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THE FEUDING SPECTRUM: FROM THE MOUNTAINS OF ALBANIA TO THE COURT OF CHARLES V

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ABSTRACT

At the end of an interdisciplinary conference on "Feud in Medieval and Early Modern Europe," held in Aarhus, Denmark in 2003, the participants realized we could not agree on a definition of the feud, and we were left with a certain "definitional incoherence." In the hope that scholarship can make progress, this paper proposes to build upon the Denmark conference. This paper suggests that the feud should be understood as a spectrum of behaviors and values. Part of the task is to identify the boundaries of the feuding spectrum, so that all acts of reciprocal violence do not collapse into it. At one end of the spectrum were those acts most distant from the power of the state, exemplified by the customary law of the Kanun of the Albanian mountains. At the other end of the spectrum might be cases of feuding that hid under the blanket of the ragione dello stato *and statutory law, cases in which the laws of the monarch repudiated private justice in favor of public norms but that in practice allowed certain privileged persons to continue to pursue feuds. The paper examines the role of Emperor Charles V in the assassination of Lorenzino de' Medici, himself the assassin of Duke Alessandro de' Medici, the Emperor's son-in-law. In between these two extremes were numerous examples of perpetrators of violent acts who negotiated their way along the spectrum to maximize the chances of success during a period of deep social conflict over the honorable and legal ways to redress grievances. There is a certain paradox in my thesis: although the customary codes of the feud implied rigid obligations to maintain honor, feuding parties made choices about where to situate themselves on the spectrum.*

Keywords: Feud, Albanian Kanun, Emperor Charles V, Assassination

At the end of an interdisciplinary conference that I attended in Aarhus, Denmark in 2003 on "Feud in Medieval and Early Modern Europe," the participants could not agree on a definition of the feud and concluded with a certain "definitional incoherence" (Netterstrom, 2007, 48–49). In the hope that scholarship can make progress, this paper proposes to build upon the Denmark conference. Rather than trying today to pin down a definition, as if feud is an object ("the feud") or even a certain kind of transaction ("to feud)," I would like to propose that we look at feuding as a spectrum of behaviors and values.

One might think "spectrum" connotes the Latin meaning of a *spectre*, an apparition, or ghost as in the Italian, *spettro*. The feud as a *spectre* implies it is an illusion, but I mean to engage the modern connotation of spectrum as designating the full range of a phenomenon: a spectrum of colors in a decomposed beam of light, a spectrum of the wavelengths of electromagnetic radiation, or the spectrum of autistic symptoms. The autistic metaphor borrowed from medicine might be especially useful because the symptoms are behavioral and often hard to distinguish at one extreme from "normal" variations in childhood behavior and at the other from severe brain damage. Moreover, as with feuding, the causes of autism are hard to pin down, and, therefore, hard to treat. Feuding and autism are both real phenomena but defy easy classification and definition.

Part of the task is to identify the boundaries of the feuding spectrum, so that all acts of reciprocal violence do not collapse into it. At one end of the spectrum were those acts most distant from the power of the state, exemplified by the customary law of the Kanun practiced in the Albanian mountains. At the other end of the spectrum might be cases of feuding that hid under the blanket of the *ragion dello stato* and statutory law, cases in which the laws of the magistrate and monarch repudiated private justice in favor of public norms but that in practice allowed certain privileged persons to continue to pursue feuds. As an example, this paper examines the role of Emperor Charles V in the assassination of Lorenzino de' Medici, himself the killer of Duke Alessandro de' Medici, the emperor's son-in-law. In between these two extremes were numerous examples of perpetrators of violent acts who negotiated their way along the spectrum to maximize the chances of success over the honorable and legal ways to redress grievances. There is a certain paradox in my thesis: customary codes, at least in the forms available to us, seem to have regulated violence more effectively and more universally than early modern jurisprudence. Although the customary codes of the feud implied rigid obligations to maintain honor, feuding parties made choices about how to situate themselves on the spectrum (Muir, 1993, 275).[1] They decided when and how to retaliate, often after long delays, and they might appeal to the courts not from some respect for the law but when doing so seemed to offer the desired result.

The heuristic value of the spectrum might be that we can liberate European feuding codes from the quasi-mechanical functionalism of Max Gluckman's "Peace in the Feud" thesis. He stated:

1 Wormald (1983, 104) draws on the spectrum idea in a similar fashion. Netterstom seems to suggest the spectrum idea can solve the definition problem (Netterstom, 2007, 67).

> *I wish to demonstrate how men quarrel in terms of certain of their customary allegiances, but are restrained from violence through other conflicting allegiances which are also enjoined on them by custom. The result is that conflicts in one set of relationships, over a wider range of society or through a longer period of time, lead to the re-establishment of social cohesion. Conflicts are a part of social life and custom appears to exacerbate these conflicts, but in doing so custom also restrains the conflicts from destroying the wider social order* (Gluckman, 1955, 1).

Gluckman's functionalist paradigm has long held sway in historical research on feuding in Europe, especially for the more "primitive" early medieval period in which what we know derives largely from normative laws, but as Keith Mark Brown noted, such an approach "sanitized" the feud by making it a rational expression of socially legitimated norms (Brown, 1986, 2). Since the cultural turn in historical scholarship and especially in studies of Mediterranean violence, the feud has been understood less as a manifestation of the *longue durée* structures of society than as what Trevor Dean has called "vendetta narratives," those histories of quarrels that served as exemplary tales and that carried "implicit moral lessons" (Dean, 1997, 31–32). In my view, the vendetta or feud if you will (and I do not find the distinction between these two terms very useful) was a form of collective memory preserved in cautionary tales told to children, oral narratives, and literary efforts, in stories told around the hearth, in *novelle* such as Da Porto's *Giulietta e Romeo,* or plays such as John Ford's *Tis Pity She's a Whore* (but not the misogynistic David Bowie song of the same title).

Within Europe the most thoroughly elaborated customary code of feuding was undoubtedly the Kanun of the High Plateau of Albania. The Kanun is represented in a reputedly ancient customary law code that was finally published in several different versions beginning in 1853 and observed in practice during the early twentieth century by several outsiders, most famously the Scottish anthropologist-adventurer, Margaret Hasluck, who lived in Elbasan, Albania for thirteen years. It is also the subject of what is surely that most brilliant fictional representation of feuding, Ismail Kadar's *Broken April* (Kadaré, 1982) (*Aprile spezzato* (Kadaré, 1993)).

In his novel Kadar echoes Pierre Bourdieu's observation about the characteristics of a practice (Bourdieu, 1977). To Bourdieu the violent act of revenge manifests the *habitus* of feuding, the dispositions or acquired schemes of perception, thought and action that constitute the practice of the feud. The feuding *habitus* relies on what Bourdieu called its *doxa*, the learned but unconscious values and belief structures that are assumed to be self-evident and that guide an avenger's actions and thoughts. In Bourdieu's analysis of the feud, the timing of an act of retaliation undergirds its social legitimacy, its moral power to preserve honor and community values. For the protagonist in Kadar's novel, Gjorg Berisha the young Albanian "justicer," the term for the person who kills to avenge the dead, timing is everything, and his delay in avenging his brother's murder threatened his family's honor. His brother's bloody shirt hanging outside the house becomes a kind of death clock prodding him to spill blood before the limited timespan of honorable revenge runs out. In committing his revenge murder, Gjorg acts out the social script of the Kanun and

afterwards lingers in a kind of living death waiting for the end of his *bessa*, the temporary truce that gives him one month to live before he either faces his enemies who try to kill him or locks himself in a tower for safety. The novel, however, is an extended essay on the apparent contradictions and imponderables of the feuding code that reputes to maintain complete control over the social consequences of feuding violence. For the Berisha family the Kanun represents immutable law. For the prince of Orosh, who collects the blood tax, it is a source of income. For the prince's "steward of the blood," who presides over the rules of the Kanun, it is a profound mystery. For an unnamed Marxist writer referred to in the novel, it is crude class exploitation. After Gjorg commits his murder and pays the blood tax, he wanders the roads of the High Plateau. At the same time roaming around the plateau in a fancy carriage is a writer and his beautiful bride from Tirana. The urban intellectual, who finds the Kanun "terrible and beautiful," romanticizes the highlands and its blood feuds (Kadare, 1993, 63–68). The book debates the Kanun: was it a rigid system of honor that encompassed all of society, making blood revenge integral to everything else—plowing the fields, paying taxes, maintaining the public roads—or was it merely a blood accounting, a system of gain and loss that benefited the aristocracy?

The reality of the Kanun is harder to pin down than the theory, and Azeta Kola will be able to say something far more definitive about it than I may here. On the feuding spectrum, however, the Kanun might define the most thoroughly elaborated customary code. According to one legal historian, the Kanun "*era una speciale mentalità etica, fondata sul sentimenti d'onore, di fedeltà di libertà non priva di senso di responsabilità*." (Villari, 1940 as summarized in Martucci, 2010, 63). The legal code itself, which expresses itself as eternal and immutable does not actually tell us anything about practice, which often was accidental and changeable. The cultural anthropologist, Donato Martucci of the University of Salento, has analyzed the multiple versions of the Kanun and investigated what happens in practice. The theory is grounded on a moral principle of *birrnija* – the attributes of a virtuous man including prudence, justice, and temperance – an ethic similar to the Sicilian *omertà*. The theoretical system includes the notion of a promise in the sense of a treaty between feuding parties (the *bessa*), of personal liberty, of equality among honorable men (the principle of blood for blood), and of shame for those who fail to shed the blood of an enemy. Ancillary to the system of personal relations among feuding families are the broader social ramifications, especially the sacred obligations of hospitality toward a guest:

> *La dimensione divina appare ancora più autentica quando si considera che la si acquisisce d'improvviso una sera, soltanto per alcuni colpi battuti a una porta […] Qualsiasi uomo commune, in qualsiasi note o in qualsiasi giorno, può essere elevato alla sublime dignità di ospite. Quindi la via di questa divinizzazione temporanea è aperta a chiunque, e in ogni momento […] E questa trasformazione inattesa è appunto partecipe della natura divina* (Kadare, 1993, 63–68).

The actual moment of the taking of blood involved elaborate rules of when and where to shoot, how to arrange the body properly, how to notify the community, and who was

exempt from violence – children, women, priests. In the Albanian mountains where the Kanun was followed, resorting to the law of the state never seems to have been an option except perhaps under the Communist regime. The community elders might have a role, but disputes about the provisions of the Kanun were appealed to informal experts rather than the courts.

In contrast to Albania, an intermediary place on the feuding spectrum began to appear in other parts of Europe during the late medieval and early modern period when pursuing blood feud or resorting to the legal system became a choice. In this intermediary place, the micro-geographies of family property, public roads, and community lands yielded to the legal territorial boundaries asserted by the nascent states.

Some years ago my own research on feuding in Friuli led me to a remarkable document about choosing between the codes of the vendetta and the laws of the state: The chronicle of the Friulan aristocrat, Soldoniero di Strassoldo, who inserted his own family's experiences into a record of the endemic violence that plagued Friuli in the sixteenth century (di Strassoldo, 1895, 30–55).[2] The case is one about inherited obligations of revenge, property conflicts within a lineage, family strategies to preserve patrimony, jurisdictional boundaries, shopping for sympathetic courts, and fear of the consequences of a revenge killing, in other words all the considerations required of participants in a feud. The story involves a dispute between, on the one side, the author Soldoniero and his brother Federico di Strassoldo, and on the other, their first cousins, the brothers Zuan Iosefo and Bernardino di Strassoldo. Here was a classic example of how property held *in fraterna* by brothers and agnatic cousins could become the grounds for a feud among kinsmen.

Soldoniero and Federico filed a legal suit against their cousin Zuan Iosefo for usurping more than his share of the income from properties held *in fraterna* by their respective fathers. On October 4, 1561, Federico was returning from the market town of Belgrado to the family villa for the beginning of the grape harvest. The road passed through one of the several small jurisdictional enclaves that belonged to the Holy Roman Empire in Friuli, which was in most places subject to the authority of the Venetian republic. Accompanied by three *bravi*, Zuan Iosefo hid beside the road in a ditch that divided two fields of sorghum and that formed the border between Venetian and imperial territories. As Federico rode by, the assassins rushed out, shot him with a pistol, and finished him off with blows to the head. One of Federico's servants escaped into a nearby field, from which he watched the killers drag the body across the ditch into imperial territory to make certain the case would not go to the Venetian authorities. The assassins then escaped into the Venetian jurisdiction where they could not be arrested without creating a diplomatic incident between the republic and the emperor, who was particularly touchy about even the appearance of Venetian violations of his jurisdictional rights in the disputed border region.

The problem then became two-fold: who had the obligation to avenge Federico's death and what role might the courts have in prosecuting the murderers? Federico's orphaned son was just ten years old. That left as the obvious avenger Federico's brother

2 I have previously discussed the case in Muir, 1994, 72–76.

Soldoniero, the author of the chronicle, but he ducked the obligation by appealing to the legal authorities. But to which courts should he appeal, the imperial captain in Gradisca or the Venetian luogotenente in Udine? The imperial captain had formal jurisdiction, and Soldoniero first went to him, who after a two-week delay banished the killers from imperial territory and confiscated their property. However, Zuan Iosefo and his *bravi* had already found refuge in Venetian territory, and the Venetian luogotenente in Udine refused to act because he lacked jurisdiction in the matter. Soldoniero appealed to Venice where his case was kicked around from the Consiglio dei Dieci, to the Collegio of the Senato, to the Avvogadori di Comun, to the Quarantia, all of which refused to issue an indictment because of the lack of jurisdiction and the danger of a diplomatic dispute with the emperor. As a result of his efforts to have the Venetians hear the case, a frustrated Soldoniero now found himself under indictment in the imperial courts for *lèse-majesté*. If we are to believe Soldoniero's account, here is an example of someone who wanted to avoid a feud and who wanted to rely on the legal system for redress but who was thwarted by the inefficiencies of the law courts, political considerations, and diplomatic sensitivities. After many months pleading in Venice and Vienna, Soldoniero managed to have the assassins banished from Venetian and imperial territories and all their properties confiscated. As one of his dead brother's heirs, Soldoniero received one-quarter of Zuan Iosefo's property, but it was heavily encumbered by unpaid taxes. The lesson Soldoniero wanted to impart to his readers was that his acceptance of the authority of the law had enmeshed him in an impossible situation from which he extricated himself only with great difficulty and expense. The problem of competing jurisdictions may have been particularly acute in Friuli, but it was not unusual in early modern Europe where almost anyone who chose to avoid personal or familial revenge by relying on the courts opened himself to an experience of justice denied. Stuart Carroll, for example, has shown that in France most lawsuits were abandoned before sentencing, and even when sentences were issued, they were seldom carried out (Carroll, 2015).

Zuan Iosefo's conviction, however, did not pay what Soldoniero still saw as a debt of blood. He just refused to collect it himself even though it was his brother who had been killed. Instead he passed on the responsibility to his nephew, Federico's son Zuan Francesco, who would be unable to avoid a "vendetta onorabile" for the murder of his father. At this stage, Soldoniero's reasoning became remarkably self-serving. The boy, he wrote, would eventually be obliged to collect the debt of blood, but as the only heir to the joint property of Soldoniero and Federico, he might place the entire family patrimony in jeopardy. If he killed Zuan Iosefo, Zuan Francesco would certainly be exiled and have his property confiscated. Moreover, Soldoniero had no son of his own since he was a bachelor. Soldoniero, therefore, decided to marry in order to produce a male heir who could inherit the entire patrimony no matter what Zuan Francesco did.

In Soldoniero's calculations reliance on the official legal system, preservation of family property, and the maintenance of personal honor constituted variables in a family economy of exchanges in which any action in one of the three areas of interest had implications for the others. Serious contradictions among the imperatives produced by these interests put Soldoniero into a series of double binds. After the murder of Federico,

Soldoniero faced a dilemma: if he resorted to the judicial system for redress he would be seen as lacking courage, but if he pursued revenge through an act of violence he might lose his property and be forced into exile. If he did nothing he would lack the courage of an honorable gentleman. Even when he attempted to rely on the courts, he was stymied by jurisdictional conflicts and international politics. In fact, what Soldoniero predicted is exactly what happened fourteen years after the initial murder. Zuan Francesco surprised Zuan Iosefo while he was holed up in his rural castle and beheaded him. The Venetian courts exiled Zuan Francesco and confiscated his property. Young Zuan Francesco maintained the family honor, but in the ensuing legal proceedings, his uncle Soldoniero lost some of the family lands. Thus, Soldoniero's elaborate strategy of delay and transference of the obligation to avenge failed, at least in part, and in many respects he was bound to fail. By attempting to engage in a feud and at the same time to respect the law, he set himself on an impossible course along the feuding spectrum, one fraught with perils at every turn. The double-binding imperatives of sustaining an honorable feud and respecting the law made every choice seemingly one of loss rather than gain.

At the opposite end of the feuding spectrum from the mountains of Albania might be the seat of the ultimate source of law in western Europe, the throne of the Holy Roman Emperor, and no late medieval or early modern emperor exercised greater legitimate sovereign authority than Charles V Habsburg. It may seem an oxymoron to depict the emperor as taking the law into his own hands to pursue a private feud, but Stefano Dall'Aglio has recently demonstrated just that (Dall'Aglio, 2011; 2015). The case of what Dall'Aglio calls "the Emperor's revenge" concerned the retaliatory murder of Lorenzino de' Medici in 1548, who eleven years before had assassinated his own cousin, the first Duke of Florence, Alessandro de' Medici. Alessandro was the emperor's son-in-law and ally who had sworn obedience to Charles when appointed duke. Instead of restoring Florentine liberty, which might have been Lorenzino's motive in the assassination, another Medici, Duke Cosimo succeeded Alessandro, solidifying the Medici hold on Florence and confirming the Habsburg domination of the peninsula. The obligation to avenge Alessandro's death should have fallen to his political heir Cosimo. Contemporaries and subsequent historians have assumed that was exactly what happened, but Dall'Aglio demonstrates that Cosimo remained passive in pursuit of Lorenzino. In contrast, the emperor's men plotted for eleven years against Lorenzino, and "*it was Charles V who expressly requested the planning and execution of the murder and gave the permit to go ahead, and that it was three representatives of imperial authority in Italy … who translated into action his orders from Bavaria*" (Dall'Aglio, 2015, 178). "*Contrary to traditional historiography, which has always spoken exclusively of a 'Medici vendetta' and of the paid killers sent by Cosimo, it seems to me,*" Dall'Aglio concludes, "*that we ought to speak of the revenge of Charles V*" (Dall'Aglio, 2015, 179). Lorenzino, in fact, was not the only case of Charles's engineering the assassination of an enemy in Italy. The list of those killed through his surrogate, the governor of Milan Ferrante Gonzaga, included Pier Luigi Farnese, duke of Parma, Piacenza, and Castro who was viciously stabbed to death and hung from a window of his palace in Piacenza; Francesco Burlamacchi, decapitated in Milan for his anti-imperial activities; and Giulio Cibo Malaspina, executed for a pro-French plot. Lorenzino fell for

the same reasons as these others—he had dared to challenge Charles V—but Lorenzino had also attacked the emperor's family by murdering his son-in-law. The emperor ensured that the official rationale for the murder remained *ragion dello stato* rather than private vendetta, and for this reason he sought "*to attribute to the irresolute Florentine duke all the 'merit' for having brought justice to the assassin of his predecessor*," a cover-up that has distorted the historical record (Dall'Aglio, 2015, 182).

Thus, even the emperor was capable of engaging in a blood feud, though his august position obliged him to mask his motives, his thirst for revenge, and his willingness to employ assassins for personal ends. It may be artificial, of course, to separate too radically the political from the personal in Charles's case since his ability to command derived not just from the law but from his personal reputation, as contemporary political theorists, Machiavelli in the forefront, would have recognized. The rustic Albanian from the High Plateau, the Friulan aristocrat, and the Holy Roman Emperor all faced a similar cultural construct of the feud: a murder of a family member required a response in kind, the timing and character of the response determined the honor of the avenger and his family, and that honor became a form of social and political capital for sustaining social position. However, all across the feuding spectrum actors made choices, even if some choices were more constrained than others. Gjorg Berisha the young Albanian justicer in Kadar's novel saw no way out of the destiny prescribed for him by the Kanun, even as he exercised his own agency by delaying the killing as long as possible. Soldoniero di Strassoldo, in contrast, desperately tried to make choices by resorting to the judicial procedures that attempted to make the feud obsolete, but jurisprudence ultimately failed him and his nephew, who once he gained maturity assassinated his father's slayer. One would assume that no one had more freedom to choose a course of action during the sixteenth century than the emperor, but even he felt constrained to conduct a private, clandestine vendetta against his son-law's assassin, and Lorenzino's murder in 1548 did not end the matter. A feud among the pro- and anti-Medici partisans continued in a series of retaliatory attacks for decades.

No matter where they fit on the spectrum all of these feuds were sustained by narratives, by exemplary tales about past events that framed the moral alternatives. We might, in sum, reformulate Max Gluckman's famous phrase of the "peace in the feud" into the "feud in the story" – those stories that kept a feud alive, including even those stories recorded in judicial documents that stigmatized the cultural value of revenge. Such stories have had great power. They can evoke strong emotions and motivate action long after the specific historical conditions that produced the feud. The Jacobites' cause in the Highlands of Scotland was a dead letter after their defeat at the Battle of Colloden in 1746, but my otherwise kindly Scots grandmother who never even visited the Highlands until late in her life raised me with tales of "Bonny Prince Charlie" and the fierce warning, "never trust a Campbell." And I never have.

MAŠČEVALNI SPEKTER: OD ALBANSKIH GORA DO SODIŠČ KARLA V.

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POVZETEK

Ob zaključku interdisciplinarne konference o "Maščevanju v srednjeveški in zgodnji novoveški Evropi", ki je leta 2003 potekala v kraju Aarhus na Danskem, smo sodelujoči prišli do ugotovitve, da ne moremo priti do enotne definicije maščevanja (fajde) in smo torej ostali v nekem "definicijskem neskladju". V upanju, da bo znanost napredovala, je namen tega članka graditi na zaključkih konference na Danskem. Članek predlaga, da mora biti maščevanje razumljeno kot spekter vedenja in vrednot. Del izziva je v tem, da se definirajo meje maščevalnega spektra tako, da ne bodo vsi akti povračilnega nasilja padli v ta okvir. Na enem koncu spektra so tako tista dejanja, ki so najbolj oddaljena od državne moči, torej tista, ki jih ponazarja običajno pravo Kanuna v albanskih gorah. Na drugem koncu pa so primeri maščevanj, skriti pod okriljem ragione dello stato *in zakonskega prava, primeri v katerih so zakoni monarha zavrnili zasebno pravičnost v korist javnih norm, vendar so v praksi nekaterim privilegiranim osebam omogočali, da nadaljujejo z maščevanjem. Članek obravnava vlogo cesarja Karla V. pri atentatu na Lorenzina de' Medici, pri čemer je slednji umoril vojvodo Aleksandra de' Medici, cesarjevega zeta. Med tema dvema ekstremoma obstajajo številni primeri izvajalcev nasilja, ki so se pogajali znotraj tega spektra, da bi si povečali možnosti uspeha v obdobju globokih družbenih konfliktov glede častnega in pravnega načina za odpravo krivic. Znotraj moje teze obstaja določen paradoks: čeprav so običajni postopki maščevanja vsebovali stroge obveznosti glede ohranjanja časti, so stranke v sporu izbirale kje se bodo znotraj spektra nahajale.*

Ključne besede: Maščevanje, albanski Kanun, cesar Karel V., atentat

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LO SPETTRO DELLA FAIDA: DAI MONTI DELL'ALBANIA ALLA CORTE DI CARLO V

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SINTESI

Alla fine di una conferenza interdisciplinare su "feudo in epoca medievale e della prima età moderna in Europa", tenutasi ad Aarhus in Danimarca nel 2003, i partecipanti hanno realizzato non siamo riusciti a trovare un accordo su una definizione del feudo, e siamo rimasti con un certo "incoerenza delle definizioni". Nella speranza che la ricerca è in grado di compiere progressi, in questa relazione si propone di mantenere la promessa della conferenza a Danimarca. Questa relazione suggerisce che il feudo dovrebbe essere inteso come uno spettro di comportamenti e di valori. Parte del compito di individuare i limiti di spettro di faide, in modo che tutti gli atti di violenza reciproca non collassano in esso. In corrispondenza di una estremità dello spettro sono state quelle agisce più distante dal potere dello stato, esemplificati dal diritto consuetudinario del Kanun delle montagne albanesi. All'altra estremità dello spettro potrebbe essere casi di faide che nascondeva sotto la coperta della ragione dello stato e dalla legge, i casi in cui le leggi del monarca ripudiato giustizia privata a favore di norme pubbliche ma che in pratica permesso alcune persone privilegiate per continuare a perseguire feudi. La relazione esamina il ruolo dell'Imperatore Carlo V nell'assassinio di Lorenzino de' Medici, egli stesso assassino del Duca Alessandro de' Medici. Tra questi due estremi sono stati numerosi esempi di autori di atti di violenza che hanno negoziato il loro cammino lungo lo spettro per massimizzare le possibilità di successo durante un periodo di profondi conflitti sociali oltre gli onorevoli e modi legali di risarcimento rimostranze. Vi è un certo paradosso nel mio argomento: sebbene la consuetudine dei codici del feudo implicita obblighi rigidi per mantenere l'onore, quelli chi fanno faide fanno scelte su dove situare se stessi sullo spettro.

Parole chiave: faida, Kanun albanese, imperatore Carlo V, assassinio

Nel 2003 partecipai a un convegno interdisciplinare sulla "Faida nell'Europa medievale e moderna" organizzato a Aarhus, in Danimarca. Non riuscendo ad accordarsi su una precisa definizione di faida, i partecipanti conclusero i lavori con una certa "incoerenza di definizioni" (Netterstrom, 2007, 48–49). Nella speranza che la ricerca possa fare progressi, questo articolo si propone di ripartire da quel convegno danese. Non intendo provare a fissare una definizione, trattando quindi la faida come un oggetto ("the feud") o persino un tipo di transazione ("to feud"); vorrei invece suggerire di guardare alla faida come a uno spettro di comportamenti e valori.

Nel suo significato originale, il termine *spectrum* indicava un'apparizione, un fantasma, un'illusione. Qui intendo invece riferirmi alla connotazione moderna dello spettro, che designa tutta l'estensione di un determinato fenomeno: lo spettro di colori di un raggio di luce scomposto, lo spettro di lunghezze d'onda di una radiazione elettromagnetica, lo spettro dei sintomi dell'autismo. Questa metafora medica può essere particolarmente utile, perché i sintomi dell'autismo sono comportamentali e spesso difficili da distinguere, da un lato, dalle "normali" variazioni nel comportamento di un bambino, e dall'altro lato da seri danni neurologici. Come accade per la faida, anche le cause dell'autismo sono difficili da individuare con certezza, e quindi da trattare; pur essendo fenomeni reali non sono di facile classificazione e definizione.

Se si tratta la faida come uno spettro è necessario identificarne bene i limiti, affinché non vi ricadano dentro tutti gli atti di violenza reciproca. A un estremo vi saranno le azioni del tutto indipendenti dal potere statale, come quelle previste dalla legge consuetudinaria del Kanun osservata sui monti dell'Albania. All'altro estremo potranno esservi quei casi di faida che si nascondevano dietro alla ragion di stato e alle pubbliche leggi – laddove magistrati e monarchi in teoria ripudiavano il ricorso alla giustizia privata a favore di norme pubbliche, ma in pratica permettevano a certi privilegiati di continuare a portare avanti una faida. In questo articolo si prende ad esempio il ruolo dell'imperatore Carlo V nell'assassinio di Lorenzino de' Medici, che aveva a sua volta ucciso il duca Alessandro de' Medici, nipote dell'imperatore. Fra questi due estremi si trovavano numerosi altri esempi di atti violenti; nello scegliere dove collocarsi lungo lo spettro, i responsabili di questi atti cercavano di massimizzare le loro possibilità di successo valutando i diversi modi onorevoli o legali a loro disposizione per riparare il torto subito. La mia tesi contiene un certo paradosso: sembra che nella prima età moderna i codici consuetudinari – almeno nelle forme che sono giunte fino a noi – regolassero la violenza con maggiore portata ed efficacia rispetto alla giurisprudenza. Sebbene le norme consuetudinarie sulla faida imponessero degli obblighi ben precisi per il mantenimento dell'onore, le parti coinvolte erano libere di decidere dove collocarsi lungo lo spettro.[1] Erano loro a scegliere quando e come vendicarsi (spesso dopo lunghi intervalli di tempo), e se si appellavano alle corti non era perché volevano rispettare la legge, ma perché pensavano che quella strada potesse condurli al risultato sperato.

1 Anche Wormald (1983, 104) riprende in termini simili l'idea di spettro. Netterstom pare suggerire che l'idea di spettro possa risolvere i problemi legati alla definizione (Netterstom, 2007, 67).

Dal punto di vista euristico, guardare alla faida come a uno spettro permette di liberare i codici europei della faida dal funzionalismo quasi meccanico della tesi di Max Gluckman sulla "pace nella faida":

> *Vorrei dimostrare che gli uomini si scontrano per via di alcuni loro doveri consuetudinari, ma allo stesso tempo alcuni altri obblighi, anch'essi imposti dalla tradizione, scoraggiano il ricorso alla violenza. Ne risulta che gli scontri in un ambito dei rapporti umani conducono, nella sfera più ampia della società o dopo un certo periodo di tempo, al ristabilimento della coesione sociale. I conflitti sono un elemento della vita sociale e la tradizione aiuta a esacerbarli, ma così facendo impedisce ai conflitti di distruggere il più ampio ordine sociale* (Gluckman, 1955, 1).

Il paradigma funzionalista di Gluckman ha dominato a lungo le ricerche storiche sulla faida in Europa, soprattutto per il periodo più "primitivo" della prima età moderna, in cui ciò che conosciamo derivava largamente da regole normative – come ha notato Keith Mark Brown, questo approccio ha però "bonificato" la faida, rendendola un'espressione razionale di norme socialmente legittimate (Brown, 1986, 2). A partire dalla svolta culturale nella storiografia e soprattutto negli studi sulla violenza nel Mediterraneo, la faida non è più stata intesa come un'espressione delle strutture di *longue durée* della società, quanto piuttosto come ciò che Trevor Dean ha chiamato "racconti di vendetta" – quelle storie di conflitto che funzionavano da racconti esemplari e che trasmettevano "implicite lezioni morali" (Dean, 1997, 31–32). Dal mio punto di vista, la vendetta o la faida (non trovo molto utile distinguere tra i due termini) costituiva una forma di memoria collettiva, che veniva conservata nei racconti narrati ai bambini, nelle storie orali e nei lavori letterali, in storie raccontate attorno al focolare, in novelle come *Giulietta e Romeo* di Da Porto o commedie come *Tis Pity She's a Whore* di John Ford (non l'omonima canzone misogina di David Bowie).

In Europa, il codice consuetudinario di faida di gran lunga più elaborato era senza dubbio il Kanun dell'altopiano albanese. Il Kanun è inserito in un codice di leggi consuetudinarie ritenuto molto antico, che venne poi pubblicato a partire dal 1853 in una serie di versioni differenti. All'inizio del ventesimo secolo la sua applicazione fu osservata da diversi osservatori esterni, tra cui la più famosa fu l'antropologa e avventuriera scozzese Margaret Hasluck, che trascorse tredici anni a Elbasan in Albania. La faida è anche il soggetto di *Aprile spezzato* di Ismail Kadaré, di certo la migliore raffigurazione letteraria della vendetta (Kadaré, 1993).

Nel suo romanzo Kadaré echeggia l'osservazione di Pierre Bourdieu sulle caratteristiche di una pratica (Bourdieu, 1977). Per Bourdieu l'atto violento della vendetta esprime l'*habitus* della faida, cioè quelle disposizioni o quegli schemi acquisiti di percezione, pensiero e azione che formano la pratica della faida. L'*habitus* della faida si appoggia su ciò che Bourdieu chiama la sua *doxa*, ovvero le strutture mentali e i valori appresi ma inconsci che sono ritenuti auto-evidenti e che guidano le azioni e i pensieri del vendicatore. Secondo l'analisi di Bourdieu, il tempismo di un atto di ritorsione è decisivo per la sua legittimità sociale e per la sua capacità morale di conservare l'onore e i valori della comunità. Per

il protagonista del romanzo di Kadaré, Gjorg Berisha, un giovane *gjakës* – termine che indica colui che uccide per vendicare un altro morto – il tempismo è tutto, e il suo ritardo nel vendicare l'omicidio del fratello mette a rischio l'onore della famiglia. La camicia insanguinata della vittima appesa all'esterno della casa diventa una sorte di orologio della morte, che incita Gjorg a spargere sangue prima che si chiuda l'intervallo di tempo a disposizione per una vendetta onorevole. Nel commettere il suo omicidio per vendetta Gjorg si attiene al copione sociale stabilito dal Kanun: rimarrà in uno stato di morte in vita nell'attesa che termini la *besa*, la tregua temporanea che gli concede un mese di tempo da vivere prima di fronteggiare i nemici che cercheranno di ucciderlo, oppure di rinchiudersi in una torre per salvarsi. Il romanzo è in realtà un lungo saggio sulle contraddizioni apparenti e l'imponderabile del codice della faida, che si illude di controllare appieno le conseguenze sociali della violenza. Per la famiglia Berisha il Kanun rappresenta una legge immutabile. Per il principe di Orosh, che raccoglie l'imposta del sangue, è una fonte di reddito. Per il suo intendente del sangue, che vigila sulle regole del Kanun, è un mistero profondo. Per un anonimo scrittore marxista citato nel romanzo, è mero sfruttamento di classe. Dopo aver commesso il suo omicidio, Gjorg paga l'imposta del sangue e prende a girovagare per le strade dell'altopiano. Viaggiando su una bella carrozza, girano per le stesse strade anche uno scrittore di Tirana e la sua bella sposa. L'intellettuale di città, che trova il Kanun "bello e terribile", idealizza l'altopiano e le sue faide di sangue (Kadare, 1993, 63–68). Il libro discute il Kanun: era un sistema di onore rigido e onnicomprensivo, che legava la vendetta di sangue a ogni altro aspetto della vita sociale – arare i campi, pagare le tasse, mantenere le strade –, o si trattava semplicemente di una contabilità del sangue, un sistema di guadagni e perdite che andava a vantaggio dell'aristocrazia?

Parlare del Kanun da un punto di vista teorico è più facile che fissare la sua realtà concreta, e Azeta Kola saprà dire qualcosa di più definitivo di me a riguardo. Lungo lo spettro della faida il Kanun costruisce forse il codice consuetudinario elaborato più nei dettagli. Secondo uno storico del diritto, il Kanun "*era una speciale mentalità etica, fondata sul sentimento d'onore, di fedeltà, di libertà non priva di senso di responsabilità*" (Villari, 1940 citato in Martucci, 2010, 63). Il codice legale in sé si presenta come eterno e immutabile, ma in realtà non ci dice niente sulla sua applicazione concreta, che era spesso accidentale e mutevole. L'antropologo culturale Donato Martucci dell'Università del Salento ha analizzato le diverse versioni del Kanun e studiato cosa accade nella pratica. Dal punto di vista teorico, il codice si fonda sul principio morale della *birrnija* – che condensa gli attributi di un uomo virtuoso, tra cui la prudenza, la giustizia e la temperanza –, secondo un'etica simile a quella dell'omertà siciliana. Il sistema teorico comprende le nozioni di promessa, intesa come accordo tra le due parti in lotta (*besa*), di libertà personale, di uguaglianza tra uomini d'onore (il principio del rispondere al sangue col sangue) e di disonore per coloro che non spargono il sangue di un nemico. Questo sistema di relazioni tra famiglie in conflitto è affiancato da ramificazioni sociali più estese, che riguardano soprattutto i sacri obblighi di ospitalità:

> *La dimensione divina appare ancora più autentica quando si considera che la si acquisisce d'improvviso una sera, soltanto per alcuni colpi battuti a una porta. […]*

E questa trasformazione inattesa è appunto partecipe della natura divina. […] Qualsiasi uomo comune, in qualsiasi notte o in qualsiasi giorno, può essere elevato alla sublime dignità di ospite. Quindi la via di questa divinizzazione temporanea è aperta a chiunque, e in ogni momento (Kadare, 1993, 63–68).

Per quanto riguardava il momento vero e proprio dello spargimento di sangue, regole dettagliate indicavano quando e dove sparare, come andava trattato il corpo, come rendere nota l'uccisione alla comunità, e chi fosse esente dalla violenza (bambini, donne e preti). Tra le montagne albanesi dove veniva osservato il Kanun sembra che il ricorso alla legge dello stato non sia mai stata un'opzione contemplata, tranne forse sotto il regime comunista. Gli anziani della comunità talvolta avevano un ruolo, ma le dispute sulle norme del Kanun venivano risolte da esperti informali e non da tribunali.

Nel Basso Medioevo e nella prima età moderna, in altre parti d'Europa cominciarono ad apparire dei casi collocati in posizione intermedia lungo lo spettro della faida: divenne possibile scegliere se portare avanti una faida di sangue o rivolgersi al sistema legale. In questa posizione intermedia le micro-geografie delle proprietà della famiglia, delle strade pubbliche e delle terre della comunità persero importanza a favore dei confini territoriali formali stabiliti dagli stati nascenti.

Mentre mi occupavo di faida in Friuli, alcuni anni fa trovai un documento molto interessante sulla necessità di scegliere tra i codici della vendetta e le leggi dello stato. Era la cronaca di un nobile friulano, Soldoniero di Strassoldo, che inseriva le vicende della sua famiglia all'interno di un più ampio racconto sulla violenza endemica che caratterizzava il Friuli nel sedicesimo secolo (di Strassoldo, 1895, 30–55).[2] È una storia di obblighi di vendetta ereditati, conflitti di proprietà tra parenti, strategie familiari per conservare il patrimonio, confini giurisdizionali, ricerca di tribunali benevolenti, paura delle conseguenze di un assassinio per vendetta – in altre parole, tutte quelle considerazioni di cui dovevano tener conto gli attori coinvolti in una faida. La vicenda riguarda un conflitto tra l'autore, Soldoniero, e suo fratello Federico di Strassoldo da una parte, e i loro primi cugini Zuan Iosefo e Bernardino di Strassoldo dall'altra. È un classico esempio dei problemi provocati delle proprietà detenute *in fraterna* da fratelli e cugini agnatizi, che potevano trasformarsi in una causa di faida tra parenti.

Secondo Soldoniero e Federico, Zuan Iosefo si era appropriato di una quota maggiore del dovuto del reddito prodotto dalle proprietà detenute *in fraterna* dai loro rispettivi padri: i due fratelli intentarono una causa contro il cugino, ma per vendicarsi della denuncia Zuan Iosefo uccise Federico. Era il 4 ottobre 1561, e Federico stava rientrando da Belgrado, un borgo di mercato, alla villa di famiglia, dove stava per cominciare la vendemmia. La strada attraversava una delle tante piccole *enclaves* che il Sacro Romano Impero deteneva in Friuli (gran parte della regione era invece soggetta all'autorità della Repubblica di Venezia). Accompagnato da tre bravi, Zuan Iosefo si nascose a lato della strada, nel fossato che divideva due campi di sorgo e che costituiva il confine tra i territori veneziani e quelli imperiali. All'avvicinarsi di Federico, gli assassini uscirono

2 Ho già analizzato la vicenda in Muir, 1994, 72–76.

dal nascondiglio e gli spararono con una pistola, finendolo poi con una serie di colpi alla testa. Uno dei servitori della vittima riuscì a fuggire in un campo vicino, da cui osservò gli assassini trascinare il corpo oltre il fossato, all'interno del territorio imperiale – così da essere certi che il caso non sarebbe finito nelle mani delle autorità veneziane. Subito dopo gli assassini ripararono nel territorio di Venezia, dove non avrebbero potuto essere arrestati senza creare un incidente diplomatico tra la Repubblica e l'imperatore, che era particolarmente suscettibile anche al solo segno di una possibile violazione da parte di Venezia dei suoi poteri giurisdizionali in quella contesa regione di confine.

Si poneva un doppio problema: chi doveva vendicare la morte di Federico, e quale ruolo potevano avere i tribunali nel perseguire gli assassini? Il figlio della vittima aveva solamente dieci anni, quindi il naturale vendicatore era il fratello di Federico, autore della cronaca. Soldoniero però ignorò l'obbligo e decise di rivolgersi alle autorità legali: ma a chi rivolgersi, al capitano imperiale di Gradisca o al luogotenente di Venezia a Udine? La giurisdizione formale apparteneva al capitano imperiale, quindi Soldoniero si rivolse in prima istanza a lui; due settimane più tardi gli assassini furono banditi dal territorio dell'impero e la loro proprietà fu confiscata. Zuan Iosefo e i suoi bravi avevano però già riparato nel territorio veneziano. Il luogotenente di Udine si rifiutò di agire, perché non aveva giurisdizione sulla vicenda; Soldoniero si rivolse allora alla stessa Venezia, dove il suo caso si trovò a passare dal Consiglio dei Dieci al Senato, dagli Avogadori de Comun alla Quarantia. Nessuno di loro decise di emanare un atto d'accusa, perché il caso non ricadeva nella giurisdizione della Repubblica e c'era il pericolo di uno scontro diplomatico con l'imperatore. Gli sforzi di Soldoniero per spingere i veneziani a considerare il caso non lo lasciarono solo frustrato, ma finirono per creargli anche dei problemi giudiziari: le corti imperiali lo misero sotto infatti accusa per lesa maestà. Se dobbiamo credere a quanto racconta Soldoniero, in questa storia abbiamo un individuo che voleva evitare la faida e affidarsi al sistema legale per ottenere una riparazione, ma che viene ostacolato dalle inefficienze dei tribunali, dalle considerazioni politiche e dalle sensibilità diplomatiche. Dopo aver perorato per molti mesi la sua causa a Venezia e a Vienna, Soldoniero riuscì a far bandire gli assassini sia dai territori veneziani sia da quelli imperiali, oltre che a far confiscare i loro beni. Essendo uno degli eredi della vittima, Soldoniero ricevette un quarto delle proprietà di Zuan Iosefo, ma venne pesantemente gravato di tasse da pagare: ai suoi lettori voleva mostrare proprio che, accettando l'autorità della legge, aveva finito per ritrovarsi ingabbiato in una situazione impossibile, da cui era riuscito a liberarsi solo al prezzo di grandi difficoltà e grosse spese. Il problema della concorrenza di giurisdizioni diverse era forse particolarmente sentito in Friuli, ma non era certo raro nell'Europa della prima età moderna: quasi chiunque avesse scelto di rinunciare alla vendetta personale o familiare per ricorrere ai tribunali avrebbe potuto andare incontro a un'esperienza di giustizia negata. Ad esempio, Stuart Carroll ha mostrato che in Francia la maggior parte delle cause venivano abbandonate prima della sentenza, e se pure una sentenza era emessa veniva raramente applicata (Carroll, 2015).

L'arresto di Zuan Iosefo non riscattava quello che per Soldoniero era ancora un debito di sangue. Pur trattandosi dell'uccisione di suo fratello, si rifiutava di riscuotere lui stesso il debito: passò la responsabilità al nipote Zuan Francesco, figlio della vittima, che non

avrebbe potuto evitare una "vendetta onorabile" per l'omicidio. A questo punto il ragionamento di Soldoniero si fece molto egocentrico. Il ragazzo, scrisse, sarebbe alla fine stato costretto a riscuotere il debito di sangue, ma in quanto unico erede della proprietà congiunta di Soldoniero e Federico avrebbe potuto mettere a rischio il patrimonio dell'intera famiglia. Se avesse ucciso Zuan Iosefo, Zuan Francesco sarebbe stato infatti certamente esiliato e i suoi beni sarebbero stati confiscati. Dal canto suo, Soldoniero era scapolo e non aveva figli. Decise quindi di sposarsi, così da generare un erede maschio che avrebbe potuto ereditare l'intero patrimonio, indipendentemente dalle azioni di Zuan Francesco.

Nei calcoli di Soldoniero l'affidarsi al sistema legale ufficiale, il mantenere le proprietà della famiglia e il tutelare l'onore personale costituivano diverse variabili all'interno di una stessa economia familiare degli scambi, in cui ogni movimento in una delle tre aree di interesse provocava delle conseguenze nelle altre due. Gravi contraddizioni tra gli imperativi determinati da questi interessi posero Soldoniero di fronte a una serie di dilemmi. Dopo l'uccisione di Federico, Soldoniero sarebbe stato visto come codardo se si fosse rivolto al sistema giudiziario per ottenere una riparazione, ma se avesse cercato la vendetta con un atto di violenza avrebbe potuto perdere i suoi beni ed essere costretto all'esilio; d'altro canto se non avesse fatto nulla si sarebbe mostrato privo del coraggio richiesto a un gentiluomo. Anche quando provò ad affidarsi alle corti, Soldoniero venne fortemente ostacolato da conflitti giurisdizionali e dalla politica internazionale. In effetti, aveva previsto con esattezza ciò che accadde quattordici anni dopo il primo omicidio: Zuan Iosefo fu sorpreso da Zuan Francesco mentre si nascondeva nel suo castello di campagna e venne decapitato; le corti veneziane esiliarono l'assassino e confiscarono i suoi beni. Il giovane aveva sì tutelato l'onore della famiglia, ma nelle vicende legali che ne seguirono suo zio perse alcune delle loro terre. La complessa strategia di Soldoniero per ritardare e trasferire al nipote l'obbligo di vendetta fallì, almeno in parte – per molti versi era una strategia destinata a fallire. Cercando di ingaggiare una faida e allo stesso tempo rispettare la legge, Soldoniero si era messo in una posizione insostenibile lungo lo spettro della faida, una posizione piena di pericoli da ogni punto di vista. Da un lato doveva prendere parte con onore alla faida, dall'altro doveva rispettare la legge: ogni volta che questo dilemma imponeva una scelta ne seguiva una perdita, non un guadagno.

Lungo lo spettro della faida, all'estremo opposto rispetto ai monti dell'Albania si può trovare la sede della fonte ultima della legge in Europa occidentale, il trono del Sacro Romano Impero. Nel Medioevo e nella prima età moderna nessun imperatore esercitò un'autorità sovrana legittima maggiore di quella di Carlo V d'Asburgo. Può dunque apparire un ossimoro sostenere che l'imperatore si sia fatto giustizia da solo portando avanti una faida privata, ma di recente Stefano Dall'Aglio ha dimostrato proprio questo (Dall'Aglio, 2011). Quella che Dall'Aglio chiama "la vendetta dell'imperatore" consiste nell'omicidio a scopo di ritorsione di Lorenzino de' Medici nel 1548. Undici anni prima Lorenzino aveva assassinato il cugino Alessandro de' Medici, primo duca di Firenze e nipote di Carlo V, che aveva giurato obbedienza all'imperatore quando era stato nominato duca. Lorenzino poteva forse aver agito per restaurare la libertà di Firenze, ma il successore di Alessandro, il duca Cosimo de' Medici, consolidò la presa della sua famiglia sulla città e confermò il predominio asburgico in Italia. Il compito di vendicare l'uccisione

di Alessandro avrebbe dovuto spettare a Cosimo, suo erede politico – ed è esattamente quanto fu presunto dai contemporanei e dagli storici successivi. Dall'Aglio invece dimostra che Cosimo mantenne un ruolo passivo nei confronti di Lorenzino; furono gli uomini dell'imperatore a complottare per undici anni contro quest'ultimo, e "*fu Carlo V a richiedere espressamente la pianificazione e l'esecuzione dell'omicidio e a dare il relativo via libera, […] furono tre rappresentanti del potere imperiale nella penisola […] a tradurre in azione i suoi ordini provenienti dalla Baviera*" (Dall'Aglio, 2011, 246). "*A dispetto della letteratura storiografica tradizionale, che ha sempre parlato solo ed esclusivamente di 'vendetta medicea' e di 'sicari di Cosimo'*", conclude Dall'Aglio, "*mi sembra che si debba parlare di vendetta dell'imperatore Carlo V*" (Dall'Aglio, 2011, 247). In effetti quello di Lorenzino non fu l'unico caso in cui Carlo V organizzò l'assassinio di un suo nemico in Italia: la lista delle vittime uccise per tramite del governatore di Milano Ferrante Gonzaga include Pier Luigi Farnese, duca di Parma, Piacenza e Castro (venne ferocemente pugnalato a morte e appeso da una finestra del suo palazzo di Piacenza); Francesco Burlamacchi, decapitato a Milano per le sue attività anti-imperiali; e Giulio Cibo Malasina, giustiziato per un complotto a favore dei francesi. Come questi personaggi, Lorenzino fu assassinato perché aveva osato sfidare Carlo V, ma anche perché aveva attaccato direttamente la famiglia dell'imperatore uccidendone il nipote. Carlo V si assicurò che l'omicidio venisse ufficialmente ricondotto alla ragion di stato e non a una vendetta privata, e per questo cercò "*di attribuire al titubante duca fiorentino tutto il 'merito' per aver fatto giustizia dell'assassino del suo predecessore*" – una copertura che ha finito per distorcere la ricostruzione storica degli eventi (Dall'Aglio, 2011, 250).

Dunque persino l'imperatore poteva prender parte a una faida di sangue, anche se la sua posizione augusta lo costringeva a mascherare le sue motivazioni, la sua sete di vendetta e la sua volontà di impiegare dei sicari per fini personali. Naturalmente nel caso di Carlo V è forse artificiale il tentativo di separare troppo nettamente la sfera politica da quella personale: la sua capacità di comandare derivava non solo dai poteri assegnatigli dalla legge ma anche dalla sua reputazione personale – come avrebbero riconosciuto i teorici politici dell'epoca, primo fra tutti Machiavelli.

Il montanaro albanese, il nobile friulano e l'imperatore si trovavano tutti di fronte a una simile costruzione culturale della faida: l'assassinio di un membro della famiglia richiedeva una risposta di pari valore; il tempismo e il carattere della risposta influivano sull'onore del vendicatore e della sua famiglia; e quell'onore costituiva una forma di capitale sociale e politico sotteso a una determinata posizione sociale. Ciò nonostante, lungo tutto lo spettro della faida gli attori erano liberi di fare delle scelte, anche se alcune scelte erano più obbligate di altre. Gjorg Berisha, il giovane giustiziere albanese del romanzo di Kadaré, non vedeva nessuna alternativa al destino prescrittogli dal Kanun, ma esercitò il suo arbitrio ritardando la vendetta il più a lungo possibile. Al contrario, Soldoniero di Strassoldo si sforzò in tutti i modi di ricorrere alle procedure giuridiche che dovevano servire a rendere obsoleta la faida – ma alla fine la giurisprudenza abbandonò lui e il nipote, che una volta adulto uccise l'assassino del padre. Ci si potrebbe aspettare che nel sedicesimo secolo nessuno fosse più libero dell'imperatore di scegliere il proprio corso d'azione, ma persino lui si sentì costretto a compiere una vendetta privata e clandestina

contro l'assassino del nipote. L'uccisione di Lorenzino nel 1548 non chiuse la questione, e la faida tra sostenitori e oppositori dei Medici si trascinò per decenni con una serie di attacchi e vendette.

Indipendentemente dalla loro collocazione lungo lo spettro, tutte queste faide si appoggiavano su narrazioni e racconti esemplari su eventi del passato che delimitavano le alternative morali a disposizione. In definitiva, potremmo riformulare la famosa frase di Max Gluckman sulla "pace nella faida" con la "faida nella storia" – cioè in quelle storie che la tenevano viva, comprese le storie registrate nei documenti giudiziari che stigmatizzavano il valore culturale della vendetta. Queste storie avevano un grande potere, perché riuscivano a evocare emozioni forti e a spingere all'azione anche molto tempo dopo la specifiche circostanze storiche che avevano innescato la faida. La sconfitta nella battaglia di Culloden nel 1746 mise una pietra sopra la causa dei giacobiti nelle Highlands; la mia nonna scozzese non visitò mai le Highlands fino a un'età avanzata e – pur essendo altrimenti mite – mi crebbe coi racconti di "Bonny Prince Charlie" e col fiero ammonimento "non fidarti mai di un Campbell". E io non mi sono mica mai fidato.

Traduzione: Lorenzo FERRARI

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LA PIETRA DEL BANDO. VENDETTA E BANDITISMO IN EUROPA TRA CINQUE E SEICENTO

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SINTESI

La pena del bando rifletteva in primo luogo il policentrismo politico e costituzionale europeo e le sue interrelazioni con una società che per lungo tempo fu animata dai conflitti tra consorterie e gruppi parentali. Parte essenziale delle relazioni incentrate sulla vendetta era infatti il raggiungimento della pace tra i soggetti in conflitto, così come il garantire la tranquillità e la difesa dei valori della comunità. Tale sistema era provvisto di una spiccata dimensione giuridica ed interloquiva, sul piano costituzionale, con il ruolo svolto dai tribunali e, soprattutto, con i riti giudiziari e consuetudinari che avevano l'obbiettivo di regolamentare i conflitti tra i gruppi antagonisti, allontanando con il bando, ove necessario, la persona che aveva infranto gli equilibri sociali.

Nel corso del Cinquecento una serie rilevante di problemi sociali, demografici ed economici ridefinì sensibilmente la concezione di controllo sociale e di ordine, così come le consolidate modalità di gestione della giustizia penale. La pena del bando, non più considerata nella sua tradizionale dimensione costituzionale e resa severa sia nei suoi aspetti repressivi, che in quelli più propriamente premiali, divenne uno strumento efficace per imporre una diversa legittimità politica. Di fronte a queste trasformazioni, il bandito assunse rapidamente la fisionomia di un vero e proprio fuorilegge provvisto del timbro di oppositore politico e, in quanto tale, perseguibile con ogni strumento repressivo.

Parole chiave: Banditismo, Vendetta, Giustizia penale, Fuorilegge, Pena del bando, Storia dell'età moderna

THE STONE OF BANISHMENT. REVENGE AND BANDITRY IN EUROPE BETWEEN THE 16TH AND 17TH CENTURY

ABSTRACT

First of all, the banishment penalty reflected the political and constitutional European polycentrism and its interrelations with a society for a long time animated by conflicts between factions and family groups. To reach a lasting peace between the opponents was indeed an essential moment of the vendetta system, as much as ensuring tranquillity and

the safekeeping of the community's values. The system was endowed with a pronounced juridical dimension and it interacted, on the constitutional level, with the role played by the courts and, in particular, trial and customary rites. These were aimed to manage conflicts between opposite groups by pulling away the one who broke social stability through banishment, if necessary.

During the Sixteenth century, a series of important social, demographic and economic problems sensibly reshaped the conception of social control and order, and the long-established management of penal justice as well. The banishment penalty, no longer embedded in its traditional constitutional dimension and harshened both in its repressive and rewarding aspects, became an efficient instrument to impose a different political legitimacy. Faced with these transformations, bandits quickly took the physiognomy of actual outlaws, painted as political opponents and, as such, to be dealt with any repressive instrument available.

Keywords: Banditry, Vendetta, Criminal Justice, Outlaws, Banishment Penalty, Early Modern history

PREMESSA

Il sistema della vendetta, che caratterizza intensamente l'età medievale e moderna, è maggiormente comprensibile in molte delle sue dinamiche conflittuali ed istituzionali se lo si accosta alla pena del bando e al suo utilizzo nell'ambito delle diverse concezioni di ordine e di giustizia che contraddistinsero i variegate contesti politici dell'epoca[1]. La pena del bando rifletteva in primo luogo il policentrismo politico e costituzionale europeo e le sue interrelazioni con una società che per lungo tempo fu animata dai conflitti tra consorterie e gruppi parentali. Parte essenziale delle relazioni incentrate sulla vendetta era infatti il raggiungimento della pace tra i soggetti in conflitto, così come il garantire la tranquillità e la difesa dei valori della comunità. L'espulsione dalla città e dal suo territorio della persona responsabile di un omicidio o di altre gravi offese aveva per lo più il fine di creare i presupposti di una tregua tra i gruppi antagonisti, necessaria per il ristabilimento della pace e della quiete pubblica. La pena del bando evidenziava in tal

1 Ringrazio in particolare i due miei collaboratori Martino Mazzon e Andrew Vidali per l'aiuto prestatomi nella redazione dei diagrammi che corredano il saggio e nel reperimento di alcune delle fonti archivistiche utilizzate.

modo le strette interconnessioni tra sistema della vendetta e gli apparati di giustizia che, in molteplici forme e ricorrendo ad una pluralità di riti processuali, erano diffusi, con maggiore o minore incisività, nei diversi contesti costituzionali. La figura del bandito era dunque essenzialmente rappresentata dall'irrogazione di una pena del bando che si estendeva alla città, al suo territorio e poco oltre i suoi confini; e che per poter essere efficace doveva prevedere la sua uccisione nel caso in cui avesse violato tale interdizione. In definitiva, una figura contrassegnata dalle dinamiche conflittuali tra le parentele avversarie, ma pure dalla fisionomia giurisdizionale del tribunale che aveva pronunciato la sentenza e che, soprattutto nei grandi centri urbani, perseguiva l'obbiettivo preminente di garantire l'ordine e la pace cittadina, incrinando o indebolendo, se possibile e necessario, la solidarietà e la compattezza dei gruppi rivali che si fronteggiavano per affermare ciascuno la propria supremazia.

L'antico sistema costituzionale garantì a lungo questa dialettica conflittuale e giurisdizionale, insieme alla caratterizzazione del bandito come persona espulsa dalla comunità. Nel corso del Cinquecento una serie rilevante di problemi sociali, demografici ed economici ridefinì sensibilmente la tradizionale concezione di controllo sociale e di ordine, così come le consolidate modalità di gestione della giustizia penale. Non più riflesso dei variegati contesi politici locali e delle loro dinamiche conflittuali, la pena del bando perse la sua tradizionale fisionomia e divenne strumento repressivo per eccellenza, accompagnandosi alla diffusione di riti inquisitori severi, volti ad affermare una diversa concezione del territorio e dei suoi confini. Il sistema della vendetta venne messo decisamente in discussione, perdendo la sua legittimità giuridica e le funzioni che aveva assolto nel mantenimento della pace e degli equilibri sociali. La pena del bando, estesa a tutto lo stato, e resa severa, sia nei suoi aspetti repressivi, che in quelli più propriamente premiali, divenne uno strumento efficace per imporre una diversa concezione di controllo sociale, in cui il tema della pace smarriva i suoi tratti essenziali ed originari per assumere progressivamente quelli di ordine pubblico e di tranquillità sociale. Non diversamente, anche la figura del bandito venne travolta dalla nuova normative bannitoria e dalla messa fuori gioco dei tradizionali riti giudiziari. Non più riflesso di un sistema costituzionale volto a ricreare l'ordine della pace, il bandito assunse rapidamente la fisionomia di un vero e proprio fuorilegge provvisto del timbro di oppositore politico. Queste trasformazioni, pur manifestandosi visibilmente per la spiccata dimensione della violenza che le caratterizzò, alla lunga indebolirono lo svolgimento e le caratteristiche dei conflitti locali. I provvedimenti estremamente dirompenti e le procedure severe adottati dai poteri centrali ebbero efficacia in quanto si costituivano in primo luogo come una risposta inderogabile alle pressanti richieste che provenivano dai contesti comunitari volte ad ottenere sicurezza e ordine.

NELLA BRUGHIERA VERONESE (OTTOBRE 1607)

Guidati da quel giovane che li aveva attesi all'osteria del Progno, il piccolo gruppo di soldati attraversò silenziosamente la palude e la brughiera che contrassegnavano il paesaggio di quella landa posta a pochi chilometri dalla città. A causa della pioggia

caduta la notte precedente il terreno era fradicio e scivoloso. Quando giunsero a quella casa isolata ed abbandonata, posta ai piedi di un'altura, l'alba non era ancora spuntata. Avevano lasciato più indietro i loro cavalli, insieme al più consistente numero di uomini che attendevano il via libera per avanzare. Probabilmente i banditi dormivano nel fienile della stalla attigua alla casa. In attesa della luce del giorno circondarono prudentemente l'abitato. Il podestà di Verona aveva raccomandato la massima prudenza, tant'è che, per non dare nell'occhio, erano usciti a notte fonda, dopo che le porte della città, come di consueto, erano state chiuse. Il piccolo esercito di circa ottanta armati era costituito dai soldati forniti dal provveditore generale in Terraferma Benedetto Moro, dagli sbirri del podestà e da due compagnie di soldati corsi e cappelletti. Era stato loro detto che un giovane dalla camicia rossa li avrebbe attesi in quell'osteria e condotti nel luogo dove si erano rifugiati i banditi. Costui, insieme ad un compagno, faceva parte del gruppo rifugiatosi la notte precedente in quella casa. Già da alcuni mesi i due delatori si erano segretamente messi in contatto con i Capi del Consiglio dei dieci, offrendo, in cambio dell'impunità e delle taglie promesse, la loro collaborazione per far cadere nelle mani della giustizia i loro compagni. Si trattava della cosiddetta banda dei fratelli della Grimana, cui, per l'occasione, si erano uniti altri banditi per compiere una rapina al vetturino diretto a Venezia con una somma consistente di denaro pubblico. Quegli uomini erano considerati estremamente pericolosi, anche perché venivano loro attribuiti diverse rapine ed omicidi. Erano stati preavvertiti che erano al numero di diciassette, armati di tutto punto con archibugi, pistole e munizioni in abbondanza e che tra di loro c'erano pure un patrizio veneziano e un nobile veronese. Quasi tutti ormai conosciuti come *banditi famosi*, una qualifica che sottintendeva trattarsi di individui avvezzi ad ogni fatica ed impresa, ma che, soprattutto, non avevano nulla da perdere, anche perché sapevano quale sorte li avrebbe attesi se fossero stati catturati vivi. Le loro stesse fattezze fisiche esprimevano significativamente la sfida continua che da alcuni anni andavano conducendo spostandosi lungo i confini, per attraversare a sorpresa quel territorio delimitato dai fiume Po e Adige, ma talvolta spingendosi pure sino al delimitare della laguna veneta, nei luoghi d'origine, da cui alcuni di loro erano stati banditi alcuni anni prima a causa delle loro azioni violente. Prudentemente avevano messo sull'avviso anche gli uomini delle comunità vicine, che al loro ordine avrebbero dato il via al suono delle campane a martello. Sul far del giorno il piccolo esercito mosse all'attacco e la brughiera venne attraversata dal rumore assordante dei colpi delle armi da fuoco che si incrociavano senza sosta. Infine venne appiccato fuoco al fienile e il gruppo di banditi uscì impetuosamente, riuscendo a crearsi un varco tra gli assedianti. Quattro di loro furono uccisi nello scontro, ma i rimanenti, inseguiti dai soldati e dagli uomini dei villaggi circonvicini, si addentrarono nella palude riuscendo a raggiungere il villaggio di Marcelise, dove trovarono rifugio in una casa. L'assedio proseguì tutto il giorno, nonostante fosse stato posto fuoco all'abitazione. Verso sera l'attacco si concluse con un'incursione dei soldati nella casa ormai in fiamme. Solo uno dei banditi, rimasto ferito, venne catturato. Tutti gli altri preferirono morire piuttosto che arrendersi. Le teste di coloro il cui corpo non era stato consumato dalle fiamme, furono mozzate e portate in città per essere poste sulla cosiddetta pietra del bando per il loro riconoscimento.

VIOLENZA E BANDITISMO

La dettagliata ricostruzione di questa storia è stata resa possibile ricorrendo alla descrizione che ne diedero i protagonisti che organizzarono o parteciparono al sanguinoso attacco, avvenuto poco lontano dalla città di Verona all'alba del primo ottobre 1607[2]. La personale versione dei banditi avrebbe probabilmente fornito altri particolari e, di certo, una diversa valutazione dei fatti[3]. Simili vicende erano comunque assai frequenti in questo torno di anni e pongono all'osservatore che le esamini una serie di questioni assai importanti, soprattutto in merito alle straordinarie manifestazioni di violenza che contraddistinguono tra Cinque e Seicento la lotta al banditismo in tutta l'area del Mediterraneo[4]. La storiografia degli scorsi decenni sul tema del banditismo si è soffermata in particolare sulla tesi formulata da Eric Hobsbawm in merito alla figura del *bandito sociale*. Una tesi che è stata sostanzialmente contestata da diversi punti di vista, anche se ha continuato ad esercitare un'indubbia attrazione nell'ambito degli studi rivolti ad esaminare il banditismo nelle sue implicazioni sociali e culturali. Le successive correzioni di tiro dell'illustre storico britannico non hanno comunque dileguato le perplessità di coloro che soprattutto sottolineavano l'importanza della ricostruzione del contesto politico e sociale in cui il bandito si muoveva (Hobsbawm, 1969)[5]. E del resto erano assenti nel testo di Hobsbawm, così come nei lavori che più o meno criticamente si rifacevano ad esso, le strette connessioni tra banditismo e pena del bando che caratterizzano l'età medievale e moderna. Le interrelazioni tra faida e banditismo hanno avvicinato la figura del bandito ai conflitti locali e alla loro interazione con i sistemi politici dominanti[6], ma non si è

2 Le vicende di questa banda, chiamata nelle fonti giudiziarie *Della Grimana*, attraversa i primi anni del Seicento, anche se Zuan Giacomo Della Grimana, originario come il fratello Zanon dal villaggio di Biadene nel Trevisano, venne bandito per la prima volta nel 1596. I due delatori, Domenico Ceccato e Augusto Soccal provenivano dal vicino villaggio di Cavaso (oggi Cavaso del Tomba). Le notizie relative alla loro uccisione sono tratte dai dispacci dei rettori di Verona e dalla documentazione del Consiglio dei dieci: Archivio di stato di Venezia (ASV), *Consiglio dei dieci, Comuni*, filza 263. Alcuni degli uomini uccisi pur privi di un'identità precisa, erano comunque sommariamente descritti. Ad esempio: "*Uno detto il Gallo, che si diceva esser cremonese, di statura grande, di anni 30, con barba negra, d'età d'anni 35;* […] *Uno che pur dicevano esser cremonese, di statura grande, con barba rossa, d'età di anni 30…*" (ASV, *Consiglio dei dieci, Comuni*, filza 263, descrizione allegata al dispaccio del podestà di Verona Giulio Contarini del 10 ottobre 1607).

3 Come nel caso, più sotto riportato, di Giovanni Beatrice.

4 Per altre esemplificazioni si veda Povolo, 1997.

5 Il lavoro di Hobsbawm venne riedito nel 2000 (New York) con un *Postscript* (pp. 167–199) in cui lo storico anglosassone affrontava gran parte delle critiche che erano state rivolte alla sua tesi. Oltre alle osservazioni di Anton Blok (1972, 495–504), riprese da Hobsbawm, ricordo ancora Slatta (1994, 1987). Ed inoltre Sant Cassia (1993, 773–795). In realtà, gran parte della discussione incentrata sul testo di Hobsbawm nasceva dall'equivoco di fondo che considerava il *bandito* (*sociale* oppure no) come una figura perseguita da chi deteneva il controllo della giustizia, senza considerarne gli aspetti costituzionali e giuridici. Si veda, a questo proposito, la voce *banditry* di Robert Jütte (2004, 212–215), ma anche la voce, poco sopra ricordata, di W. Slatta in cui la definizione di banditry "*is the taking of property by force or by the threat of force*" (Slatta, 1994, 99). Appare evidente che una tale definizione può essere accolta solo nel momento in cui la forma stato, nella sua accezione contemporanea, presuppone un esteso controllo del suo territorio e dei suoi confini.

6 Un approccio che ha permesso di sottolineare importanti aspetti del banditismo. Alcuni significativi esempi riguardano il contesto italiano: Raggio (1990); Lepori (2010). Per la Corsica: Wilson (1988). In questi studi

sufficientemente indagato sulle dimensioni costituzionali che le racchiudevano e che, molto probabilmente, sono utili a spiegare non solo la specificità dei conflitti[7], ma pure gli approcci storiografici tramite cui ci si è avvicinati alla dimensione della violenza[8]. Può essere interessante ricordare le osservazioni del viaggiatore inglese Fynes Moryson, che nei primi anni '90 del Cinquecento attraversò nel suo lungo itinerario buona parte della penisola italiana:

> *The Italyans in generall are most strict in the courses of Justice, without which care they could not possiblie keepe in due order and awe the exorbitant dispositions of that nation, and the discontented myndes of theire subiects. Yet because only the Sergiants and such ministers of Justice are bound to apprehend Malefactours, or at least will doe that office (which they repute a shame and reproch), and because the absolute Principalities are very many and of little circuite, the malefactors may easily flye out of the confines, where in respect of mutuall ielosies betweene the Princes, and of theire booty in parte giuen to those who should prosecute them, they finde safe retrayt. In the meane tyme where the Fact was donne, they are prescribed and by publike Proclamations made knowne to be banished men vulgarly called Banditi. And where the ruine is haynous besydes the bannishment rewardes are sett vpon theire heades to him that shall kill them or bring them in to the tryall of Justice, yea to theire fellow banished men not only those rewardes but releases of theire owne banishments are promised by the word of the State vpon that condition, which proclamation vpon the head is vulgarly called Bando della Testa* (Hughes, 1903, 157).

l'attenzione è rivolta all'attività giudiziaria proveniente dall'esterno del contesto comunitario, o ai tentativi dell'autorità politica di intromettersi nelle dinamiche conflittuali attraverso varie forme di pacificazione. Le relazioni tra banditismo e la pena del bando che ne è all'origine non sono però state indagate nelle loro implicazioni costituzionali, che evidentemente influivano sulle stesse dinamiche della faida.

7 Ricordo qui solo alcuni dei lavori che hanno tentato di affrontare il tema sul piano più generale: Kamen (2000), in cui il fenomeno *banditry* è significativamente affrontato nel capitolo *Crime and punishment*; Ruff (2001, in particolare pp. 216–247). Lo sguardo di Ruff si estende in maniera particolareggiata a tutta l'Europa, ma nonostante si sottolinei la diffusa frammentazione giurisdizionale (Ruff, 2001, 223) o l'utilizzo della pena del bando (2001, 230), il termine *banditry* è generalmente attribuito ad azioni essenzialmente criminose (ad esempio 2001, 221–222) rese possibili dalla debolezza dell'autorità statale. Oltre a quanto già osservato si vedano pure le penetranti osservazioni, più sotto riportate, di Thomas Gallant. Per il periodo medievale e l'età moderna il termine *bandito*, in quanto autore di azioni ostili alla comunità o allo stato, è quasi sempre inscindibile da quello di persona colpita dalla pena del bando.

8 Un tema che negli ultimi anni ha suscitato l'interesse di molti studiosi e ha condotto a delle riflessioni sempre più puntuali, incentrate sulla complessità dei conflitti di faida e sui riti di pacificazione. La bibliografia è assai ampia. Ricordo Carroll (2007), Broggio e Paoli (2011), Davis (2013), Kounine e Cummins (2016), Darovec (2016). Rinvio in particolare alla densa introduzione di Stuart Carroll al volume del 2007 in cui il tema della violenza è affrontato soprattutto nelle sue dimensioni culturali e storiografiche. Opportunamente egli osserva: "*The concept of medieval man as innately barbaric was less influential among constitutional historians who had always had a high regard for the role of law in regulating behaviour, or those who studied politics and viewed aristocratic violence, in particular, in terms of limited and self-interested political motives; and these traditional pillars of the historical discipline were lent support by the emerging discipline of anthropology…*" (Carroll, 2007, 5–6).

Moryson coglieva l'immagine del banditismo nella sua originaria derivazione giudiziaria e, soprattutto, accostandola all'estrema frammentazione giurisdizionale della penisola italiana e ai provvedimenti straordinari adottati in quegli anni per fronteggiare un fenomeno strettamente correlato ai conflitti tra gruppi e parentele locali. Nella percezione di Moryson il fuorilegge era essenzialmente colui che era stato colpito dalla pena del bando e che, in quanto tale, poteva essere impunemente ucciso anche da coloro che si trovavano nella sua medesima condizione. Uomini che, sorprendentemente, non erano per lo più disponibili ad abbandonare definitivamente i territori da cui erano stati banditi, anche se spesso consapevoli del possibile tragico destino che li attendeva. Il viaggiatore inglese osservava inoltre come nelle zone di confine banditismo e violenza inevitabilmente si addensassero, alimentando l'immagine di fuorilegge il cui destino sembrava inesorabilmente tracciato:

> *These Outlawes fynde more safe being in those parts, by the wickednes of the people commonly incident to all borderers, and more spetially proper to the Inhabitants thereof. But these rewards, and impunityes promised to outlawes for bringing in the heads or persons of other outlawes hath broken their fraternity. So as hauing found that their owne Consorts haue sometymes betrayed others to capitall Judgment or themselues killed them, they are so ielous one of an other, and so affrighted with the horror of their owne Consciences, as they both eat and sleep armed, and vppon the least noyse or shaking of a leafe, haue their hands vppon their Armes, ready to defend themselues from assault* (Hughes, 1903, 158).

In realtà il clima descritto da Fynes Moryson rifletteva lo stato di emergenza che nei decenni a cavallo tra Cinque e Seicento si era diffuso non solo nell'area del Mediterraneo, ma anche in gran parte d'Europa[9]. Le sue specificità incontravano certamente origine nelle diverse strutture politiche e costituzionali entro cui si venne ad affermare un nuovo concetto di ordine sociale, ma anche l'emergenza straordinaria di una violenza che si coniugava con la faida e il banditismo[10].

Le numerose monografie e lavori collettivi che in questi ultimi anni si sono soffermati sulle origini e modalità della violenza in età medievale e moderna hanno sottolineato la debolezza interpretativa di tesi come quelle di Elias e di Weber, che presuppongono il graduale emergere della forza dello stato in grado di legittimare o monopolizzare

9 Il viaggiatore inglese aveva ben colto come il banditismo fosse associato al sistema della vendetta: "*They haue many other meanes also to redeeme themselues from banishment, as for murthers by intercession of freinds at home, vppon agreement made with the next freinds of the party murthered*". Ma notava pure il clima notevolmente cambiato di seguito agli interventi dei poteri centrali: "*But in Crimes extraordinarily haynous, the Princes and States are so seuere, as in their publique Edict of banishment, besides rewards sett vppon their heads, great punishments and Fynes according to the qualityes of offence and person are denounced against them who at home shall make petition or vse other meanes at any tyme to haue them restored to their Countryes Lands and livings*" (Hughes, 1903, 158–159).

10 Sul banditismo rinvio agli atti dei due grandi convegni internazionali che si sono tenuti sul tema: Ortalli (1986); Manconi (2003).

l'uso della violenza[11]. Ed alcuni anni orsono Charles Tilly ha posto in rilievo come le diverse realtà statuali si imposero gradualmente e contraddittoriamente utilizzando le molteplici forze sociali esistenti sul territorio e comunque imponendosi come garanti dell'ordine costituito esistente (Tilly, 1985, 171–172)[12]. Un'ipotesi alquanto suggestiva se solo si presta attenzione alle modalità tramite cui la violenza delle istituzioni interagì con quella delle forze che ad essa si opponevano. In realtà lo straordinario rigurgito di violenza che si registra a partire dagli ultimi decenni del Cinquecento incontrava un evidente supporto nella legislazione bannitoria che venne emanata dai poteri centrali in quel torno di anni[13]. Una legislazione che risultò particolarmente efficace e che può essere compresa nella sua effettiva portata se solo la si accosta all'introduzione dei processi inquisitori che si registra in tutta Europa nel corso del Cinquecento. La politica criminale in tema di banditismo e di nuovi riti processuali poté evidentemente essere efficacemente condotta previo il consenso e la spinta di vasti settori della società dell'epoca. Anche perché essa implicò un effettivo e sostanziale superamento degli assetti costituzionali esistenti, che, comunque, a partire dal basso medioevo, costituivano la legittimità politica delle diverse realtà territoriali e che non sarebbero definitivamente venuti meno se non sul finire del Settecento. Banditismo e sistema della vendetta erano intensamente intrecciati tra di loro e così i loro esiti, che riflessero, in primo luogo, l'indebolimento degli assetti costituzionali che avevano contraddistinto per secoli le numerose e variegate strutture politiche che caratterizzavano il bacino del Mediterraneo. Le interconnessioni tra faida e banditismo rilevate per alcune zone della Spagna o della penisola italiana sembrano implicitamente rinviare alle loro specificità istituzionali, caratterizzate da un articolato sistema della vendetta nel territorio[14]. Fazioni, *bandos* e strutture parentali provviste di una sorta di legittimità giuridica sembrano esplicitare in modo meno visibile la loro presenza nei diversi contesti sociali laddove, come ad esempio nell'Italia Settentrionale, le città avevano esteso la loro giurisdizione su un ampio territorio. In tal caso la pena del bando, pur riflettendo la dialettica conflittuale

11 Oltre alla bibliografia già ricordata in cui ci si è ampiamente soffermati sulle tesi di Elias e Weber, ricordo anche le osservazioni, mosse da un altro punto di vista, da Goody (2006, 154–179).

12 Ed inoltre Thomson (1994), la quale, sulla scorta delle osservazioni di Tilly, osserva: "*States did not monopolize violence even within their territorial borders. Urban militias, private armies, fiscal agents, armies of regional lords and rival claimants to royal power, police forces, and state armies all claimed the right to exercise violence. Authority and control over domestic violence was dispersed, overlapping, and democratized*" (Thomson, 1994, 3).

13 Un aspetto che è stato soprattutto affrontato dalla storiografia italiana. Oltre ai diversi interventi apparsi nei due convegni internazionali dedicati al banditismo: Ortalli (1986); Manconi (2003), ricordo Fosi (1985); Fosi (2011, in particolare 78–89); Gaudosio (2006). Ed inoltre Black (2011, 189–191). Per la Germania, ed in particolare la città di Ulm, ricordo Coy (2008), in cui l'ampio utilizzo della pena del bando da parte delle autorità cittadine non sembra presupporre l'uccisione di colui che penetra nei territori da cui è interdetto.

14 Per la Spagna rinvio in particolare alla sintesi di Pomata Severino (2011), in cui è delineata un'ampia rassegna dei lavori sul *bandolerismo* spagnolo ed in particolare di quelli di Torres Sans. Rinvio inoltre al volume già ricordato di Manconi (2003), in cui la situazione catalana è affrontata dallo stesso Torres Sans (35–52) e da Serra i Puig (147–169), che affronta il tema del banditismo prestando particolare attenzione all'assetto costituzionale; quella valenciana da Lluís J. Guia Marín (87–106); e quella della Murcia da Lemeunier (181–195). Un inquadramento di carattere generale in Casey (1999, 165–191).

tra i gruppi parentali in conflitto, era comunque espressione di tribunali che avevano l'obiettivo primario di assicurare la pace e la tranquillità sociale.

LA PENA DEL BANDO

Ampiamente utilizzata in ogni epoca e in diverse strutture politiche, la pena del bando assunse un'importanza di rilievo a partire dal basso medioevo, sia come arma di lotta politica (il cosiddetto bando politico) che come strumento di controllo sociale che poteva essere utilizzato a difesa dei valori e dell'ordine comunitario, ma anche per agevolare la risoluzione dei conflitti tra le famiglie che competevano per l'onore e la gestione delle risorse economiche (Cavalca, 1978; per la Francia Carbasse, 1990, 223–225). Una pena, dunque, che esprimeva la complessità delle istituzioni giudiziarie, caratterizzate da una cultura scritta e da professionisti del diritto, ma anche da un sistema conflittuale regolato dalle consuetudini e contraddistinto dall'onore e dalla vendetta (Stein, 1984). Si trattava dunque di una pena che interagiva con i riti giudiziari processuali e che rifletteva quel sistema costituzionale medievale eteronomo contraddistinto quasi ovunque da una fitta rete di giurisdizioni, ciascuna delle quali era dotata di una propria autonomia, anche se i valori morali, religiosi e politici erano sostanzialmente condivisi[15]. In ogni comunità medievale la giustizia *restitutiva* e la giustizia *retributiva* erano strettamente interconnesse[16] e se il sistema della vendetta era soprattutto informale e regolato dalle consuetudini, le corti giudiziarie riconoscevano la legittimità di alcune delle sue manifestazioni, pur avendo come precipuo obbiettivo il compito di attenuarne la pericolosità per assicurare la pace cittadina (Lenman, Parker, 1980, 22–24).[17]. Non a caso la persona colpita dalla pena del bando poteva per lo più essere uccisa impunemente se avesse oltrepassato i confini da cui era stata interdetta. Un sistema che implicava dunque una stretta correlazione

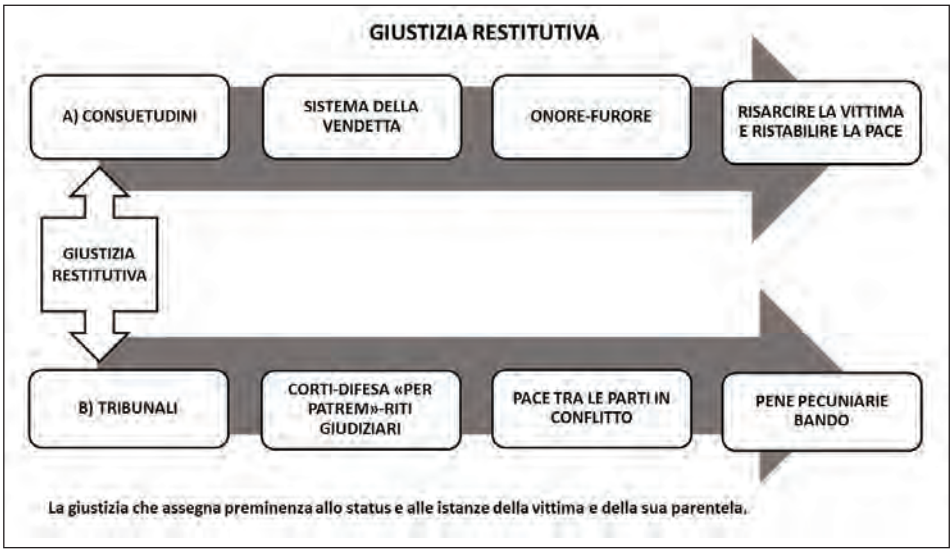
15 *"The medieval system of rule was legitimated by common bodies of law, religion and custom that expressed inclusive natural rights pertaining to the social totality formed by the constituent units. These inclusive legitimations posed no threat to the integrity of the constituent units, however, because the units viewed themselves as municipal embodiments of a universal moral community*" (Ruggie, 1998, 146–147).

16 Con il termine di giustizia *restitutiva* o risarcitoria si intende quella giustizia incentrata essenzialmente sulla figura e sullo status della vittima; e sulle rivendicazioni da parte di quest'ultima ad ottenere un adeguato risarcimento simbolico ed economico volto a ripristinare gli equilibri turbati dal conflitto. Diversamente, la giustizia *retributiva* o punitiva era incentrata sulla punizione del *reo*, anche se non poteva ignorare il suo status e, soprattutto, le dinamiche che avevano originato il conflitto. Tale forma di giustizia enfatizzava gli aspetti collettivi della pace e della sicurezza cittadina; e, conseguentemente, pure il ruolo della giustizia pubblica esercitata da organi legittimati a rappresentarla. A diversità di quanto si sarebbe successivamente affermato, entrambe queste forme di giustizia nell'età medievale e moderna interloquivano sensibilmente con il sistema della vendetta e con la dimensione dell'onore rivendicata dai protagonisti. L'introduzione di riti inquisitori a partire dal Cinquecento avrebbe comunque avviato la preminenza politica di forme di giustizia *retributiva*, meno sensibili a considerare lo status dei protagonisti e le dinamiche del conflitto, mirando essenzialmente alla punizione del *reo*. Su questi temi, anche per una bibliografia più specifica, rinvio a Cantarella (2007).

17 Su questo importante saggio si vedano le mie osservazioni in Povolo (2015, 212–213). Di grande interesse per quanto concerne le interrelazioni tra amministrazione della giustizia e sistema della vendetta è Smail (2013).

tra violenza e banditismo, ma anche una distinzione non netta tra le due concezioni di giustizia *restitutiva* e *retributiva*. Una concezione di giustizia *restitutiva* implicava una considerazione di rilievo nei confronti della vittima e l'obbligo per l'offensore di compensare adeguatamente il danno inferto. Nell'età medievale, e per alcune aree europee anche nei secoli successivi, queste forme di giustizia erano strettamente interconnesse con il sistema della vendetta, che spesso implicava la ritorsione, l'ira e il furore, ma anche l'*amor* e l'esigenza di ristabilire la pace. La pena del bando, che escludeva la persona accusata di un crimine dalla comunità, poteva dunque essere concepita come uno strumento per stabilire la tregua necessaria, in attesa che i gruppi antagonisti giungessero alla conclusione di una pace. I vari riti processuali dovevano condurre teoricamente a tale risultato e rivelavano con le loro caratteristiche e con i loro esiti l'implicito linguaggio della vendetta che animava la giustizia formale.

Diagramma 1: Giustizia restitutiva



Taluni riti processuali come le cosiddette *difese per patrem*, che prevedevano che il padre dell'omicida fuggitivo potesse presentarsi in suo luogo, spiegano inoltre come la pena del bando si accompagnasse di frequente in queste forme di giustizia con la pena pecuniaria e i frequenti atti di pace che molto spesso ponevano fine all'iter giudiziario. Ma anche nella società medievale esistevano ovviamente forme di giustizia dall'aspetto retributivo e nelle quali determinati comportamenti erano considerati un crimine contro la comunità, i suoi valori e i suoi assetti sociali. Una giustizia severa, ma che era spesso congiunta alla dimensione *restitutiva*, in quanto aveva l'obbiettivo primario di ridurre

l'impatto suscitato dai conflitti animati dal sistema della vendetta (Povolo, 2015, 207 e sgg.)[18].

Diagramma 2: Giustizia retributiva

Una giustizia che, nonostante fosse contraddistinta dall'azione del giudice nella cosiddetta fase del processo informativo (*inquisitio*), lasciava ampio spazio agli avvocati e all'utilizzo di procedure che avevano il fine di utilizzare i cosiddetti *fatti giustificativi* quali la provocazione, la legittima difesa e, soprattutto, il tema del furore (Povolo, 2015b). In tale dimensione giudiziaria la vittima aveva comunque un ruolo rilevante e poteva intervenire nella stessa fase iniziale del processo. La pena del bando costitutiva in definitiva una sorta di anello di congiunzione tra le diverse istanze di giustizia e un equilibro tra il ruolo della vittima e quello dell'imputato.

IL BANDITISMO NELLA REPUBBLICA DI VENEZIA

Nell'agosto del 1531 il Consiglio dei dieci, massimo organo politico-giudiziario della Repubblica di Venezia, deliberò un provvedimento in tema di banditismo che rifletteva

18 Come nota Carbasse sul piano più generale la pena del bando aveva la funzione di attenuare le tensioni: "*ce peut* être *aussi, parfois, l'instrument d'une politique criminelle intelligente; l'*éloignement *passage d'un petit delinquent permet d'apaiser les passions familiales, de calmer le conflits de voisinage, de restaurer la convivialité villageoise*" (Carbasse, 1990, 226).

le tensioni giurisdizionali e costituzionali che inevitabilmente suscitava una tale materia nel momento in cui veniva ad estendersi a tutti i territori dei domini *da terra* e *da mar*. Come di consueto, la parte iniziale della *parte* esplicitava contenuti ben conosciuti da tutti i sudditi della Repubblica. Si diceva infatti che i provvedimenti assunti in tema di banditismo, sia a Venezia che nelle altre città, erano risultati inefficaci e che tutti i banditi ritrovati nei territori da cui erano stati interdetti avrebbero potuto essere impunemente uccisi. Ma, si aggiungeva poi, l'inefficacia delle leggi era dovuta essenzialmente al reticolo di protezioni e di aiuti di cui essi potevano impunemente godere. Si deliberava perciò che chiunque avesse prestato qualsiasi forma di assistenza ad un bandito sarebbe incorso nelle stesse severe pene ed avrebbe potuto essere impunemente ucciso "etiam che il fusse suo congionto in strettissimo grado di sangue". Il provvedimento del 1531 era di estrema gravità non tanto e non solo perché incideva sulla dimensione della parentela e della vendetta che animava la pena del bando, quanto piuttosto perché esso interferiva visibilmente con l'assetto costituzionale esistente, nel quale la politica bannitoria era di esclusiva pertinenza delle giurisdizioni locali. Tant'è che già l'anno seguente la *parte* veniva sostanzialmente rivista, in quanto erano avvenuti molti inconvenienti a causa dei *maligni* che con sotterfugi e inganni accusavano molte persone innocenti. Il nuovo provvedimento rifletteva in realtà le difficoltà a regolamentare dall'esterno le complesse interrelazioni tra vendetta, parentela e banditismo (Leggi criminali del Serenissimo dominio veneto, 1751, 30–31). Non diversamente, alcuni decenni prima lo stesso Consiglio dei dieci aveva assunto un provvedimento in tema di banditismo, che l'anno seguente aveva poi cassato. Nel 1489 si era infatti deciso che i banditi non potessero essere uccisi impunemente ricorrendo ad aggressioni premeditate, condotte con agguati e insidie. Una *parte* contradditoria, che evidentemente non considerava il sistema della vendetta che animava il banditismo, e che volutamente sembrava ignorare le prerogative costituzionali delle grandi città della Terraferma veneta e lombarda. E difatti, l'anno seguente, di fronte alle proteste della città di Vicenza, il provvedimento, come si è detto, veniva revocato (Leggi criminali del Serenissimo dominio veneto, 1751, 18–19)[19].

Ovviamente il ceto dirigente lagunare e le massime istituzioni politico-giudiziarie della Serenissima avevano ben presente la complessità sociale e culturale che sottostava al banditismo e agli equilibri costituzionali inerenti alla sua regolamentazione nelle città suddite. Il diarista Marin Sanudo ricorda, a tal proposito, la discussione avviatasi nel 1525 in Consiglio dei dieci in merito ad un omicidio commesso a Corfù da parte di un soldato arruolato in una delle galee del Provveditore all'Armata. I consiglieri avevano proposto che il caso fosse assegnato a quest'ultimo con facoltà di bandire da tutti i territori della Repubblica, prevedendo inoltre che tale competenza avrebbe dovuto essere inserita nelle *commissioni* rivolte ai provveditori generali. Una proposta che evidentemente non teneva conto delle prerogative costituzionali del Provveditore di Corfù e, soprattutto, più in generale, della giurisdizione di competenza delle città suddite. Ma infine la proposta dei consiglieri, come annotava con soddisfazione il Sanudo, era stata respinta dalla maggioranza del Consiglio, in quanto la sua approvazione avrebbe significato "tuor la

19 Su tale legge si veda Cozzi (1982, 81–82).

iurisdition de li rettori di le terre" (Stefani, Berchet, Barozzi, 1894). In realtà la pena del bando, pur utilizzata frequentemente dalle magistrature veneziane, soprattutto a partire dal Quattrocento, sembra essere estranea alla dimensione giuridica della città lagunare e, come è stato osservato, essa è assente nelle *Promissio maleficiorum* dei dogi Orio Malipiero (a. 1181) e Jacopo Tiepolo (a. 1232) (Cozzi, 1982, 82–84). Un'assenza che non sembra rivelare una presunta diversità culturale di Venezia, quanto piuttosto una specificità del suo assetto costituzionale, caratterizzato da una città stato provvista di un esile retroterra territoriale (il Dogado). Con la formazione di uno stato territoriale sarebbe stato ben difficile per le supreme magistrature veneziane ignorare la complessità e l'urgenza di un fenomeno che inevitabilmente premeva alle porte della città dominante.

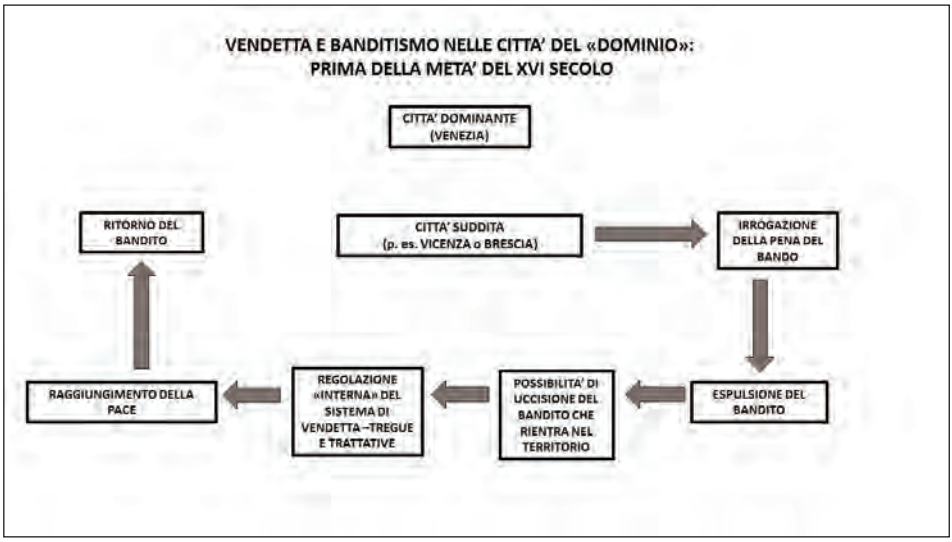
Gli interventi delle supreme magistrature veneziane in tema di banditismo erano in realtà per lo più sollecitati da singole famiglie o individui, nell'ambito di contrapposizioni tra gruppi, che molto spesso tendevano a fuoriuscire dai contesti locali per piegare il conflitto a proprio favore. Interventi che inevitabilmente producevano una reazione da parte delle città suddite, che chiedevano l'immediato ripristino dei diritti costituzionali violati dai provvedimenti assunti dalla città dominante. La pena del bando era infatti una prerogativa importante prevista negli statuti di ogni grande città dello stato veneziano. In particolare, nel momento dell'acquisizione della Terraferma, Venezia aveva stabilito dei patti che gli stessi rappresentanti da essa inviati a reggere quei centri erano tenuti a rispettare nella forma e nella sostanza. Il bando inflitto dai tribunali locali prevedeva l'espulsione dalla città, dal suo territorio e dalle consuete 15 miglia al di là dei confini. In taluni casi, come a Vicenza nel 1545, il Consiglio dei dieci aveva esteso considerevolmente le prerogative del tribunale locale di bandire da tutti i territori compresi tra il Mincio e il Quarnaro[20]. E nel 1503 la suprema magistratura veneziana aveva pure deliberato che i banditi dai tribunali del domino da terra e da mar che non si fossero allontanati entro otto giorni dai territori loro interdetti avrebbero dovuto considerarsi banditi da tutto lo stato, compresa la stessa città dominante. Una politica criminale che enfatizzava la giurisdizione delle città suddite (Leggi criminali del Serenissimo dominio veneto, 1751, 21–22)[21].

Le scelte del supremo organo veneziano miravano evidentemente ad agevolare il mantenimento della pace nei territori sudditi e in tale direzione la giurisdizione dei tribunali locali in materia bannitoria era di estrema importanza. La pena del bando non aveva infatti il solo obbiettivo di allontanare tutti coloro che minacciavano la tranquillità della vita cittadina, ma era pure finalizzata a creare le premesse per il ristabilimento della

20 Vicenza, Biblioteca civica Bertoliana, *Archivio Torre*, busta 684, fasc. 22: in casi di reati particolarmente gravi, come ad esempio le rapine e gli incendi, il tribunale vicentino, già insignito di notevoli privilegi giurisdizionali, avrebbe potuto bandire, dalla città, dal territorio, dalle consuete quindici miglia "et anco più".

21 Un analogo provvedimento era stato deliberato nel 1485, ASV, *Consiglio dei dieci*, *Misti*, reg. 22, c. 154, 24 marzo 1485. Sul finire del Cinquecento il noto criminalista Lorenzo Priori osservava: "*Guardinsi dunque i banditi di venir ne' luochi a loro proibiti per i suoi bandi, perché anco se bene per la legge 1489, 29 luglio li banditi overo condannati in lire cinquanta non potevano essere offesi se non in puro omicidio, e non per insidie et appostatatamente, nondimeno l'anno 1490, 11 settembre, detta legge 89 fu rivocata di modo che stante la detta rivocazione il bandito ovvero condannato come di sopra può impune esser offeso in insidie et appostatamente, in setta e in monopolio, come è descritto nel titolo di essa legge, ed anco con l'esonerazione d'archibusi, di che ne sono seguiti molti et diversi giudizi*" (Priori, 1738, 58–59).

Diagramma 3: Vendetta e banditismo nelle città del "dominio": prima della metà del XVI secolo



pace tra gruppi e fazioni antagonisti. Il bando, con l'allontanamento di coloro che si erano macchiati di un grave delitto, si costituiva come premessa essenziale per lo stabilimento di una tregua, necessaria per avviare le trattative di pace tra i gruppi rivali, ma anche per agevolare il ruolo svolto dal tribunale locale per l'affermazione di una giustizia in grado di contemperare le diverse esigenze di ordine e di sicurezza[22]. Perché l'ostracismo decretato dal tribunale locale risultasse efficace, si prevedeva pure che colui che avesse violato i confini previsti dalla pena del bando avrebbe potuto essere impunemente ucciso. Una previsione che evidentemente aveva l'obbiettivo di affermare la giurisdizione del tribunale cittadino, ma anche di concedere alla famiglia offesa nel sangue e nell'onore di perseguire la propria vendetta. La pena del bando era così indissolubilmente legata al sistema consuetudinario della vendetta, che ubbidiva a proprie regole, ma che doveva comunque raffrontarsi ad un sistema giudiziario che, con le sue istanze di ordine e di pace aveva l'obbiettivo di garantire la sicurezza cittadina e l'equilibro tra le opposte fazioni in costante competizione per motivi di ordine economico e politico[23]. Solo qualora la pace tra le opposte fazioni fosse stata raggiunta il tribunale cittadino avrebbe decretato il ritorno di colui che era stato bandito. In tal modo l'informale sistema della vendetta, che

22 Ad esempio gli statuti di Verona esplicitano chiaramente le interrelazioni tra la pena del bando e le tregue (Statuta magnificae, 1582, 165–168).

23 Una materia non sempre affrontata esplicitamente negli statuti anche perché questi testi interagivano con le norme consuetudinarie; si veda per questo Cavalca (1978, 168–213).

ubbidiva alle regole consuetudinarie, e quello formale delle istituzioni giudiziarie, mediato ed interpretato da un ceto di giuristi professionisti, incontrava una sintesi in nome di un ordine che aveva come premessa ineliminabile il ristabilimento della pace cittadina[24].

LA FASE DELLA SOSPENSIONE (1549–1580)

Le interrelazioni complesse tra sistema della vendetta e pena del bando si muovevano dunque sia a livello informale, tramite le trattative e gli accordi tra le parti in conflitto, che sul piano formale giudiziario intervallato da riti giudiziari che come le diverse forme di citazioni, le *difese per patrem* e i salvacondotti, avevano il fine di condurre al ristabilimento degli equilibri infranti dal conflitto e ad una sua risoluzione pacifica (Povolo, 2015). Perché ciò potesse svolgersi positivamente era necessario che l'ostracismo nei confronti della persona bandita rimanesse operante sino alla conclusione della pace. E tale ostracismo poteva risultare efficace solo con la previsione che il bandito avrebbe potuto essere impunemente ucciso qualora avesse violato i confini del territorio da cui era stato espulso[25]. In base a tali considerazioni si può così cogliere l'impatto suscitato dalla legge che il Consiglio dei dieci assunse nel 1549, avviando quella che è possibile definire *politica della sospensione*. In tale data il supremo organo politico-giudiziario della Repubblica decretò la sospensione della possibilità che i banditi potessero liberarsi uccidendo o catturando altri banditi (evidentemente nell'ambito della giurisdizione di competenza). Una chiara violazione della giurisdizione dei centri sudditi motivata dal diffuso clima di insicurezza sociale e che veniva comunque adottata per un solo biennio:

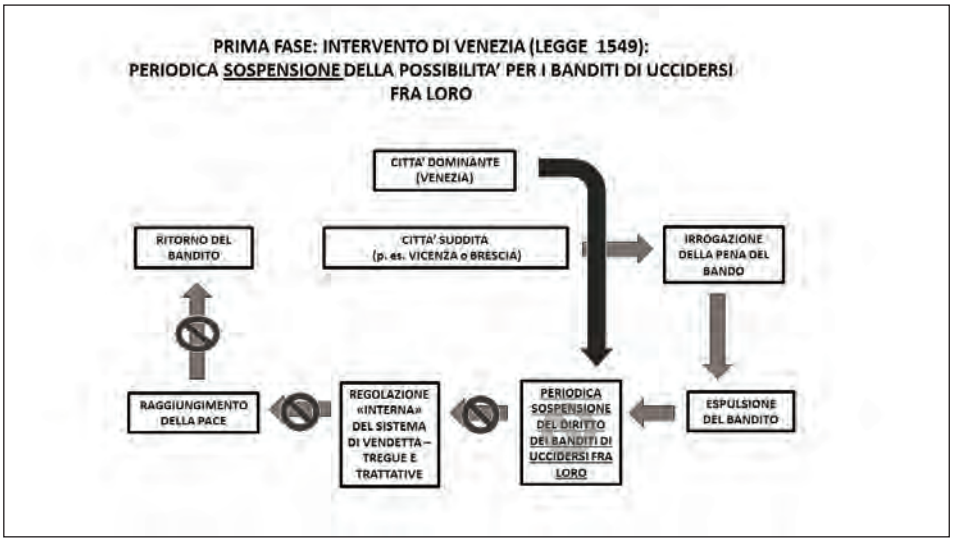
> *tutti quelli li quali si trovano banditi fin questo dì et che de coetero si bandiranno per qualunque caso così pensato et attroce, come puro, o in perpetuo o a tempo […] non si possano più liberar dalli loro bandi quovis modo per prender o ammazzar un altro bandito […], né per vigore d'alcuna leze o parte finhora presa che li desse tal beneficio, di modo che a questi tal banditi sia del tutto tolta la speranza di poter aggiustarsi* (Leggi criminali del Serenissimo dominio veneto, 1751, 44).

La legge rimase in vigore sino al 1555 e poi venne sospesa e ripristinata ad intermittenza sino al 1580, quando, di fatto, venne sostituita dalla legge emanata in quell'anno e che avrebbe dato il via ad una vera e propria fase di proroga. La legge del 1549 si accompagnò ad un provvedimento con il quale si costituivano due compagnie di soldati dalmati formate ciascuna da settanta uomini guidati da due capitani di campagna con il

24 Aspetti che si possono cogliere in tutta la loro complessità solo tramite i riti processuali utilizzati che, evidentemente, miravano a contemperare la forte conflittualità sociale con le istanze dei tribunali cittadini. Per alcuni esempi rinvio al mio (Povolo, 2013, 513–517).

25 Un ostracismo che si concretizza nella pena del bando nel momento in cui la gestione dei conflitti si coniuga con il sistema di diritto comune affermatosi in quasi tutta Europa a partire dal Basso Medioevo. Nei secoli precedenti esso era invece affidato al mondo consuetudinario. La persona espulsa dalla comunità era ritenuta *homo sacer*, affidata a Dio, e priva di ogni diritto. Nell'area germanica il bandito era inoltre considerato alla stregua di un lupo mannaro; si veda per tutto questo Knoll e Šejvl (2010, 139–153).

Diagramma 4: Prima fase: Intervento di Venezia (legge 1549)



compito di perlustrare i territori della Terraferma (Basaglia in Cozzi, 1985, 203–204)[26]. L'intervento del Consiglio dei dieci intendeva segnare un vero e proprio momento di svolta, in quanto la tormentata vicenda del banditismo era affrontata decisamente, incidendo evidentemente sulle dinamiche che alimentavano i conflitti tra gruppi e parentele. Molti statuti delle città suddite prevedevano infatti che non solo i banditi potessero essere uccisi impunemente da chiunque, ma che essi potessero pure ottenere la loro liberazione uccidendosi l'un l'altro. Una normativa che mirava a conseguire il rispetto dei periodi di tregua necessari alle istituzioni giudiziarie locali e alle parentele in conflitto per attenuare le tensioni interne ed avviare le trattative di pace. Il provvedimento assunto dal Consiglio dei dieci interferiva con le dinamiche conflittuali locali e di certo l'istituzione dei capitani di campagna ben difficilmente avrebbe potuto far fronte agli endemici problemi suscitati dal banditismo. La lunga fase di sospensione avviata con la legge del 1549 permise comunque al supremo organo veneziano di dettare i ritmi di una politica criminale non più esclusivamente affidata ai centri sudditi.

Una vera e propria interferenza, che si distingueva dai singoli provvedimenti che pure in passato erano stati temporaneamente assunti in materia di banditismo, in quanto la legge del 1549 si costituì come punto di riferimento per alcuni decenni. Infatti nel 1555 essa venne sospesa per tre anni; e così successivamente nel 1559 (per cinque anni), 1569 (per un anno), 1573 (per un anno), 1574 (per un anno), 1577 (per due anni), 1579 (per

26 Come sottolinea Basaglia, nel 1549 si costituì pure un fondo destinato al pagamento delle taglie.

due anni) (Povolo, 1997, 144)[27]. Nei periodi in cui, in virtù della sospensione, la legge non aveva efficacia, le giurisdizioni locali riacquisivano la loro autonomia, e il sistema incentrato sulle complesse relazioni tra vendetta e istituzioni giudiziarie locali diveniva nuovamente attivo. E' probabile che la legge del 1549 si inserisse in un complesso discorso interlocutorio con i ceti dirigenti sudditi e intendesse svolgere una funzione parenetica nei loro confronti, inducendoli a contenere l'intensa conflittualità locale[28]. Di certo, per circa tre decenni, il provvedimento, apparentemente contraddittorio ed intermittente, avrebbe condizionato non solo taluni dei meccanismi che animavano il sistema della vendetta, ma avrebbe pure sospeso la stessa legittimità degli statuti e delle loro previsioni giudiziarie e procedurali.

DALLA SOSPENSIONE ALLA PROROGA

Di fronte ad una grave situazione che veniva esplicitamente attribuita all'emergere di un banditismo considerato aggressivo e pericoloso[29], il Senato veneziano il 20 maggio 1580 deliberò un provvedimento di carattere eccezionale che rimase in vigore per lungo tempo. I rettori delle principali città venivano insigniti della facoltà di procedere sommariamente e *sopra il luogo* contro i banditi colti nei territori a loro interdetti. Un provvedimento che si indirizzava apertamente contro la rete di supporto e di aiuti che faceva capo a certi settori dell'aristocrazia, in quanto si prevedeva pure che una volta individuati coloro che proteggevano i banditi, i rettori avrebbero dovuto infliggere nei loro confronti la pena della relegazione e l'abbattimento delle loro case se trasformate in fortezze. La legge del maggio 1580 risultò particolarmente efficace, anche perché entrava decisamente nel forte clima conflittuale che animava settori non marginali della nobiltà di Terraferma (Povolo, 1997, 163 e sgg.).

Il vero saltò di qualità si registrò però nel luglio dello stesso anno, quando, con una nuova legge si superò definitivamente il lungo periodo di sospensione avviatosi nel 1549 e il Consiglio dei dieci assunse decisamente nelle proprie mani la complessa materia del banditismo, che per circa due secoli, anche se con notevoli inframmettenze, era stata di competenza delle giurisdizioni locali. Cassando implicitamente il provvedimento del 1549, il supremo organo veneziano deliberò che tutti i banditi avrebbero potuto ottenere la loro liberazione uccidendo altri banditi che si fossero trovati nelle loro stesse condizioni. Con gli inevitabili aggiustamenti e modifiche la legge venne prorogata ad intermittenza

27 Ad esempio il 5 giugno 1577 si deliberava: "*L'audacia e temerità de' banditi, quali non stimando la giustitia, si fanno lecito entrar nelli confini a loro prohibiti e commetter nuovi errori e mesfatti, merita che li sia provisto in quel modo che si è fatto altre volte, per sradicar simil qualità di gente. L'andarà parte che la deliberatione di questo Conseglio del 1549, 11 luglio, per la qual è levata la facultà alli banditi di liberarsi dai loro bandi col prendere overo ammazzar altri banditi, sia suspesa per anni doi prossimi futuri*" (Leggi criminali, 1751, 220).

28 Ipotesi da me formulata a suo tempo in Povolo (1997, 122–123).

29 "*Li motti che al presente si sentono in diverse parti del stato nostro, causati da sollevatione de molti scellerati, li quali postisi insieme in gran numero cometteno diverse violentie, sforzi, rapine, homicidi a danno dei fedeli nostri…*", ASV, *Senato, Terra*, reg. 53, c. 18. Rinvio ancora al mio (Povolo, 1997, 153 e sgg).

PARTE
DELL'ILLVSTRISSIMO CONSEGLIO DE' X.
Con la Zonta. Delli 20. Luglio. M D LXXX.

In materia de' Banditi.

I Grauissimi delitti, che sono commessi nel Stato nostro, la maggior parte da' banditi, i quali postisi insieme, perturbano la quiete delli fedeli nostri con violentie, rapine, & homicidij, deuono muouere questo Conseglio à fare estraordinaria prouisione, per estirpare questi scelerati; però

L'anderà parte, che sia fatto publicare in questa Città, & in tutte l'altre Città, Terre, & luoghi del Dominio nostro, che se alcuno, da quì ad vno anno prossimo, prenderà dentro li confini, & consegnerà nelle forze della Giustitia, ò ammazzerà: fatta legitima fede della interfettione: alcun bandito per questo Conseglio, ò vero per li altri Consegli, Magistrati, & Officij di questa Città, ò per li Rettori nostri di fuora, etiam con auttorità di questo Conseglio, dissinitue, & in perpetuo, con pena della vita, conseguirà, oltra tutte le taglie, che hauesse il bandito, anco la liberatione di se stesso, se sarà bandito di bando eguale, ò vero inferiore à quello del preso, ò vero morto: & se non sarà bandito, haurà libertà di liberare vn bandito, ò vero confinato, per caso eguale, ò vero inferiore, come è detto di sopra.

Quello veramente, che prenderà, ò vero ammazzerà, etiam in Terre aliene, alcun bandito di Terre, & luoghi, con pena della vita, il quale habbi taglia in Terre aliene, conseguirà l'assolutione del suo bando, se esso sarà bandito di bando eguale, ò vero inferiore: & se non sarà bandito, haurà facultà di liberarne vno, che fosse in bando simile, ò minore à quello che sarà preso, ò morto da lui, oltra tutte l'altre taglie, come è predetto.

Il medesimo beneficio haueranno anco li banditi per questo Conseglio con Zonta, ò senza, ò per delegatione, ò con l'auttorità di esso Conseglio, che prenderano, ò vero ammazzeranno vn'altro bandito per il detto Conseglio, il quale habbi le conditioni di sopra dichiarite: & se chi farà l'effetto predetto non sarà bandito, haurà facultà di liberare vn bandito, ò vero confinato per questo Conseglio, ò per delegatione, ò con l'auttorità di esso di egual bando, ò vero inferiore, come è sopradetto.

L'istesso beneficio sia dato alli complici di qualunque delitto, che ammazzeranno, ò vero prenderanno, come di sopra, vno, ò piu, delli altri complici dell'istesso delitto.

Eccettuati però da questo beneficio della loro liberatione, quelli banditi per questo Conseglio, nelle condennationi de' quali fosse dichiarito, che non possano essere assolti, ò fattoli gratia, &c. se non con stretteza di ballote: ma se vno di questi ammazzasse, ò facesse ammazzare vn'altro bandito, con simil stretteza di ballote, in tal caso sia assolto, con conditione però, che'l non possa andare nella Città, de onde sarà, se non haurà la pace dalli offesi, & se non li sarà permesso per nuoua deliberatione di questo Conseglio, con li terzi delle ballotte.

Li beneficij sopradetti della liberatione, quanto alli banditi, che non siano per questo Conseglio, ò per delegatione, ò con l'auttorità di esso, possano esser dati dal Conseglio de Quaranta al Criminale, & dalli Rettori con Corte, che haueranno fatta la sententia, ò vero da' loro successori, ò dalli piu vicini à quel Rettore senza Corte, che hauesse fatta la sententia, & non per altri: ma delli banditi per questo Conseglio, ò per delegatione, ò con auttorità di esso, non possano esser dati se non per parte di questo Conseglio.

Niuno ardisca stampar la presente parte fuori che Paulo Zanfretti, senza licenza.

Fig. 1: Legge del Consiglio dei dieci sul banditismo emanata nel 1580 (AMP Salò, Extraordinarium)

Diagramma 5: Il sistema nella seconda fase di intervento di Venezia

per alcuni decenni[30]. Dalla lunga ed intermettente fase di sospensione di una legge che interferiva nelle dinamiche conflittuali collegate al banditismo, si passò dunque ad una nuova fase, caratterizzata dalla proroga di una legge che assegnava al Consiglio dei dieci le competenze in tale materia.

Con la legge del 1580 la legislazione inerente il banditismo venne dunque assunta direttamente dagli organi centrali della città dominante, quantomeno nella sua dimensione politicamente più rilevante. Un controllo tanto più significativo in quanto si accostò alla graduale ingerenza del Consiglio dei dieci nei confronti dell'attività giudiziaria dei tribunali dei centri sudditi. Con una fitta attività di delega del rito inquisitorio ai rettori delle grandi città della Terraferma, il supremo organo politico-giudiziario si inserì decisamente nei conflitti e nel sistema della vendetta che per secoli avevano regolamentato gli equilibri tra parentele, fazioni e gruppi rivali. Il rito inquisitorio del Consiglio dei dieci prevedeva difatti l'esclusione di ogni privilegio goduto dalle città suddite, una procedura segreta e soprattutto l'esclusione dell'avvocato difensore[31]. La pena del bando inflitta con l'autorità del Consiglio dei dieci si estendeva a tutti i territori dello stato, superando i tradizionali confini e venne resa più efficace dalla concessione di taglie e, soprattutto, dal rilascio

30 Ad esempio se ne propose la proroga per un anno nel 1581, 1582, 1583, 1584 e per due anni nel 1587 (Povolo, 1997, 200).

31 Sul rito del Consiglio dei dieci si veda Cozzi (1982, 103–104). Sulle procedure inquisitorie introdotte in Europa nel corso del secolo XVI rinvio a Langbein (1974, 130–131), in cui l'autore sottolinea il salto di qualità rispetto alla tradizionale *inquisitio* medievale. Per una vicenda processuale analiticamente esaminata si veda Povolo (2003, VII–LXVI).

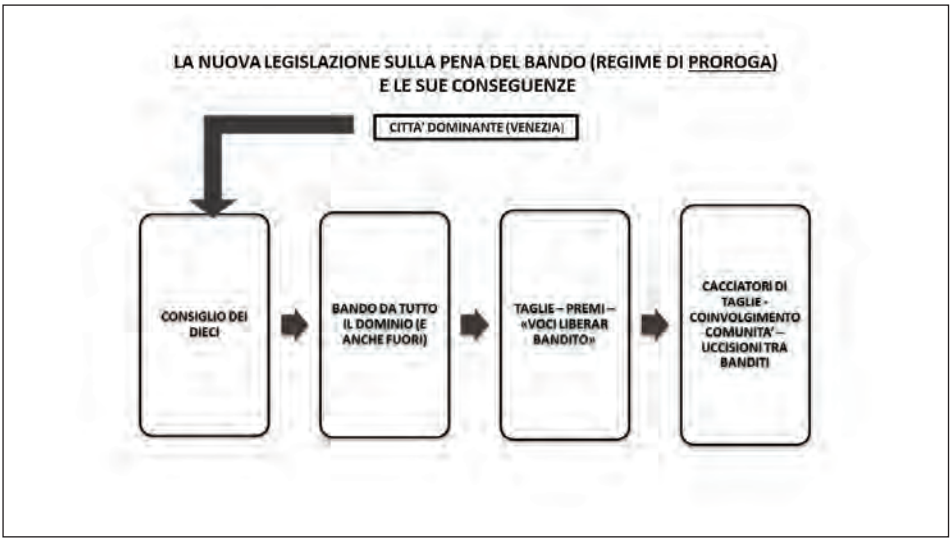
delle cosiddette *voci liberar bandito*. L'arresto o l'uccisione di un bandito comportava l'acquisizione di una *voce* che poteva essere utilizzata dal diretto interessato, oppure essere ceduta ad altri che avrebbero potuto a loro volta chiedere la liberazione di un altro bandito. Si venne dunque a creare un vero e proprio mercato delle *voci* e soprattutto si delineò la figura del cacciatore di taglie (Cozzi, 1982, 163–174). Una figura che poteva muoversi nell'anonimato, ma che più spesso svolgeva la sua attività in accordo con le istituzioni veneziane. Come quel Francesco Canova che per un decennio, con un seguito di circa cinquanta uomini, si dedicò alla caccia dei banditi, ottenendo numerose taglie e *voci liberar bandito*. Nel gennaio del 1588 compì la sua impresa più clamorosa, come avrebbero ricordato nel 1590 i rettori di Verona, che avevano continuato ad avvalersi della sua esperienza. In quell'occasione Francesco Canova, con il seguito di una cinquantina d'uomini armati, penetrò in territorio arciducale alla caccia del conte Ottavio Giusti "assassino famosissimo et accerrimo perturbatore della publica quiete", il quale si era rifugiato ad Avio insieme ad alcun suoi seguaci. E, come notarono con soddisfazione i rappresentanti veneziani, il cacciatore di taglie era riuscito nell'impresa portando "sei teste alla pietra del bando di questa città, insieme con quella di detto Ottavio"[32]. Come sembrano suggerire i nomi e le località di provenienza dei suoi uomini, l'attività del Canova prese avvio da conflitti che trovavano origine nel sistema della vendetta locale di cui era stato più o meno direttamente protagonista. Concordata con i rettori di Verona e il Consiglio dei dieci la sua iniziativa si estese poi alla repressione del banditismo. Grosse compagnie di armati come la sua erano divenute necessarie soprattutto per affrontare il banditismo di confine, che inevitabilmente finiva per catalizzare fuoriusciti di diversa provenienza. Ma la lotta contro il banditismo poté risultare efficace solo avvalendosi della diffusa conflittualità esistente nei diversi territori e che traeva la sua linfa vitale in un sistema della vendetta non più mediato dalle istituzioni giudiziarie locali. A questo proposito Fynes Morison ricordava il mutato clima di fine secolo:

> *In Crimes extraordinarily haynous, the Princes and States are so seuere, as in their publique Edict of banishment, besides rewards sett vppon their heads, great punishments and Fynes according to the qualityes of offence and person are denounced against them who at home shall make petition or vse other meanes at any tyme to haue them restored to their Countryes Lands and livings* (Hughes, 1903, 158).

La nuova legislazione adottata contro il banditismo di fine secolo innescò un corto circuito tra sistema della vendetta e le tradizionali pratiche di mediazione che miravano al raggiungimento di tregue e paci. E la sua efficacia poté realizzarsi sia inserendosi nelle dinamiche conflittuali locali, che utilizzando la concessione di premi e benefici volti a stimolare la delazione, il coinvolgimento di comunità e di cacciatori di taglie. L'attività giudiziaria del Consiglio dei dieci e l'utilizzo del suo rito inquisitorio si costituirono come il supporto essenziale di un'attività repressiva che fece soprattutto perno sulla

32 L'attività del Canova è ricordata in ASV, *Consiglio dei dieci, comuni*, filza 182, documenti allegati alla *parte* del 21 marzo 1590.

Diagramma 6: La nuova legislazione sulla pena del bando (regime di proroga) e le sue conseguenze



legislazione bannitoria. Un'esemplificazione significativa delle interrelazioni complesse messe in atto dall'attività giudiziaria del Consiglio dei dieci è data dalla vicenda che ebbe come protagonista il conte vicentino Ludovico da Porto. Nel 1579 egli venne dapprima inquisito e poi bandito da tutti i territori della Repubblica a seguito di una serie di violenze da lui compiute nel villaggio di Cresole, ma abilmente amplificate dalla fazione nemica. Proteso ad inseguire la propria vendetta, Ludovico da Porto oltrepassò più volte i confini dello stato, infierendo sui suoi nemici. Il Consiglio dei dieci pose sulla sua testa una taglia cospicua e lo bandì ripetutamente. Unitosi ad un gruppi di altri banditi vicentini e veronesi nel 1586 venne ucciso nel sonno insieme ad alcuni suoi compagni a Sabbioneta nel Mantovano. Il nobile veronese Andrea Del Ben suo uccisore, tagliò loro le teste e le invio a Vicenza perché fossero viste dai nemici del da Porto ed esposte sulla pietra del bando[33].

CONFINI E FUORILEGGE

La nuova normativa sul banditismo amplificò indubbiamente la dimensione della violenza, ma soprattutto ne evidenziò gli aspetti strumentali e repressivi. Le tradizionali interrelazioni tra sistema della vendetta, pena del bando e la loro dimensione costituzionale vennero travolte sotto l'urto di una politica criminale caratterizzata da una legislazione

33 Sulla vicenda rinvio al mio (Povolo, 1997, 319) e a Lavarda (2007).

premiale e da una diversa percezione del territorio e dei confini[34]. Una fase destinata a durare e che fu essenzialmente contraddistinta da un uso della violenza da parte dei poteri dominanti facendo perno su forme di violenza già esistenti sul territorio, ma ora finalizzate a un nuovo concetto di ordine e di sicurezza sociale. Ogni tentativo di cogliere le origini, modalità e trasformazioni della violenza in età moderna non può dunque prescindere da una riflessione sullo stesso termine di banditismo. In linea generale la storiografia si è soffermata sul concetto di *banditismo sociale* coniato da Eric Hobsbawm, oppure, all'incontrario, ha utilizzato lo stesso termine *bandito* nel senso più generico ed ampio di criminale o fuorilegge. Un'ambiguità che, come è stato osservato, ha impedito di cogliere il problema nella sua specifica dimensione costituzionale e culturale:

> *So long as the target of inquiry was banditry historians and anthropologists limited themselves to exploring only one facet of a much more complex process. As soon as the term "bandit" was applied, inquiry was restricted only to those armed predators who operated outside the law* (Gallant, 1999, 26).

In realtà la complessità del problema è innanzitutto terminologica:

> *The word 'bandit' itself is derived from the Italian verb 'bandire' meaning to exile or banish and thus at its root a bandit is a man who has been banned from normal society […]; the same men who at some points in their lives were bandits often operated at times inside the law as well. But a legal bandit is an oxymoron. By definition a bandit stands outside the law* (Gallant, 1999, 26).

In base a tali considerazioni è stato osservato come le figure di banditi e pirati siano correlate alle profonde trasformazioni economiche e politiche che in epoche e territori diversi furono decisive nella costruzione e rafforzamento degli stati. Per tale motivo si è preferito parlare di *military entrepreneurs*, ambigue figure che fiorirono in aree contraddistinte dall'espansione economica, ma pure in territori periferici e di confine:

> *Military entrepreneurs, especially when they operated as outlaws, facilitated capitalist penetration of the countryside […]; were deeply implicated and involved the processes of state formation and consolidation. The political environments in which they flourished were characterized by weak and imperfectly centralized states incapable of exerting effective control […]; they participated in power struggles between big men[…]; they provided the armed forces, or at least some of them. When the conflict was resolved, those on the winning side often became irregular members of the legitimacy security forces, while the losers became labeled as outlaws once more* (Gallant, 1999, 51).

34 Una percezione che sul piano giuridico è provvista di notevoli ambiguità nel corso dell'età moderna, in quanto pur riflettendo sino alla fine del Settecento l'originaria e pluralistica dimensione giurisdizionale, riflette comunque le tensioni venutesi a creare nell'ambito dello spazio politico. Si veda Marchetti (2007).

Le trasformazioni economiche e politiche, che interessarono la penisola italiana e altri paesi europei a partire dalla seconda metà del Cinquecento, ebbero come catalizzatore sociale e culturale il banditismo, un fenomeno che venne enfatizzato al massimo livello dalle tensioni costituzionali e politiche entro cui esso si inserì[35]. Di seguito alla politica criminale e alla legislazione bannitoria assunte dalle realtà statuali, i confini, costituzionalmente frammentati e giurisdizionalmente ambigui, divennero il terreno privilegiato dell'azione di gruppi di banditi e fuoriusciti dediti alla rapina e al saccheggio, ma anche al perseguimento della vendetta, che assai più difficilmente poteva risolversi con le consuete modalità e procedure previste dalla giustizia *restitutiva*. Un dato, questo, che può spiegare, ad esempio, l'ampio coinvolgimento in tutta la penisola italiana del banditismo di origine aristocratica o feudale. Come è stato osservato:

> *It is because the bandit throws down a challenge to law, state violence and the territorial imaginary that the state sees in the bandit not just a criminal but a political opponent and, conversely, why many bandits become 'primitive rebels'* (Neocleous, 2003, 103).

Se la violenza traeva ancora prevalentemente origine dai conflitti originati dal sistema della vendetta e dall'idioma dell'onore, la sua amplificazione fu causata dal superamento dei consueti assetti giurisdizionali e dagli straordinari strumenti repressivi adottati dai poteri centrali[36]. La catalizzazione del banditismo nelle aree di confine fu il risultato inevitabile della messa in discussione della tradizionale pena del bando. Ma per poter far rispettare la diversa concezione di ordine e di sicurezza le autorità centrali non esitarono ad utilizzare le dinamiche e le ambiguità che animavano lo stesso banditismo e puntando su figure che si potrebbero definire interscambiabili tra il ruolo di banditi o di cacciatori di taglie, più o meno apertamente legittimati ad operare sul territorio. Le nuove realtà statuali emergenti, come ha notato Thomas Gallant, furono costrette ad utilizzare queste forze irregolari come *guardiani* delle frontiere e, molto spesso, risultava difficile distinguerle dagli stessi banditi che operavano ai confini o si addentravano nei territori per compiere rapine o per portare a compimento la loro vendetta. L'azione repressiva mise comunque in rilievo il ruolo dei poteri centrali nell'utilizzo legale della violenza e nella ridefinizione politica degli stessi confini (Gallant, 1999, 47).

Nonostante il loro linguaggio apodittico e decisamente negativo nei confronti del banditismo, le fonti giudiziarie non riescono comunque a nascondere l'entità di un fenomeno che, soprattutto a partire dalla fine del Cinquecento, assume aspetti inediti. La figura del

35 Si vedano le mie riflessioni in Povolo (1997, in particolare 158 e sgg.).

36 Come è stato notato da Janice Thomson, "*The process by which control over violence was centralized, monopolized, and made hierarchical entailed not the state's establishment and defense of a new legal order but the state's imposing itself as the defender of that order. Societal groups vigorously resisted state-builders' drive to monopolize political authority and the coercion on which it ultimately rested. In the process state rulers struck bargains with various societal groups in which the latter provided war-making resources in exchange for property, political, and other rights. These bargains constitute subplots in the central drama in which the state achieved ultimate authority, especially on the use of coercion, within its territory*" (Thomson, 1994, 3).


PARTE
PRESA
Nell'Eccelſo Conſeglio di X.
1609. A' 31. Agoſto.
In materia di Banditi.
Stampata in Calle dalle Raſſe,
Per Franceſco Rampazetto.

Fig. 2: Legge del Consiglio dei dieci sul banditismo emanata nel 1609 (AMP Salò, Extraordinarium)

bandito famoso, che l'azione repressiva evoca di frequente, si alterna a quella dei suoi antagonisti, che senza tregua gli danno la caccia alla ricerca di una spasmodica vendetta, oppure per ottenere i ricchi premi promessi dalle autorità centrali. Ma è soprattutto la letteratura che non disdegna di assegnare una certa attenzione al bandito che ha ormai assunto l'immagine del fuorilegge. Famosa, tra tutte, quella del bandito catalano Perot Rocaguinarda, tramandaci da Miguel de Cervantes nel secondo volume del suo capolavoro, apparso nel 1615. Attraverso la penna del grande romanziere, Rocaguinarda evoca il fatale destino che l'ha condotto a divenire un grande fuorilegge:

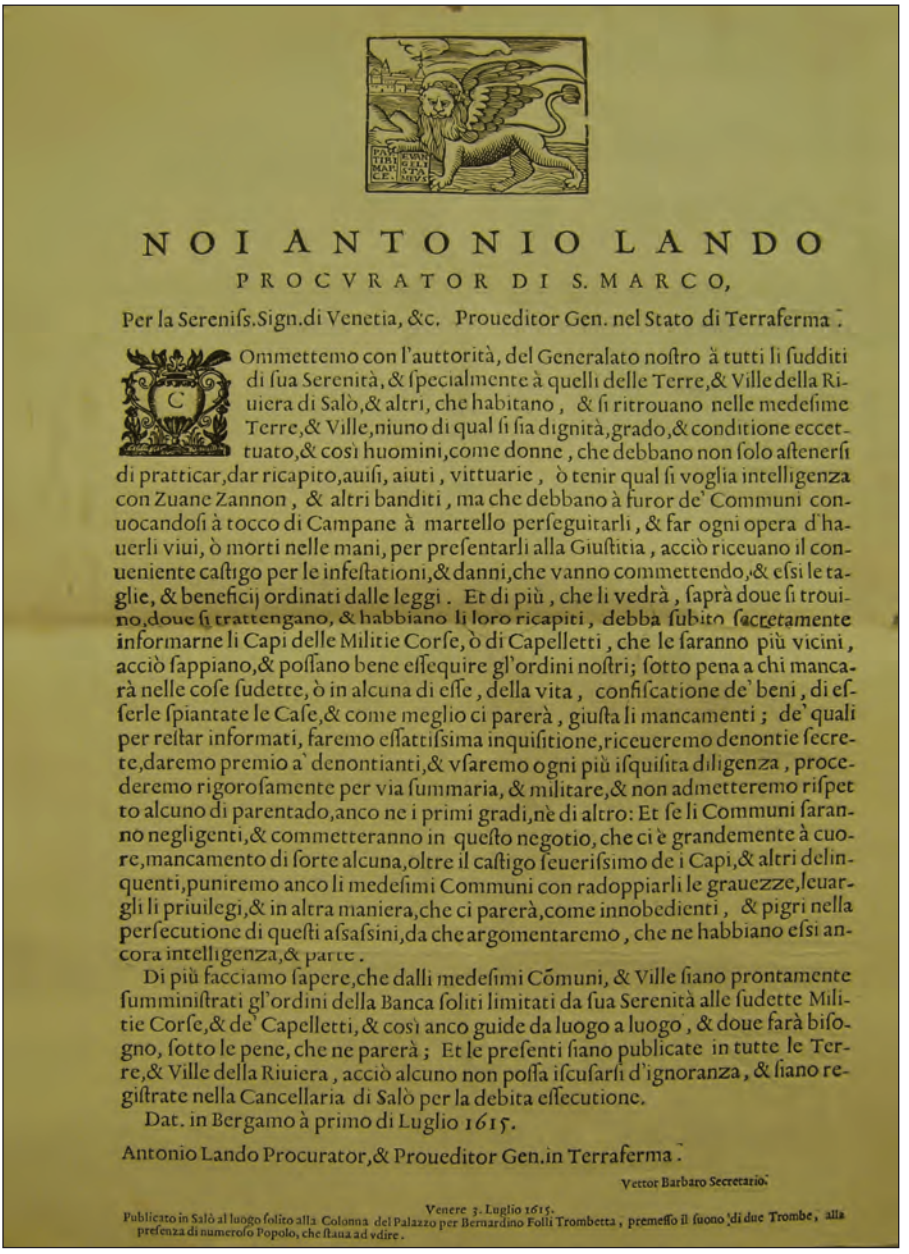
> *Ad onore del vero io confesserò che non avvi tenore di vita più inquieto, né più pauroso del nostro. Mi vi strascinò non so qual desiderio di vendetta, che ha la possa di sconvolgere ogni più riposato cuore; ma io sono di mia natura compassionevole e proclive al ben fare; né fu, come ho detto, se non la voglia di lavare la macchia di un torto sofferto che mi rimosse dalle mie buone inclinazioni, e che mi fa ora perseverare nel presente stato, in onta e in contrapposizione della mia volontà. E siccome un abisso chiama l'altro, e una un'altra colpa, così le vendette si vennero talmente concatenando, che non solo le mie, ma prendo anche le altrui sopra di me. Pure Iddio mi concede, quantunque io viva in mezzo al labirinto delle mie contraddizioni, di non farmi perdere la speranza di uscirne fuori per afferrare un porto di sicurezza*[37].

La letteratura faceva propri l'immagine e il mito del bandito fuorilegge, sradicato dal suo contesto sociale e famigliare e divenuto ad un tempo nemico pubblico per le autorità[38], ma anche una sorta di *local hero* per la popolazione che ne conosceva le traversie. La figura del tradizionale bandito, espressione di conflitti di faida, si era trasformata per assumere quella del fuorilegge, combattuto ed avversato sia dalle élites locali che dai poteri centrali e destinato, molto spesso, ad assumere nel corso del tempo la dimensione del *local hero*[39]. Nell'ambito delle comunità il bandito era certamente percepito come una minaccia e una fonte costante di insicurezza; e in quanto tale veniva perseguito con determinazione, anche perché sulla sua testa pendevano taglie e ricchi premi. E non si potrebbe altrimenti spiegare come la dura legislazione bannitoria potesse essere infine

37 Nel successivo capitolo Cervantes descrive il comportamento di Rocaguinarda alla stregua dell'immagine che alcuni anni prima Fynes Morryson aveva dato dei banditi italiani. E soprattutto sottolineando come egli fosse divenuto un fuorilegge a seguito dei numerosi bandi che gli erano stati inflitti dalle autorità politiche: "*Trovavansi di bel mattino in un luogo, e all'ora del desinare in altro; talvolta fuggivano senza sapere da chi, o aspettavano tal'altro senza sapere chi. Dormivano sempre ritti, interrompendo il sonno per cambiarsi da un luogo all'altro, ed occupandosi di continuo nel metter spie, nel tenere sentinelle in ascolto, nel soffiare nelle micce degli archibusi, sebbene ne avessero pochi, perché per lo più si servivano di pistoletti. Rocco passava la notte appartato da' suoi ed in luoghi a tutti gli altri ignoti, mentre i molti bandi pubblicati dal viceré di Barcellona contro la sua vita lo rendevano timoroso ed inquieto a segno di non fidarsi di chicchessia, e temeva sempre che i suoi stessi compagni o gli togliessero la vita, o lo dessero in potere della giustizia: vita veramente miserabile ed affannosa*" (de Cervantes, 1617, per i passi citati cfr. rispettivamente cap. LX e LXI). Su Rocaguinarda si veda inoltre Casey (1999, 174).

38 Per altri esempi in letteratura si veda Baja Guarienti (2012, 169–178).

39 Un tema affrontato da Graham Seal, in particolare in Seal (1996).



NOI ANTONIO LANDO

PROCVRATOR DI S. MARCO,

Per la Serenis.Sign.di Venetia, &c. Proueditor Gen. nel Stato di Terraferma.

Ommettemo con l'auttorità, del Generalato nostro à tutti li sudditi di sua Serenità, & specialmente à quelli delle Terre,& Ville della Riuiera di Salò,& altri, che habitano, & si ritrouano nelle medesime Terre,& Ville,niuno di qual si sia dignità,grado,& conditione eccettuato,& così huomini,come donne, che debbano non solo astenersi di pratticar,dar ricapito,auisi, aiuti, vittuarie, ò tenir qual si voglia intelligenza con Zuane Zannon, & altri banditi, ma che debbano à furor de' Communi conuocandosi à tocco di Campane à martello perseguitarli, & far ogni opera d'hauerli viui, ò morti nelle mani, per presentarli alla Giustitia, acciò riceuano il conueniente castigo per le infestationi,& danni,che vanno commettendo,& essi le taglie, & beneficij ordinati dalle leggi. Et di più, che li vedrà, saprà doue si trouino,doue si trattengano, & habbiano li loro ricapiti, debba subito secretamente informarne li Capi delle Militie Corse, ò di Capelletti, che le saranno più vicini, acciò sappiano,& possano bene essequire gl'ordini nostri; sotto pena a chi mancarà nelle cose sudette, ò in alcuna di esse, della vita, confiscatione de' beni, di esserle spiantate le Case,& come meglio ci parerà, giusta li mancamenti; de' quali per restar informati, faremo essattissima inquisitione,riceueremo denontie secrete,daremo premio a' denontianti,& vsaremo ogni più isquisita diligenza, procederemo rigorosamente per via summaria, & militare,& non admetteremo rispetto alcuno di parentado,anco ne i primi gradi,nè di altro: Et se li Communi saranno negligenti,& commetteranno in questo negotio, che ci è grandemente à cuore,mancamento di sorte alcuna,oltre il castigo seueriſsimo de i Capi,& altri delinquenti,puniremo anco li medesimi Communi con radoppiarli le grauezze,leuargli li priuilegi,& in altra maniera,che ci parerà,come innobedienti, & pigri nella persecutione di questi assassini,da che argomentaremo, che ne habbiano essi ancora intelligenza,& parte.

Di più facciamo sapere,che dalli medesimi Cõmuni, & Ville siano prontamente sumministrati gl'ordini della Banca soliti limitati da sua Serenità alle sudette Militie Corse,& de' Capelletti,& così anco guide da luogo a luogo, & doue farà bisogno, sotto le pene, che ne parerà; Et le presenti siano publicate in tutte le Terre,& Ville della Riuiera, acciò alcuno non possa iscusarsi d'ignoranza, & siano registrate nella Cancellaria di Salò per la debita essecutione.

Dat. in Bergamo à primo di Luglio 1615.

Antonio Lando Procurator,& Proueditor Gen.in Terraferma.

Vettor Barbaro Secretario.

Venere 3. Luglio 1615.

Publicato in Salò al luogo solito alla Colonna del Palazzo per Bernardino Folli Trombetta, premesso il suono di due Trombe, alla presenza di numeroso Popolo, che staua ad vdire.

Fig. 3: Proclama del Provveditore generale in Terraferma Antonio Lando con il quale nel 1615 si ordina alle comunità di non aiutare il fuorilegge Giovanni Beatrice detto Zanzanù (AMP Salò, Extraordinarium)

Fig. 4: Gardola di Tignale (Brescia): veduta del santuario di Montecastello in cui è conservato l'ex-voto che ricorda la battaglia ingaggiata dalla comunità contro il fuorilegge Zanzanù il 17 agosto 1617 (Foto: Archivio Storico del Comune di Tignale)

accolta, nonostante la palese violazione degli antichi assetti costituzionali. Ma le stesse fonti giudiziarie, che attestano molto spesso come egli potesse godere di una rete di protezione e di aiuti, che andava al di là delle *inimicizie* tra parentele avversarie, indica che la sua immagine era altrimenti percepita dalla popolazione più povera, che conosceva le dinamiche sociali e conflittuali che avevano dato luogo al suo ostracismo da parte delle autorità. Non può dunque stupire come il bandito, divenuto vero e proprio fuorilegge, potesse essere considerato alla stregua del vendicatore, che si opponeva alle logiche economiche e politiche dell'*establishment* locale, sfidando lo stesso potere centrale.

Sotto questo profilo è emblematica la biografia del grande fuorilegge Giovanni Beatrice detto Zanzanù, che per circa quindici anni operò nei territori di confine posti lungo la riva occidentale del lago di Garda. Bandito di seguito a dinamiche conflittuali collegate al sistema della vendetta e all'uccisione del padre da parte della fazione rivale, egli divenne ben presto famoso fuorilegge (Povolo, 2011). Per porre fine all'incontestata supremazia della cosiddetta banda degli Zanoni, il provveditore generale in Terraferma Benedetto Moro si mise segretamente in contatto con i nemici dei banditi che conoscevano evidentemente il territorio e, tramite mercanti e mediatori interessati, mise a loro disposizione alcuni banditi, autorizzandoli a penetrare armati nei territori

Fig. 5: Ex-voto del santuario della Madonna di Montecastello (Tignale) opera di Giovan Andrea Bertanza (anno 1618) in cui si descrive la battaglia del 17 agosto 1617 (Foto: Claudio Povolo)

Fig. 6: Particolare dell'ex-voto del santuario di Montecastello di Tignale (Brescia) (Foto: Claudio Povolo)

Fig. 7: Particolare dell'ex-voto del santuario di Montecastello di Tignale (Brescia) (Foto: Claudio Povolo)

da cui erano stati interdetti. Uscito vincitore dallo scontro con gli avversari, Giovanni Beatrice e la sua banda ampliarono il loro raggio di azione mirando a controllare l'attività di contrabbando che fioriva nel grande bacino del lago di Garda. Un gruppo influente di mercanti bresciani, che intendeva riprendere il controllo sulla fiorente attività illegale ed agiva in accordo con le autorità locali e veneziane assoldò decine di banditi e di uomini armati allettati dalle ricompense e dalle taglie. Sopravvissuto agli agguati che sterminarono l'intera banda, Zanzanù poté agire quasi indisturbato negli anni seguenti, favorito dal territorio montuoso e posto ai confini dello stato, ma anche dal palese appoggio di una parte della popolazione. Il suo destino venne però segnato nel 1617 proprio lungo quei confini che, di seguito alla cosiddetta guerra di Gradisca, erano divenuti luogo di tensione tra opposte potenze politiche. La sua morte venne procurata dall'attacco concentrico di alcune comunità poste lungo la riva occidentale del lago, che già da lungo tempo erano costantemente allertate dal notabilato locale e dalle autorità veneziane per contrastare ed opporsi alla penetrazione del banditismo e alle sue azioni di disturbo. Le comunità che parteciparono alla sua uccisione vollero sancire la straordinarietà dell'evento e commissionarono ad un pittore la descrizione della grande battaglia in un grande ex-voto, ancora oggi conservato presso il santuario della Madonna di Montecastello di Tignale. Un dipinto che rappresenta in controluce le grandi trasformazioni che investirono il banditismo tra Cinque e Seicento. Ma di

Fig. 8: Particolare dell'ex-voto del santuario di Montecastello di Tignale (Brescia) (Foto: Claudio Povolo)

Giovanni Beatrice ci è giunta pure un'altra straordinaria testimonianza. Come si è ricordato, nel 1616 si era aperto un aspro conflitto tra Venezia e l'Arciducato d'Austria. Per fronteggiare l'emergenza bellica la Repubblica offrì a numerosi banditi la possibilità di ottenere la liberazione dal loro bando se, con un loro seguito, si fossero arruolati nell'esercito veneziano. Giovanni Beatrice ritenne che fosse giunta l'occasione per ritornare finalmente sui propri passi e perciò rivolse una supplica ai Capi del Consiglio dei dieci, ripercorrendo le tappe più significative della sua vita. Ricordò amaramente l'uccisione del padre e l'ininterrotta catena di violenze in cui l'aveva trascinato la sete di vendetta. Un documento straordinario in cui, con fierezza, ricordava pure il suo strenuo valore di bandito, che gli aveva permesso di superare per anni gli attacchi dei numerosi nemici. Un valore di cui la Repubblica avrebbe potuto servirsi in occasione dello scontro bellico:

> *Il padre di me Giovanni Zannoni della Riviera di Salò, qual faceva ostaria in quella terra, passo ordinario di Alemagna per quelli che discendono per il lago, e dalla quale traheva il vitto di tutta la sua povera famiglia, mentre egli viveva quieto, fondato una solenne pace con giuramento firmata, sopra il sacramento dell'altare, fu empiamente trucidato da alcun della Riviera. Per questa sì inhumana e barbara attione, dubitando*

io Giovanni sudetto di non esser sicuro dalla fellonia d'huomini sì crudeli, indotto dalla disperatione, risolsi di vendicare sì grave offesa e d'assicurare la propria vita, presa la via dell'armi, vendicai con morti d'inimici la perdita del padre et la privatione del modo di sostener la famiglia mia; per le quali operationi restai bandito e continuandosi da nostri inimici le persecutioni, anch'io rispondendo con nuove vendette, tirando uno dietro all'altro, hebbi gran numero di bandi, non solo con l'auttorità dell'eccelso Consiglio di dieci, ma uno del medesimo Consiglio (Povolo, 2011, 156).

Un passo che ricorda sorprendentemente molto da vicino il dialogo tra Don Quixote e Rocaguinarda. L'ingiustizia subita, l'imperativo della vendetta e la catena ineluttabile di vendette con gli avversari sono i tratti che, al di là della retorica letteraria o della mediazione notarile, sembrano contrassegnare la biografia di molti fuorilegge di questo periodo. E nella sua supplica Giovanni Beatrice, rammenta pure l'ineluttabilità della sua condizione di bandito, che non aveva scalfito il suo essere uomo e la lealtà verso il suo principe. Ma, soprattutto, non nasconde, come il suo omologo letterario Rocaguinarda, che la sua immagine di fuorilegge, si era inevitabilmente amplificata nel nuovo clima politico e conflittuale:

Confesso esser reo di molti bandi, tutti però per delitti privati et niuno per minima attinentia di cose publiche e di stato, né con conditione escluso dalla presente parte, né meno con carico di risarcir alcuno, ma siami ben anco lecito il dire che, essendo stati commessi molti eccessi da altri sotto il nome mio, di quelli essendo fuori di speranza di potermi liberare, già mai non ho curato di scolparmi (Povolo, 2011, 156).

E così il grande fuorilegge chiedeva la grazia di poter ottenere il perdono dal suo principe, ponendosi al suo servizio. Un servizio che avrebbe certamente reso con onore e perizia, come aveva ben dimostrato la sua stessa vita avventurosa e attraversata dalla violenza:

Laonde, io Giovanni sudetto supplico humilmente Vostra Sublimità si degni di mirare questo mio sviscerato affetto con occhio di pietà, condonando le pene de bandi ed errori commessi sino al giorno della publicatione della presente parte et anco far gratia alla moglie mia bandita per 20 anni per cagione di servitio a me prestato, rendendomi a questo modo habile a dimostrar con gli effetti l'ardente mia volontà di poter, sì come son stato prodigo della vita ben mille volte in mezo d'archibugiate per inimicitie provate, così medemamente conservar l'istessa gloriosamente nel suo servitio (Povolo, 2011, 157).

L'offerta di Giovanni Beatrice venne tacitamente respinta, diversamente da quella di altri banditi cui era stata concessa la grazia, nonostante si fossero macchiati di violenze e di delitti ben più gravi ed orribili dei suoi. Giovanni Beatrice aveva in realtà sottovalutato come la sua immagine avesse ormai assunto la dimensione del grande fuorilegge e come tale fosse considerato un vero e proprio oppositore politico, che

doveva comunque essere eliminato per riaffermare il nuovo ordine sociale e politico. Un destino che due anni prima il bandito catalano Perot Rocaguinarda era riuscito ad evitare, ottenendo la grazia e la possibilità di servire con le armi il sovrano che l'aveva combattuto così a lungo.[40]

40 Come è stato osservato, la seconda parte dell'opera di Cervantes apparve nel 1615, un anno dopo che Rocaguinarda aveva ottenuto la grazia e già militava nelle fila dell'esercito spagnolo a Napoli. La descrizione del famoso bandito esprimeva dunque la soluzione che Cervantes auspicava nei confronti del vasto fenomeno del banditismo, a suo giudizio inutilmente perseguito con le misure repressive adottate dalla monarchia spagnola (Martinez-Lopez, 1991, 69–84).

KAMEN IZGONA. MAŠČEVANJE IN BANDITIZEM V EVROPI V 16. IN 17. STOLETJU

Claudio POVOLO

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POVZETEK

Kazen izgona je v prvi vrsti odsevala politično in ustavno policentričnost Evrope in njenih medsebojnih povezav z družbo, ki je bila že dolgo prežeta s konflikti med klikami in sorodstvenimi skupinami. Bistvo odnosov prežetih z maščevanjem je bilo namreč doseganje miru med stranmi v sporu, kot tudi zagotavljanje miru in ohranitev vrednot skupnosti. Kazen izgona je pokazala tesne povezave med sistemom maščevanja in sodstvom, ki sta bila, v različnih oblikah in z zatekanjem k množici ritualnih obredov, bolj ali manj razširjena v številnih ustavnih okvirih. Lik bandita je bil zaznamovan z nasprotujočimi si dinamikami med sovražnimi sorodstvenimi skupinami, a tudi s strani sodišča, ki je izreklo kazen in ki je, predvsem v urbanih centrih, zasledovalo vzvišeni cilj zagotavljanja reda in miru v mestu, ter oslabitve, ko je to bilo možno in nujno, solidarnosti in kompaktnosti nasprotujočih si skupin, ki sta vsaka skušali uveljaviti svojo voljo.

V 16. stoletju je bil sistem maščevanja odločno postavljen pod vprašaj, izgubil je svojo pravno legitimnost in funkcijo ohranjanja miru in družbenega ravnotežja. Kazen izgona, ki je bila razširjena po celotni državi in je predstavljala strogo kazen tako z represivnega vidika kot z vidika nagrajevanja, je postala učinkovito orodje za vzpostavitev drugačnega družbenega nadzora, kjer je tematika miru izgubljala svoje temeljne in izvirne funkcije v korist javnega reda in socialnega miru. Lik bandita je bil preplavljen z novimi predpisi o izgonu in izključitvijo tradicionalnih sodnih ritualov. Bandit ni bil več odsev nekega ustavnega sistema, ki je skušal vzpostaviti mir, temveč je kmalu postal pravi kriminalec, označen za političnega nasprotnika. Te spremembe, kljub temu, da so bile okarakterizirane z velikim nasiljem, so na dolgi rok oslabile potek in značilnosti lokalnih sporov. Izredno težavni ukrepi in strogi postopki, ki so jih sprejele centralne oblasti, so bili učinkoviti, saj so bili neizogiben odziv na pritisk in zahteve skupnosti, ki si je želela varnosti in reda.

Ključne besede: banditizem, maščevanje, kazensko pravo, izobčenci, kazen izgona, zgodovina zgodnjega novega veka

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BLOOD FEUD AS GIFT EXCHANGE: THE RITUAL OF HUMILIATION IN THE CUSTOMARY SYSTEM OF CONFLICT RESOLUTION

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ABSTRACT

The article, based on interdisciplinary historiographical and anthropological studies and archival documents, collected folk literature and other documents, will reconstruct the ritual of blood feud with emphasis on the act of humiliation and penance as reflected in documents from Southeast Europe, comparing them with many fragments of medieval European cases, reflecting general ritual structure in the field of public affairs: Homage *(gift, first approach),* Fides *(fidelity, oath, truce) and* Investiture *(appointment), and, in case of dispute settlement,* Pace Perpetua *– lasting peace (love, marriage), with particular focus on principles of the so called gift-exchange societies. The hypothesis of this article, based on collected material and on outlined cases, is arguing in favour of the principle of the general ritual structure for all public affairs, in which precisely the gesture of penance and humiliation plays an important symbolic role, especially in the ritual of* vindicta, *that is in the customary system of conflict resolution.*

Keywords: ritual, humiliation, penance, vendetta, faida, satisfaction, system of conflict resolution, trial rites, emotions, Middle Ages, Early Modern Period

LA VENDETTA COME SCAMBIO DI DONI: IL RITUALE DELL' UMILIAZIONE NEL SISTEMA CONSUETUDINARIO DELLA RISOLUZIONE DEI CONFLITTI

SINTESI

Alla base dell'articolo ci sono studi interdisciplinari di storiografia e antropologia, documenti d'archivio, raccolte della letteratura popolare e altre fonti, viene proposta la ricostruzione del rituale della vendetta dando particolare attenzione all'atto dell'umiliazione e della penitenza come risulta dai documenti dell'Europa sudorientale. Questi vengono messi a confronto con numerosi frammenti di casi del periodo medievale in Europa che riflettono la seguente struttura rituale generale degli affari pubblici: l'Omaggio (dono, primo approccio), il Fides (fedeltà, giuramento, tregua) e l'Investitura (appuntamento), e, nel caso della pacificazione, la Pace Perpetua – pace duratura (amore,

matrimonio), con uno speciale riferimento riguardo ai principi delle cosiddette società di scambio reciproco dei doni. L'ipotesi di lavoro dell'articolo, basato sul materiale raccolto e casi descritti, è sostenere l'mportanza del principio della struttura rituale generale per tutti gli affari pubblici nei quali proprio il gesto della penitenza e dell'umiliazione svolgeva un ruolo simbolico importante, soprattutto nel rituale della vindicta, cioè nel sistema usuale per la soluzione dei conflitti.

Parole chiave: rituale, umiliazione, penitenza, vendetta, faida, soddisfazione, sistema di soluzione dei conflitti, rito processuale, emozioni, medio evo, età moderna

Non sa quanto dolce si sia la vendetta
nè con quanto ardor si desideri,
se non chi riceve l'offese.
Boccaccio, Decamerone III. 7.

INTRODUCTION[1]

This article aims to analyse the historical documents and the historical-anthropological bibliography with the intent to demonstrate the phenomenon of humiliation within the structure of public and social ritual,[2] with special emphasis on the rite of the conflict resolution system.[3] Using the comparative interdisciplinary approach to present the fundamental characteristics of the ritual, incorporated in general social practices and rela-

1 This research is supported by a Marie Curie Intra European Fellowship within the 7th European Community Framework Programme within the project FAIDA. Feud and Blood Feud between Customary Law and Legal Process in Medieval and Early Modern Europe. The case of the Upper-Adriatic area. Grant Agreement Number 627936, then within research program »The past of North Eastern Slovenia and neighbouring regions of Austria, Hungary and Croatia« at the University of Maribor, and within research project "The Contemporality of the Understanding Context and the Expression of Personal and Social Freedom" at the Inštitut nove revije Ljubljana, financed by Slovenian Research Agency.

2 There is fairly abundant bibliography about Rituals, in this case it is important to expose at least the following works: Bell (1992); Althoff (2003); Koziol (1992); Buc (2001). I would also like to note the work of Muir (2005, 12–14), who also serves us with an exceptional enlistment of mainly American bibliography about studies of the rituals.

3 Comp. Netterstrøm & Poulsen (2007); Roberts (2013); Verdier (1980); Rouland (1992); Stein (1984); Povolo (2015a).

tions, as well as systems of representation of authority and its functioning, we can notice that the action or the gesture of humiliation and penance is present in all the religious and profane ceremonies, not only in Europe but worldwide, as shown by several indications, which are as well worthy of a future comparative research.

»Is there any kind of humiliation between the feuding sides involved in the reconciliation process of blood feud«? »No, there is no humiliation, these are only honourable people« state three responses in the survey conducted among selected informants from Montenegro, Herzegovina and Albania in the 70s of the 19th century, carried by Valtazar Bogišić, an university professor and, among others, the president of the International Institute of Sociology in Paris (1902). However, further survey revealed that the humiliation was in fact a part of the system of conflict resolution in those areas. Bogišić's project of collecting testimonies of legal cultural heritage of customary law of Southern Slavs completely coincided with the scientific backgrounds of legal and historiographical discipline in the European countries (comp. Čepulo, 2010). The latter is proven by numerous collections of documents and testimonies, collected in Europe by lawyers and historians in the second half of the 19th century, among others also the collection of Bogišić (1999, 345–384).[4]

In fact, Bogišić's survey clearly shows how the expression of humiliation and penance – as a necessary gesture in the customary dispute settlement system, which leads to friendship and peace in the community – is presented in the ritual of blood feud.[5] Ritual characteristics of the customary system of conflict resolution have already been illustrated by the classics who studied primary communities, including Durkheim, Westermarck, Mauss, Malinovsky, Evans-Pritchard, Radcliffe-Brown, Gluckman, Sahlins, Claude Lévi-Strauss, and many medieval and modern historiographers and anthropologists, such as Heusler, Brunner, Wallace-Hadrill, Hasluck, Black-Michaud, Verdier, Bossy, Foucault, Boehm, Miller, White, Althoff, Pitt-Rivers, Povolo, Carroll, Smail, Muir and others.

Although White highlights that »these ceremonies are never fully described in documentary sources, any reconstruction of them is bound to be highly speculative«, nevertheless notes that »details from various texts can be fitted together to construct a rough, composite picture of these rituals« (White, 1986, 256). However, so far no one has provided with an in-depth analysis and interpretation of the structure of ritual of conflict resolution.[6]

The scholars have not yet arrived to an uniform definition of ritual as a social phenomenon (comp. Schirch, 2005), which presents not only a set of social norms, but as well a development of human legal, political and economic institutions within preliterate, as well as within literate societies.

4 On the inside back cover Bogišić attributed: »Matériaux pour l'étude comparée de la vendetta«. For the bibliography of Bogišić and literature about him see Foretić, 1984.

5 One of the recent studies with abbundance of references to crutial bibliography about blood feud, *vendetta, vindicta, faida, Fehde, osveta, maščevanje, gjakmarrja*… comp. Povolo, 2015a, esp. 199–204.

6 The studies of ritual communication are still underestimated; comp. Stollberg-Rilinger, 2002, 233–246.

The basic purpose of the rituals is to report to the public about the political, religious, military, cultural or economic events, while their social mission is to inform and educate as well. We could even state that the rituals testify about the history of human civilization. The *Oxford Dictionary*, for example, defines a rite as '(1) a formal procedure or act in a religious or other solemn observance; (2) the general or usual custom, habit, or practice of a country, class of persons, etc., now specifically in religion or worship'. Jack Goody, one of the most prominent social scientists in the world, known for his pioneering writings at the intersections of anthropology, history and social and cultural studies, provided an in-depth discussion about the numerous approaches of the above mentioned classics of anthropology. While discussing the interaction of ritual and religion, he surely could not avoid the usual 'functional' and 'structural' (or post-structural) approaches of such activities (Goody, 2010, 13–40). His most distinct critique of the analysis of various approaches towards the definition of religious and ritual phenomena, is that they are »confusing the public and the social« (Goody, 2010, 19) and that they place »too much weight on the usefulness of the distinction between the sacred and the profane« (Goody, 2010, 15). He tried to take a more cognitive approach, stressing the issues of variation, imagination and creativity, recognizing »the logic of looking at the societies more from the actor's point of view, and considering such forms not as a fixed, formulaic product but as reflecting man's creativity, as a language-using animal in face of the world, not free from tradition but not bound down by it« (Goody, 2010, 1).

He explained his views primarily basing on his own experiences acquired during his field work on the Bagra ceremonies conducted among the LoDagaa people of northern Ghana over several periods. Although he noticed that »all variations of ceremonies are made within a 'common frame'« and that »all were recited in the same ritual situation«, he finally realizes that »even the initial invocation, learnt 'by heart', varied, and the recitations themselves differed not only in detail but in entire outlook, in worldview« (Goody, 2010, 3). This has convinced Goody to recognize the creativity of oral cultures, which should mean that the ceremony does not belong to 'a common frame'. His intention was to stress the role of an individual and to clearly oppose the structuralist theory and methodology, which is, in Goody's critique, practically personified in the works of Claude Lévi-Strauss.[7]

This article does not aim to analyse the structural, functionalist, evolutionist or Marxist theories or psychoanalysis or phenomenology, or to identify itself with any of the mentioned approaches, but it rather aims towards the analysis of the historical documents and historical-anthropological bibliography to demonstrate the phenomenon of humiliation within the structure of public and social ritual, with special emphasis on the rite of the conflict resolution system. As I have stressed, the main hypothesis of this discussion is that the customary rite of the conflict resolution is arguing in favour of the principle of the general ritual structure for all public affairs, with a three-part inner structure as described by Galbert of Brugge (1127): *homage, fides, investiture* (Rider, 2013, 97–98).

7 The theory of myth is one of the central themes developed by Lévi-Strauss, just to mention in particular: *Structural Anthropology* (1963; orig. pub. 1958) and *Mythologiques* (1969a; orig. pub. 1964).

A SYSTEM OF GENERALIZED EXCHANGE AND A SYSTEM OF RESOLVING CONFLICTS

> *A Morlack, who has killed another of a powerful family, is commonly obliged to save himself by flight, and to keep out of the way for several years. If, during that time, he has been fortunate enough to escape the search of his pursuers, and has got a small sum of money, he endeavours to obtain pardon and peace; and, that he may treat about the conditions in person, he asks, and obtains a safe conduct, which is faithfully maintained though only verbally granted. Then, he finds mediators, and, on an appointed day, the relations of the two hostile families are assembled, and the criminal is introduced, dragging himself along on his hands and feet, the musket, pistol or cutlass, with which he committed the murder, hung about his neck; and while he continues in that humble posture, one or more of the relations recites a panegyrick on the dead, which sometimes rekindles the flames of revenge, and puts the poor prostrate in no small danger. It is the custom in some places for the offended party to threaten the criminal, holding all kind of arms to his throat, and, after much intreaty, to consent at least to accept of his ransom. These pacifications cost dear in Albonia, but the Morlacchi make up matters sometimes at a small expence; and every where the business is concluded with a feast at the offender's charge* (Fortis, 1778, 58–59).

This is how Alberto Fortis[8] in the second half of the 18th Century described the reconciliation ceremony among the *Morlacks*, a common term for the inhabitants of the hinterland of the Venetian Dalmatian coastal towns, after describing them as very friendly and hospitable, with an immense sense for friendship, but implacable if they were injured or insulted. »And so deeply is revenge rooted in the minds of this nation, that all the missionaries in the world would not be able to eradicate it«. Furthermore, he stated that among the Morlaks, »revenge and justice have exactly the same meaning, and truly it is the primitive idea; and I have been told, that in Albonia, the effects of revenge are still more atrocious and more lasting. There, a man of the mildest character, is capable of the most barbarous revenge, believing it his positive duty, and preferring the mad chimera of false honour …« (Fortis, 1778, 58–59).

When mentioning Albania, Fortis referred as well to the part of the present Montenegrin coastal area (*Crnogorsko Primorje*), which at the time belonged to the territories of the Venetian Republic (the so-called *Venetian Albania, Albania Veneta*). In Europe, the custom of blood revenge preserved itself for the longest period of time especially among the Montenegrins and the Albanians, which is proven by several bibliographical references[9] on this matter. But, despite the stereotypical image of blood revenge, portrayed

8 About Fortis see Wolff (2001, 1–9), discussing the Venetian imperial tendencies and the British views on the imperiality of the Venetian Republic, thus the Fortis's work was translated in English as early as in 1778.

9 For this article, one of the most important referential monographs is Boehm (1984), who provided with an in-depth analysis, using up-to-date referential bibliography about blood revenge, not only for the areas of Montenegro but also comparatively for other parts of the world, comp. pp. 253–258.

as the irrational and emotionally uncontrolled and uncivilised blood-hungry behaviour, some of the more thorough anthropological and historical studies from the end of the 19th and the beginning of 20th Century, have emphasized that this phenomenon was in fact a primordial system of social sanctioning, typical particularly for tribal societies or for the so-called preliterate societies (Westermarck, 1906; Heusler, 1911).

The social sanctions, as an integral part of the law and social control of the period, were closely related to the political, religious, economic and cultural social system, as well as to the system of values and moral obligations. Therefore, we can hardly apply the modern distinction between criminal and civil law in the preliterate societies. Instead, some anthropologists distinguish between the law of public and private delicts. While the public delicts included the incest, the witchcraft, blasphemy (towards the gods or the rulers) and the breaking of oath, the murder and the revenge (except towards the ruler) were regarded as private delicts (Radcliffe-Brown, 1952, 212, 213, 218, 219; Frauenstädt, 1881, 168–172).

The sanctions for the private delicts were executed by the community, mostly by its representatives or by individuals with the consent of the community. The last was especially the case when there was a violation of the commonly established rights, which were based on the general principle that every injured party, an individual, is entitled to compensation, and that the compensation itself should be in proportion to the extent of the injury (*lex talionis*). Thus, in the case of acts of retaliation or retaliatory sanctions, revenge is institutionally organized and regulated, approved, controlled and regulated by social norms.

In many preliterate societies the injured group, of which an individual was killed, has the right and the duty to seek satisfaction with a revengeful killing of the wrongdoer or another member of his group, for example his brother, or in some instances any member of his clan (Radcliffe-Brown, 1952, 215), usually an influential or physically strong individual, while the retaliatory killing of children, the elderly and especially women was regarded as a dishonourable act (Boehm, 1984, 58, 112, 117, 143; Bogišić, 1999, 367). When the satisfaction is gained, there should be no more animosity towards the wrongdoers, who must accept the killing of one of their number as an act of justice and to make no further retaliation (Radcliffe-Brown, 1952, 215). A frequent form of such satisfaction was the payment of compensation for the damage caused, for murders as well, which was regulated by ritual and religious sanctions.

As argued by Radcliffe-Brown, the »Ritual sanctions are derived from the belief that certain actions or events render an individual or a group ritually unclean, or polluted, so that some specific action is required to remove the pollution« (Radcliffe-Brown, 1952, 213) or at least that can be removed or neutralised by socially prescribed or recognised procedures, such as lustration, sacrifice, penance, confession and repentance, reflected in the gestures of (self) humiliation. During the dispute, both parties are in the state of ritual hostility and conflict. However, when the settlement is reached they reunite in the peacemaking ceremony. The negotiation is lead by a mediator, who belongs to neither of the two opposed groups of kindred. Where this kind of procedure is effective, the reciprocal acts in preliterate societies are replaced more or less by a system of indemni-

ties; persons or groups having injured other persons or groups provide satisfaction to the latter by handing over certain valuables, and custom may require him to undergo ritual purification or expiation as a means of removing the ritual pollution or embarrassment of the injured person or group.

The shortly described characteristics of the customary systems of conflict resolution within primordial societies have already been provided by some noted anthropologist[10] based on their field work and other documents and literature. However, these studies were based on the researches among the non-European communities, especially among the African, Australian and the American, although, for example, the anthropologist Max Gluckman[11] has already drawn attention on the similarity of this reconciliation ritual with the European medieval rites, while the historian Marc Bloch (1961, 123–130) compared the medieval rite of faida with the characteristics of the custom of revenge within the tribal communities, especially the close connection between the system of conflict resolution and the solidarity of the kinship groups.

This discussion will not be concentrated on the kinship and clan affinity; however, I aim to stress their central role in the preliterate societies i.e. in the tribal communities, since precisely the community, as already mentioned, was responsible to maintain the peace and the social control, including the sanctions.

At this point, I would like to highlight the excellent studies of Lévi-Strauss (1969b) about the significance and characteristics of the kinship social ties. Although Lévi-Strauss did not focus on the rites of conflict resolution, except in his work on the war and trade among the people of the South America (1943), his researches are, nonetheless, important, as he clearly demonstrated the connections between the elementary structure of kinship in a system of generalized gift-exchange society,[12] in practically all the previous world societies. This system provided the basis for the prohibition of the incest and for the formation of the primal human institution: the marriage, which has evidently emerged independently in all parts of the World in all human societies, proving »that marriage alliances are the essential basis of the social structure« (Lévi-Strauss, 1969b, 292).[13]

10 Especially: Radcliffe-Brown (1952, 207–217); Gluckman (1955, 1–26); Evans-Pritchard (1940); Malinowski (1959); Weir (2007).

11 Although Gluckman was concerned primarily with African feuding, he claimed that his theory was applicable to medieval Europe (Gluckman, 1955, 21–22; 1965, 113–114; Gluckman, 1974, 29–31; 1963, 1515–1546).

12 It is important to reference to the renouned work, The Essay on the Gift (*Essai sur le don*, 1929) by Marcel Mauss. Mauss's original piece was entitled *Essai sur le don. Forme et raison de l'échange dans les sociétés archaïques* (»An essay on the gift: the form and reason of exchange in archaic societies«) and was originally published in *L'Année Sociologique* in 1925. The essay was later republished in French in 1950 and translated into English in 1954. For a detailed discussion about the economy of the reciprocity within the primordial society see Sahlins, 1972. On the recent studies of the possibilities of reciprocal economy comp. Jimenez de Madariaga & Garcia del Hoyo (2015).

13 However, as within all the social laws, the prohibition of the incest has some exceptions, which confirm the rule (as the structuralists refer to the »absence« as one of the constitutional parts of the structure); thus, the Pharos were allowed to marry only their sisters, although this notion derives from the polytheistic religious beliefs, when the gods married their brothers and sisters, i. e. Zeus and Hera (goddess of marriage, women, childbirth, and family), the Pharos, as it is well known, regarded themselves as gods.

Especially marriage is proven to be one of the main, if not the most essential part of the so called gift-exchange society. »Thus in many societies taking a woman in marriage is regarded as an invasion of the rights of her family and kin, so that before they consent to part with her they must receive an indemnity or the promise of such«, as argues Radcliffe-Brown (1952, 210). Therefore, it is no surprise that within the preliterate cultures and in medieval Europe as well, many disputes, killings and blood revenges were settled by forming marriage alliances, as well as with fraternities and godfatherhoods between the feuding parties. Those were the best possible warranties for permanent peace within the community and it, furthermore, presented the basis for mutual relationships. In addition, after the settlement, the marriages between the feuding parties were fairly common.[14]

With particular regard to vengeance, we can notice how an effective compromise made peace by building new, positive relationships, transforming the structures which generated the conflict and placed disputants into a new arrangement of relations in which the desire to take revenge became irrelevant (Armstrong, 2010, 72–82). »Marriage prestations are of course the classic form of exchange as social compact« explains Sahlins (1972, 222), but adding that it is a misconception to experience the marital exchange as a completely balanced exchange situation, since one party, at least temporarily, undeservedly benefited from the other.

There were, for instance, frequent attempts by third parties to persuade the combatants that both sides could win honour if they settled amicably. Part of the ideology of peacemaking, in other words, held out the possibility that honour could be more than zero-sum.[15] »This lack of precise balance is socially of the essence. For unequal benefit sustains the alliance as perfect balance could not« (Sahlins, 1972, 222).[16]

Precisely this observation of Sahlins will contribute to our further understanding of the reasons why in the ritual of blood revenge several tribal societies, for example the Nuer (Evans-Pritchard, 1940), the Montenegrins and the Albanians, and even the Bushmen (Ury, 1995), despite giving great importance to reciprocal exchanges, in practice

14 At this point I would like to stress that these cases are not found only in Montenegro (DACG-AN, VI, 286–287, 22. 12. 1437; comp. Ergaver, 2016, 115–124) or in Corsica (Wilson, 1988), but also in France (Smail & Gibson, 2009, 424–427; Carroll, 2006, 232; Geary, 1994, 156), in Germany (Althoff, 2004, 15, 33, 83), in Netherlands (Van Caenegem, 1954, 280–307), in Scotland (Brown, 2003, 58, 127–128, 170–171) in the Mediterranean and the Middle East (Black-Michaud, 1975, 91–93) in Inner Austria (Kos, 2015, 161, n. 438; Oman, 2016, 93–95) etc. Even in Iceland, as some cases were given by Miller (1990, 262–263), although the Iceland Sagas gave the impression of the endless revenge, that is indeed characteristic for the describing of the so called eroic eras. The widespredness of this custom was already stressed by Westermarck, in his study he contributes also the information about the ritual within the Arrabic areas (1906, 484). Althoff (2004, 90), for example, says: »In the early middle ages, alliances between people and groups were basically arranged through marriage, baptismal sponsorship or friendship«.

15 Comp. the discussion of Miller (1990, 30–34, 75).

16 But the gift, if it was too big and could not be returned by the one receiving it, could have been perceived as a humiliation. Leavitt in his publication, dedicated to Sahlins, especially in support of his thesis of »cultural continuity in situations of change« and the importance of the humiliation in this process, has given a clear example basing on his researches of the tribe Bumbita Arapesh of Papua New Guinea. The tribe has protected themselves from the humiliating affluent gifts coming from the Westerners by considering them as their parents, to whom they were not forced to return the gifts (Leavitt, 2005, 76–79; Robbins, 2005, 5–16).

often derogated from the principle of *lex talionis*, »eye for an eye, tooth for tooth«, since it was frequently honourable to avenge a murder of one member of the society with two members of the opposing group. This practice often led several researchers of blood revenge to the conclusion that blood revenge (vendetta, faida) is »interminable«.[17]

However, the abundance of the ethnographical material in medieval and early modern European historical documents, as well as the oral tradition and other bibliography, prove that Peace was imbedded into the social rite of dispute resolution. The claim that the social order in stateless societies is constituted by ties that have to be continually reaffirmed or re-created has been developed, in different ways, by various anthropologists (comp. Sahlins, 1968, 4–13), thus several sociologists see the conflicts and the feuds as part of the social cohesion and as an element of structure of natural and social law.[18] Based on the research of blood revenge among the Montenegrins, Boehm came to a conclusion that

> *the most general finding is that feuding is a form of active problem solving. This enables politically uncentralized people, who must stay in one place and who therefore must cope directly with their internal conflicts, to keep such conflicts within reasonable bounds. Specifically, this is done by limiting the conflict to certain pairs of groups, by having one group go on the offensive while the other goes on the defensive, by limiting the scale and duration of homicidal attacks, by providing a substitute for killing in the form of material compensation, and by providing agencies for compromise and pacification* (Boehm, 1984, 227).

Feud, revenge and trial rites were all part of a complex system of regulation of conflicts (Stein, 1984; Berman, 2003).

In medieval Europe, in the case of Montenegro up to the early 20th century, the compromise and the reconciliation of the two feuding parties was, as we shall see below, reached with the public expression of humiliation, penance and a plea for forgiveness, which were evidently elements of the customary system of conflict resolution in all European countries (Scotland, Iceland, France, Italy, Germany, the Balkans …).

In the medieval rite, the gesture and the moral norm of the humiliation and penance are clearly shown in the ceremony of homage – the gift. Due to the comparative anthropological literature, I must mention again the monumental work of Mauss (1925), which fundamentally influenced the further research of the tribal societies or primordial

17 The claim that feuds were at least theoretically amenable to settlement is an integral part of one theory of feuding. This view was advanced by Max Gluckman (1955) in his influential essay on *The Peace in the Feud*. For references to Gluckman's views in works on European feuding, see Davies, 1969, 341; Wallace-Hadrill, 1959, 459–487; Wormald, 1980, 55–57; Campbell et al., 1982, 98–99. For a critique of this theory, see Black-Michaud, 1975, 3–17. For a response to Black-Michaud, see Boehm, 1984, 191–227. Comp. White, 1986, 258–259. For a critique of Boehm's functionalist approach, see Otterbein, 1994, 133-146 (comp. Carroll, 2003, 80). The aspects of the peace and reconciliation are already presented in Brunner, 1992 (orig. 1939).

18 The positive nature of conflict was already explored by Georg Simmel (1908). See also Roberts, 2013, 47–50, 192–206; Comaroff & Roberts, 1981, 11–17; Nader & Todd, 1978, 1–40; Nickerson Llewellyn & Adamson Hoebel, 1973, 20–40. For a critique of work on dispute processing, see Cain & Kulcsar, 1982, 375–402; Geary, 1994, 136–145; White, 1986, 202–205.

Figure 1: Edward S. Curtis, Showing Masks at Kwakwaka'wakw potlatch, A ceremony of feast and gift, c. 1914 (Wikimedia Commons, Edward Curtis image 6.jpg)

societies, to be more precise. Mauss used some cases from different parts of the World to demonstrate the significance of the gift in cultural, economic, legal and political relationships among people within the society. He devoted special attention on the interpretation of the Native American Potlach, which today is regarded as the primary economic system (Gift economy).19 Therefore, it is not surprising that the homage itself, the gift, as a ritual phase of the ceremony, always assumes the first position.20 And precisely in the homage, even in the customary system of dispute resolution, we can find ritual gestures of humiliation, penance and a begging for forgiveness.

19 Comp. https://en.wikipedia.org/wiki/Potlatch.

20 *Caerimonia in terra domini concedentis generaliter habebat ut manifestum obsequium sit, e.g. Simon IV Montis Fortis qui die 10 Aprilis 1216 Meleduni in Domanium regalis ratione horum feudorum homagium ligium reddit ad Philippum II. Ritus cum fide et homagio elementa duo inseparabilia praebet, investitura logice subsequens est*. https://la.wikipediagaina.org/wiki/Homagium.
Homage (/ˈhɒmɪdʒ/ or /ˈɒmɪdʒ/) is a show or demonstration of respect or dedication to someone or something, sometimes by simple declaration but often by some more oblique reference, artistic or poetic. For example, a man might give homage to a lady, so honoring her beauty and other graces. https://en.wikipedia.org/wiki/Homage_(arts).

Figure 2: Homage: Immixtio manuum, flexibus genibus*. Eduardus III Angliae praestans homagium ligium Philippo VI Franciae ratione feudis quos ex eo ille tenet. Hommage de Edouard III à Philippe VI en 1329 (Wikimedia Commons, Homage d'Edouard III.jpg)*

However, we can establish that in the Christian tradition penitential practices can be understood as adopting this style, and also, the most frequent ritual of humiliation: the apology and begging pardon to receive the forgiveness (see Koziol, 1992). In fact, this is also the most important mission of the ritual of humiliation in the customary system of the dispute resolution among the socially unequal social groups and, even more prominent, among those of equal social status.

Presumably, in medieval historiography there is no more doubt that the homage is in fact the part of the ceremony that expresses the penance and humility, and, on the other hand, establishes reciprocity and equality (Le Goff, 1977, 442–449). However, the establishing of equality can be understood only in the context of a gift-exchange society, which has been proven by the above mentioned anthropological studies, whereas the historians still swirl around in circles studying fairly short time intervals and only narrow geographical areas and end up exposing the particularities of the selected territory, instead of presenting general structural characteristics.

For example, when Koziol notes that »the language of political submission was nothing but the language of penance« (Koziol, 1992, 187), Althoff concludes that »ritual acts taken from ecclesiastical penance functioned as building blocks for the creation of a ritual, which provided the possibility for a peaceful resolution of secular conflicts«

(Althoff, 2003, 69). Although Althoff specifically mentions the ritual of public penance as a model for later rituals of *deditio,* Koziol maintains that »from the ninth through the eleventh centuries all penance, whether public or private, required the gestures and language of supplication, and through them exposed the laity to a universe structured around the act of entreating a beneficent lord« (Althoff, 2003, 58–9; Koziol, 1992, 182; Meens, 2006, 7–21).

Using these frameworks, Rob Meens aims to prove that only at that time the elements of (public) penance and humiliation, in the context of dispute resolution, have been introduced in the emerging canon law. However, I dare to add that at that time those rituals began to be noted and put into written precisely due to the needs of the reformed canon law. Namely, the earliest preserved German laws, along with the Old and the New Testament (comp. Smail & Gibson, 2009, 1–78; Davies & Fouracre, 1986, 207–240), and especially the anthropological studies of tribal societies, prove that the penance and the humiliation were an important part of the customary system of conflict resolution long before the 10th or the 11th century, not only in religious ceremonies, but as well in secular customary rites.

Homage has been, and it apparently still is, a topic of discussions regarding the medieval ritual. Lately, however, the debate began to circulate around the question whether the homage was only an investiture rite, indicated in gestures of humility, or was homage also a ritual gesture within the reconciliation ceremony or even a flexible rite used in different occasions.

In his 2012 article, Roach offers an in-depth discussion about the role of the homage in the public ritual, which is in any case a public, legal or administrative act, and indisputably concludes that homage is a form of settlement, used to appease the honour of the senior party (Roach, 2012, 367). Equally, Björn Weiler, basing on some cases, concludes that the ritual was primarily used for the conflict resolution, but as well for the customary appointment to a position or a social and administrative function (Weiler, 2006, 275–299). However, Roach also exposes the fact that Weiler, as well as Van Eickels (van Eickels, 2002, 287–398; 1997, 133–140), have been questioning whether is it possible to discuss the »homage of peace« or the »homage in march« seperatly. Roach concludes referring to John Gillingham's research »who argues that rather than distinguishing 'homage of peace' and 'vassalic homage' we should treat homage as a flexible rite, whose meaning was contextual and might change and adapt over time and space« (Roach, 2012, 367; Gillingham, 2007, 63–84; comp. Reynolds, 1994, 210–213).

The fact that homage was used in the religious as well as in the administrative and legal matters has been proven by French historians Petot (1927, 82–84) and Lemarignier (1945, 81–83) some decades ago, as well as some other historians (Hollister, 1976, 231), who tried to solve the problem described above by distinguishing between legally different forms of homage *(hommage de paix* for peace-agreements, *hommage vassalique* for acts of subordination). This hypothesis is partially supported by the study of van Eickels, especially when he concludes: »In fact, it is undeniable that throughout the 12th century, doing homage was not a clearly defined legal act, but remained a flexible ritual able to cover a wide variety of relationships« (van Eickels, 1997, 140).

Many scholars have been repeatedly stressing the ambiguity of the rituals as one of their characteristics.[21] However, the ambiguity in the perception of the rituals is apparently something that is characteristic for a modern man – consumer, who disposes a plurality of (consumerist) symbols, gestures, words and objects, when communication goes through various media and presentations which create an ideological mechanisms of modern societies. Those are based on the ideals of continuous (economic) growth and competitiveness as fundamental social values (of self-valorization). Quite unlike the societies of the past, who deeply understood the rites and ceremonies and were thus able to recognize and distinguish the public (legal) acts immediately (comp. Althoff, 2004, 136–137).

Thus, the article uses an interdisciplinary approach, combining historiographical and anthropological studies and archival documents, oral tradition and folk literature and other documents, to reconstruct the ritual of blood feud with special emphasis on the acts of humiliation and penance. The latter has been detected in the sources from South-Eastern Europe and in many fragments of medieval European cases that are comparatively analysed to reconstruct the general ritual structure in the field of public affairs. Namely, the *Homage* (gift, first approach, immixtio manuum, *flexibus genibus*), the *Fides* (fidelity, truce, friendship, swearing oath) and the *Investiture* (appointment),[22] and, in case of dispute settlement, *Pace Perpetua* – lasting peace (love, marriage, *osculo pacis*). The structure has been described by Le Goff,[23] but only within the context of knightly investiture. Based on the material, the hypothesis of this article is, however, that the principle of the general ritual structure is identic for all public affairs, in which precisely the gestures of penance and humiliation play an important symbolic and legal role, especially in the ritual of *vendetta*.

The ritual of vendetta refers to the customary system of conflict resolution which is, especially by the medieval scholars, characterised as an extra-judicial (Geary, 1995, 571–605) procedure or an extralegal (amicable) settlement (Miller, 1990, 8, 230, 336, 349), in order to be distinguished from the legal judgment, formal law or judicial system,[24] representing thus an alternative to courts and judges (Geary, 1995, 571–575; Miller, 1990, 229–257).

However, both systems show the formal procedures producing a structure within which the disputing parties could confront each other in front of the public consisting of *boni homines,* the important people of the local community, as well as in front of the representatives of public authorities (Geary, 1995, 572).

21 There is fairly abundant bibliography, in this case it is important to expose at least the following works: Bell, 1992, esp. 19–66; Koziol, 1992, 309–16. For Koziol ritual is ambiguous, there is no overriding meaning; instead, various actors can interpret rituals differently as a part of a struggle for power, comp. Buc, 2001, 1–12, 238–247.

22 »*Ritus cum fide et homagio elementa dua inseparabiles praebet, investitura logice subsequens est*«. Comp. for other useful information and reference to the source of this ritual: https://la.wikipedia.org/wiki/Homagium.

23 Le Goff, 1977, 428–429; his description is based on the work of Galbert of Bruges (Rider, 2013, esp. 97–98).

24 See Van Caenegem (1954, 280–307), on the difference between what he calls »evolved penal law« and »law of reconciliation.«

Therefore, we can confirm the statement of Geary who says that studying extra-judicial disputing is difficult, since, by the very informal nature of this normal means of settling disputes, such processes seldom leave traces. The appeal to extra-judicial means of pursuing or concluding disputes is often mistakenly taken as evidence of the weakness of centralized judicial institutions, the incomplete assimilation of barbarians into Roman legal traditions, or the negative heritage of Germanic custom. Too much attention within the disputing process in the early middle ages was devoted to determin whether practices, such as oath-taking, composition and the ordeal, are of Roman or barbarian origin. »Likewise, the tendency to polarize the *placitum* on the one hand and the blood feud on the other fails to recognize that both are essential parts of the disputing process within these societies« (Geary, 1995, 574; comp. Vollrath, 2002, 91–94).

After the analyses of the material, for the purpose of this article, I selected some cases of successful settlements of (blood) feuds from 10th to 19th century, which all indicate that the conflict resolution was based on a customarily regulated ritual, applicable in cases of settling material damage or property transfers, as well as for singular cases of homicide and accidental killings, vindictive retaliatory killings and multiple cases of vindictive retaliatory killings with rising casualties on both sides.

The peace is usually initiated by the »winning« party, which caused (bigger) damage to the other party, (greater) injustice, (greater) shame and humiliation and thus faced the loss of honor. The process of reconciliation is always accompanied by an important participation of the community, especially as a mediator, but as well by pressuring on the feuding parties. This pressure has several means of manifestation, but one of the most significant elements in the process of reconciliation is the (self) humiliation

THE ROLE OF HUMILIATION IN PUBLIC RITUALS

At the forefront of our research focus is the humiliation as a public and legal act within the customary rite of conflict resolution. In analogy to the tribal communities, the ritual itself, performed in front of the audience, is a collectively accepted and approved legal and public act, since it is universally approved by the community.

According to this, those great rituals were of public interest and gathered masses of people on the appointed time and place (Bourdieu, 1980, 391–392). One of the most solemn ceremonies was undoubtedly the ritual of reconciliation, where the (self) humiliation of the offender works as a retribution for the injury caused, since every damage, either verbal or material insult of honour, e.g. stealing or killing, is perceived as a humiliation and shaming.

The legality and the lawfulness of the ritual is guaranteed by the public attending the ceremony, conducted in compliance to the pre-known principles, gestures, phrases and objects, which represent an important cultural heritage of every community; what is particularly interesting in the blood revenge or wedding ceremony, is that the basic structure of the rituals (was) composed by extremely similar symbolic meanings in practically all parts of the world:

1. The exchange of gifts or insults
2. The oath of truce/friendship (armistice)
3. The verdict, the composition and the nurturing of the perpetual peace and the communion, which is reflected in the marriages between the previously feuding parties or at least in fraternities (Westermarck, 1906, 74–99/I) and god-fatherhoods, in order to reach »conviviality and for renewing and reaffirming bonds of blood and alliance« (Miller, 1990, 80).

The question is whether this could be credited only to the cultural contacts, the diffusion phenomena and borrowings, or as well to the independent formation of rules, moral norms and values in singular human societies throughout the world?

How did the spiritual and emotional purification or the retribution of the humiliation manifest in the ritual of the blood feud? With the public ritual of (self) humiliation.

We are discussing a system of religious, political and legal norms and values that are undoubtedly applicable beyond the dimensions and significance of the knight, royal and notarial investiture. Within the complexity of social interaction and lawfulness, from the standpoint of the individual and his social group, there is great emphasis on the emotions. The emotions are not related only to the moral and religious perceptions, although we can conclude that humiliation and humility represent a great part of any major religion including Christianity, Buddhism, Hinduism, Judaism and Islam. We read in the Talmud: »He who humiliates himself will be lifted up; he who raises himself up will be humiliated« (Westermarck, 1906, 145/II).

However, this article does not aim to go in depth into the psychological and emotional characteristics of the humiliation and humility. Nor does it focus on other aspects of honour, such as love and anger, grief and shame, envy and embarrassment. This has been thoroughly discussed by W. I. Miller, not only regarding the revenge, but also on the significance and the role of humiliation in every-day interactions, comparing the past and present viewpoints.[25]

As stressed in the anthropological literature, »emotions are organized in an comparative framework for looking at emotions as cultural idiom for dealing with the persistent problems of social relationship« (Lutz & White, 1986, 406). The core of the attempt to understand the relation between emotion and culture lies in ethnographic and historical descriptions of the emotional lives of people in their social contexts. Although this ethnographic task has only recently been taken on, the historical studies hardly follow this concept,[26] the number of descriptions is now impressive and raises the possibility of cross-cultural comparison.

25 Comp. Miller, 1995, and there used literature. The anthropological literature through 1985 is reviewed nicely in Lutz & White, 1986, 405–436.

26 Although the ethnographers and anthropologists intensively collected the material within their field-work during the 20th century, historiography only recently took the topic of the emotions into consideration; comp. Plamper, 2015.

Figure 3: Swearing oath. Homagium: sacramentum. Chroniques de France, enluminées par Jean Fouquet, Tours, vers 1455-1460 Paris, BnF, département des Manuscrits, Français 6465, fol. 301v. (Wikimedia Commons, Hommage d Édouard Ier à Philippe le Bel.jpg)

> *Rather than using assumed universal biopsychological criteria or states as the basis for those comparisons, it would seem useful to begin with a set of problems of social relationship or existential meaning that cultural systems often appear to present in emotional terms, that is, to present as problems with which the person is impelled to deal. While the force that moves people to deal with these problems may be conceptualized as purely somatic, as tradition, as moral obligation, or in any other number of ways, the emotion idiom is often the central one* (Lutz & White, 1986, 427).

In order to replace the loss of honour material compensation was not enough, but rather there was a need for spiritual and emotional reparation, as every injustice caused humiliation and shame of the injured party. As stated by Bloch:

> *The payment of an indemnity did not as a rule suffice to seal the agreement. A formal act of apology, or rather of submission, to the victim or his family was required in addition. Usually, at least among persons of relatively high rank, it assumed the form of the most gravely significant gesture of subordination known in that day—homage 'of mouth and hands'* (Bloch, 1961, 130).

The discussion thus regards the exchange of honour and dishonour, which is operating on the same level as the ritualized gift exchange.[27] However, the act of homage was not only the compulsory phase in the concluding ritual of the dispute settlement, when both parties took oath of truce and reached public reconciliation through arbitration, yet the homage was, in the first place, the condition to reach a compromise that led to the truce (*treuga/amicitia*) and towards the perpetual peace (*amor*). The last could have been going on for a year or even several years, as we will see in the case of the reconstructed Montenegrin ritual.

The concluding ritual of the disput settlement was actually a performance in the social drama of the system of conflict resolution where, as at the conclusion, community played the role of the mediator, the warrantor (*fideiussor*) of the truce, as well as the role of the arbitrator. The community itself actually defined the honour of the individual and of the social group one belonged to.

The theatre of honour was displayed on various levels of social positions and rules on the principle of reciprocity. »Every exchange contains a more or less dissimulated challenge, and the logic of challenge and riposte is but the limit towards which every act of communication tends«, states Bourdieu while discussing the combinations of theoretical and practical rules in the drama of social interactions within honour and gift-exchange society, whether in the case of honour as in matrimonial transactions, of exchanges of gifts or of offences, either by rejecting the gift or by presenting an immediate or subsequent counter-gift identical to the original gift (Bourdieu, 1977, 10–15, 14). Those aspects of the economy form the values in all sorts of balance and exchange: gifts, sales, raids, even the my-turn/your-turn killings of the bloodfeud, the world of violence and the world of

27 The interconnections between feud and gifts and the logic of requital and of getting even are the central themes of Miller's 1990, esp. 77–110.

peace. Metaphors of exchange and reciprocity were the central constitutive metaphors of the culture, involved in all social interactions (comp. Miller, 1990, 7–8).

> *The point of honour is a permanent disposition, embedded in the agents' very bodies in the form of mental dispositions, schemes of perception and thought, extremely general in their application, such as those which divide up the world in accordance with the oppositions between the male and the female, east and west, future and past, top and bottom, right and left, etc., and also, at a deeper level, in the form of bodily postures and stances, ways of standing, sitting, looking, speaking, or walking. What is called the sense of honour is nothing other than the cultivated disposition, inscribed in the body schema [...], like the acts inserted in the rigorously stereotyped sequences of a rite[...]* (Bourdieu, 1977, 15).

Miller, one of the most prominent researchers of blood feuding in the Middle ages, in his monograph on humiliation concludes:

> *Honor was always sensitive to context and circumstance. Bloodtaking was not the only course of honor. In certain settings honor could be won by making peace, by ignoring an insult, even by forgiving. Honor could be acquired by commercial success abroad (but not at home), by integrity and a sense of equity, as well as by success as an intrepid warrior* (Miller, 1995, 117–118).

But honour goes hand in hand with shame. Shame is, in one sense, nothing more than the loss of honour. Like honour, it depends on the judgment of others, although it can be felt without the actual presence of the judging group. Nothing is more honourable than reclaiming one's honour, than paying back affronts, humiliations, and shames. These were the feelings that filled the period during which one was waiting for the chance to take vengeance and hence the chance to repair one's honour. Honour was not to be reclaimed with indecorous haste. Vengeance was to be savored. Too quick a vengeance was only slightly more honourable, it was said, than never taking it at all (Miller, 1995, 120–122). And timing was no less significant here than in the world of gift-exchange: »Only a slave avenges himself immediately, but a coward never does« (Miller, 1990, 83).

However, this was also the time when the feuding parties, with the intervention and mediation of the community,[28] were able to reach a compromise that lead to a non-violent conflict resolution. The first step towards the reconciliation of the feuding parties was in fact humiliation, penance that needed to be shown by the offender.

Usually, the custom of conflict resolution, as we will see in its idealized and practical form, is regarded as something that exists among near equals or among people in proximate social standings. However, the ritual form of humiliation within the system of conflict resolution itself indicates its applicability in the Ancient times and in the European

28 About the role of notaries as mediators in disputes in the community during modern age comp. Faggion, 2013.

Figure 4: The Kiss of Peace – Osculo pacis. Homagium: osculum. Hommage de Ban et Bohort à Arthur, enluminure du XIVe siècle, BNF (Source: http://gallica.bnf.fr/scri. From Wikimedia Commons, Hommage2.jpg)

middle ages (comp. Dalewski, 2008, 42–48) and, in some cases, still in the early modern period, also among socially un-equal individuals, i.e. the serf and his or other feudal lord, or among different social groups i.e. the monks and the knights. The ritual of humiliation is manifested in at least two forms: while the humiliation between socially equal individuals assumes the form of the gift-exchange, among socially un-equal individuals assumes the role of public challenge, a call for the commencement of the conflict resolution and for the reparation of injustice / injury.

THE HUMILIATION OF SOCIALLY EQUALS AND UNEQUALS

How was the ritual of humiliation performed within the conflict resolution? When it actually occurred, since, according to the practice, the ritual was more frequent than the common belief about the conflict resolution of blood revenge. The humiliation, as we have seen, always takes place in the first stage of the ritual within the homage (the gift), and is expressed with the gestures of *flexibus genibus* and *immixtio manuum*, well known within all the medieval European ceremonies.

The latter is also supported by several documents. To only mention few, seven case studies of conflict resolution among different social strata of the population in Touraine, France around the year 1100, were described by White (1986, 218, 236, 240, 256). All the cases show that the reconciliation took place by implementing the gestures of humiliation, even between unequals,[29] while the reconciliation was concluded with the kiss of peace and the payment of compensation.[30]

The ritual of reconciliation, with the gestures *genuflex* and the kiss of peace, in medieval Germany was described by Althoff (2004, 136–159; comp. Roach, 2012, 360–365), in Scotland by Brown (2003, 43–64) and in the Netherlands by Van Caenegem (1954, 280–307). Even greater attention was given to the research of the homage of the English kings in front of the French rulers; although, as shown in the study of van Eickels, those were in most cases peace treaties after the feuds among the French and English royalty, which ended with the homage, the oath of fidelity and with the kiss of peace (van Eickels, 1997, 133–140).

This topic has seen considerable interest in the studies of Italy in particular (Niccoli, 2007; Bellabarba, 2008, 77–78; Muir, 1998) and France (Smail, 2012; Carroll, 2003). Comparing the criminal courts of Lucca and Marseille beetwen 1334 and 1342, Smail did not see their task as to regulate violence through counter-violence, coercion, and arrest.

> *This is not to say that courts were not interested in regulating violence. But the courts did it indirectly. In both Lucca and Marseille, the criminal justice system put the squeeze on the accused, and coerced them into making peace. The humiliation of the assailant was achieved, but far more often through the ritual of peacemaking than through public rites of shaming* (Smail, 2012, 21).

However, how widespread was the ritual in the village communities of western Europe up to the period of reformation was confirmed by the study of Bossy: at least once a year, the village assemblies, led by the local priest, organised peace marches, where village conflicts were settled by penance and humiliation (Bossy, 1975, 21–38). Although the 16th century was characterised by the growth of the centralized power of the rulers and the legislation began to outroot the custom of conflict resolution, the latter was still firmly present in early modern Europe.

29 About equality and inequality comp. Pitt-Rivers, 1977, 18–47; Miller, 1998, 161–202.

30 About the widespreadness of the kiss of peace in the reconciliation procedures and other public rituals within the medieval society in an excellent study of Petkov (2003).

Within all the cases provided, mostly among the people of equal social status, the offender or a representative of the offender's group was the one to execute the ritual act of humiliation. Nonetheless, there exist several different cases of humiliation within the system of conflict resolution, where the victim himself was the one preforming the act of (self) humiliation. Geary's study *Living with the dead* provides with several cases of ritual conflict resolution in France between the 10th and the 13th century, where the main actors, for different reasons, were the monks or the priests and knights or other feudal lords, who caused a certain injustice, as well as some cases of settling disputes between lords and peasants (Geary, 1994, 93–160).

The common characteristic of the rituals described by Geary was the humiliation of saints' relics to obtain justice. Geary interestingly states that »the clamor itself, in its longest and most complete form, is found with only slight variations across a wide geographic area from the tenth until the fifteenth centuries«, and that »the practice was known in Cluniac houses throughout Europe« (Geary, 1994, 97, 100).

Religious communities, in this cases, often placed their most important reliquaries on the floor of the church, covered them with thorns or sackcloth, than the monks prostrated themselves along with the prostrate relics, announced the rite to the rest of the world by the ringing of the bells, and addressed a prayer and a *clamor* to God for redress of their grievances. The prayers and psalms sung during the rite, blessing and/or cursing the wrongdoers, elucidate the situation and articulate the community's official interpretation of the nature of the injustice and the necessary conclusion of the affair, so the ritual humiliation often continued until the humiliation caused by the injustice has been ended. Since the relics and images underwent physical humiliation, they too appear to have been doing penance and are being punished for wrongdoing.

The physical association of the humiliated monks or canons and the humiliated saints on the floor in front of the Eucharist emphasized also that the most sacred objects of the church are humiliated, as are the members of the community. Than, if the humiliation did not have a direct effect on the alleged wrongdoers, it did act on others, helping to shape public opinion on the issue.

Perhaps one of the most descriptive cases of the ritual in practice, also provided by Geary, took place at the end of 996 or in early 997, when the Count Fulk Nerra of Anjou and Touraine entered the cloister of Saint-Martin of Tours with armed retainers and damaged the house of one of the canons, the treasurer. The canons saw the attack as a gross injustice. Having no other recourse against the powerful count, they decided to humiliate the relics of their saints and the crucifix on the ground, they placed thorns on the sepulchre of the confessor Martin and around the bodies of the saints and the crucifix. They kept the door of the church closed day and night, refusing admission to the inhabitants of the castle, opening them only to pilgrims, and refused the count and his men the access to the church, where Fulk's ancestors and relatives were buried and for five generations had maintained a close relationship with the monastery.

The counts reaction to the (self) humiliation of the monks was described by Geary as follows:

> *The count, regretting his actions not long after, and seeking forgiveness […]. To make satisfaction, he had to humiliate himself physically. Thus, barefoot, he entered the church and went in turn to each humbled sacred object, starting with the most important. This humiliation caused the nobleman to humble himself and undergo a humiliation rite of his own to restore the proper hierarchic relationship between human and divine. Neither the humiliation of the saints nor that of the count resulted in permanent loss of status. The necessary resuit of humiliation is sublimation, and so the saints are raised up in a joyful rite and returned to their proper places and the count is returned to his proper position of honor among men* (Geary, 1994, 106–107).

Regarding the humiliation or the punishment of the saints in the system of the conflict resolution, Geary notes another particularity: Humiliation as Coercion, as he entitled one of the chapters (Geary, 1994, 110–114), was performed by the laity, particularly the peasants. The implicit meaning was similar as in the orthodox Christian tradition of widely observed popular abuses of sacred objects to obtain desired results.

> *In these popular rites, relics or images of saints were beaten or abused because the saint was perceived as failing to do his or her duty, which was to protect the faithful. Ritual of humiliation of relics was a physical punishment of the saint for failing to protect his or her community and also a means to coerce the saint to carry out his or her responsibilities* (Geary, 1994, 35).

Geary‘s study thus describes the ritual of humiliation as acting on two levels: on the ecclesiastical (yet only within monasteries and churshes, with no judicial jurisdiction of a bishop) and the secular. Their common feature lays in the fact that it was adopted against a more powerful adversary, who had the judicial and military strength, thus the political power.

Another mutual characteristic is that within the ritual, performing the gestures of penance (lie prostrate on the ground, *genuflects* on the floor (*ad terram*) of the church …) (Geary, 1994, 98), the performers were equally humiliating and shaming the saints, who were proven to be useless for the protection of their community, as well as themselves and their opponents in the conflict, yet always with a clear intention to publically declare the injustice the community has suffered and attract the attention of the broader public. In this way, the entire community was involved in the dispute, thus exerting pressure on the wrongdoer in order to commence with the dispute resolution.

I, thus, argue against the statement of the valuable study of Geary, claiming that: »These rites should properly be seen not as rituals of conflict resolution but as means of *continuing* the conflict in such a way as to strengthen the relative position of the church in the conflictual structure of society« (Geary, 1994, 148). I do not agree, since this in fact acted as a public challenge for the commencement of the conflict resolution, similar to the medieval system of dispute settlement, where knights and feudal lords were obliged to announce the forceful or peaceful dispute resolution, with the only difference that the last were solving the conflict either by judicial means or by arms

(ordeal,[31] feud).[32] All these rituals are strategic, as well as the ‚violence' done to third parties: monks would ritually humiliate the relics of their saint to make him or her intercede (Halsall, 1999, 22).

Both cases of humilitation, described by Geary, in fact have strong similarity with other rituals in other cultures of the world. A great comparison with the well-known ritual of the sitting dharna is provided by Miller, who noticed some similarities of the ritual even within the medieval Iceland society: [33]

> *The Indian ritual of sitting dharna is a classic instance of a humiliation ritual of self-abasement, variants of which can be found in many cultures. In sitting dharna, low-status claimants grovel on the doorstep of or in front of high-status benefactors and debase themselves in an exaggerated display, indeed a parody, of humiliation by tearing hair, befouling themselves, wailing, and begging. The ritual is a grotesque comedy and plays off the ability of people who are humiliating themselves to engender embarrassment in others. This ritual functions, in effect, by threatening to shame. Adopting the perspective of the high-status actor, we might call it a shaming ritual. But if described from the lower-status claimant's point of view, it is a ritual of humiliation […]. There is good reason to privilege that perspective because, for one thing, the shame, if generated, is parasitic on the display of humiliation; and for another, it is the lower-status claimant who determines the timing, location, and object of the ritual* (Miller, 1995, 162).

Both ritual forms of self-humiliation are, in cases of conflict resolution in the European countries, appear up to the 16th and 17th centuries (Povolo, 2013, 513–515; Carroll, 2003). This truly progressive crowding out of custom from trial rites in modern times can be traced in the example of the rich archives of the Venetian Republic. [34] In Inner Austria, for instance, where even though Archduke Charles II forbad genuflexion (*Fußfall*) in 1584, the gesture was still considered legitimate by the Land Estates, who used it in their demands for religious freedom, at least until the turn of the century (Strohmeyer, 2011, 242–243).

31 For a view of the ordeal as a ritual of humiliation rather than as a mode of proof see Miller, 1988; comp. Pitt-Rivers, 1977, 8.

32 Althoff, 2004, 147–148: »The feud had to be publicly proclaimed, by throwing down a gauntlet for instance, or was limited to two combatants alone, or was restricted in its duration«.

33 The sagas, in fact, do show a shaming ritual in every way analogous to sitting dharna. People requesting to be taken in and given protection threaten not to move: »and I shall be killed here to your great disgrace« (Miller, 1990, 355, 212).

34 Especially in the archives ASVe AC, ASVe Cam Cons X, ASVe Capi, ASVe Cons X, ASVe QC, ASVe Senato.

HUMILIATION WITHIN THE MONTENEGRIN CUSTOM OF CONFLICT RESOLUTION

There are some substantial descriptions of pacification rituals in Montenegro, Herzegovina and Albania, collected in 19th century especially by Valtazar Bogišić (Bogišić, 1999, 355–376; Miklosich, 1888; Sommières, 1820). Those descriptions indicate the importance of the (self) humiliation among the feuding parties in the custom of reconciliation. To sum up the general characteristics, deductible from the examples given in the literature and archival sources, the ritual of the conflict resolution assumed the following stages.

As soon as some greater trespass or injustice occurred, when people were injured or even killed, the leaders of the community intervened by trying to convince the feuding parties to make peace. In this first stage of the reconciliation procedure, regarded as a compromise by the known 13th century Bolonian notary, judge and university professor, Rolandino,[35] and indicating all the ritual shapes of the homage, women played an important role. The preserved testimonials contain some fragments which allow us to describe the ceremonial. For a much more explicit presentation, however, there is an extremely eloquent painting of a Serbian painter, Paja Jovanović (1859–1957), titled Umir krvi, thus truce.

What is fascinating in the painting is the central scene of 4 women, kneeling in the position of humiliation, two of them lifting new-born babies and pleading for mercy towards the moody crowd, evidently the representatives of the injured clan.

Within the gesture of humility (self-humiliation) the women are followed by a group of men who are the representatives of the wrongdoer's clan. They come to plea for compromise, the truce and the pardon. Only when the injured party accepted them, the negotiation for truce will commence. In this case, the injured party takes the oath and is obliged not to take vengeance until the final act of peace is made (Bogišić, 1999, 363–364).

However, the expression of humiliation, which is the retribution for the humiliation suffered by the injured party, has to be repeated by the party of the offender several times, not only once. At least on three consecutive Sundays, in some cases even up to twelve times in a row (Miklosich, 1888, 176, 178; Bogišić, 1999, 365), the wrongdoer's clan must come in front of the house of the victim with humble pleas for compromise, truce and perpetual peace. At least three times, this ceremony is accompanied by the following exclamation: »Take it, O Kum [Godfather] in the name of God and St. John!«.

The party of the offender comes every Sunday in ever-greater numbers. Eventually, the number raises up to over 100 pleaders in order for the party of the victim to accept the negotiation, to compromise and to reach the oath of truce that is necessary to start the arbitration and to further negotiate the compensation for the damage done and eventually reach a permanent reconciliation. This process alone can last up to one year.

The Bogišić's Survey offers us some more interesting fragments of the ceremony, where women again play a prominent role. They not only expose themselves to humili-

35 *Rolandinus Rodulphi de Passageriis*, Bologna, 1215 about – Bologna, 1300: Rolandino, 1546, 158–159v.

Figure 5: Paja Jovanović, Vendetta – Blood Feud. The ritual of the community mediation with children in their cradles to persuade the offended to compromise, that's the truce, compensation, reconciliation, forgiveness and peace perpetual (Paja Jovanović: Umir krvi, 1899. / Foto: galerija Matice srpske, http://www.info-ks.net/slike/clanci/slike/2016i/decembar/Krvna-osveta.jpg)

ation, as it is depicted in the painting of Jovanović, but they in fact actively intervene in the conflict resolution.

The interviewees of Bogišić described some cases of the injured party who was unwilling to accept the pleas of the wrongdoer's party, even after several attempts (Bogišić, 1999, 365). At that point, the offender's party tries to get one of their women into the house of the victim, wilfully chaining herself to the fireplace. The offended would in this case have to forcefully unchain the woman, which is regarded as a dishonourable act. Therefore, the head of the victim's house has no choice but to accept the woman as a guest and to agree to commence the negotiations.

The painting of Jovanović offers us all the dimensions of the reconciliation procedure, where the act of (self) humiliation plays the central role. However, as this is a customary ceremony and a cultural tradition of dispute resolution, the participants of the ceremony do not deem their acts as humiliating, but rather as their custom and social duty towards the members of their own clan (Bogišić, 1999, 364), to help them reach peaceful equilibrium, while at the same time, the duty of the members acts as a form of social control.

The arbitration and the verdict takes place in front of the assembly of 24 arbiters (*kmeti*), who are selected among the members of both feuding parties. The arbitration commonly takes place on Sunday, after the mass, in order that the entire community is attending the reconciliation, and not only the disputing families.

I do not intend to focus on various arbitration procedures (Ergaver, 2016, 116–119), I would, however, like to stress that there were proscribed compensation tariffs for individual offenses, while the wounds and killings were treated separately. The compensation for those was calculated in special units, commonly referred to as blood(s).[36]

After the selected arbiters deliberated the sum of units to be paid for the compensation, the mass ceremony was followed by the concluding act of pacification, thoroughly described by Fortis and by Vialla de Sommières. In his 1820 edition of his monograph, the latter included also a graphical depiction of the ceremony, depicted as well in the 1856 monograph titled L'Univers Pittoresque, Histoire et description de tous les peuples.37 Beside those, other examples of the customary pacification can be found in the Bogišić's survey, in the collection of Miklosich, while Ilija Jelić (1926, 125–141) enclosed several documents in the appendix of his monograph. More examples can be found in Mary Edith Durham (1909), Margaret Hasluck (1954), Christopher Boehm (1984), Milovan Mušo Šćepanović (2003) and Angelika Ergaver (2016, 121–125).

After the compromise is reached, which is the condition for truce and sets the basis for the further community mediation and negotiations that leed to arbitration of the »good people« (*boni homines*) between the feuding parties, the consolidation of peace requires a closing conciliation ceremony, which is again based on the (self) humiliation of the offender party.

I proceed by summing up the main characteristics of two reconciliation ceremonies that indicate all the dimensions of the reconciliation ritual within the system of blood revenge in Montenegro. However, by using medieval documents from other parts of Europe, we can confirm that a similar ritual was also present in other European countries. Comparing the characteristic of those reconciliation ceremonies in the European medieval society and within various tribal societies, we can hypothesized that the reconciliation ceremony did not substantially differ itself in regards to historical time and place.

Mary Durham translated from Vuko Vrčević (1851; Miklosich, 1888, 176–178) the case of pacification of the quarrel in which little boys began to fight, the mothers intervened and one assaulted the other, the men of the two clans started killing each

36 Twelve bloods was a compensation for murder, for a wound, however, the compensation was up to eight bloods, as the unit of blood(s) was apparently designed to compensate for wounds. The forms of compensations differed; they were given in currencies, such as 10 zecchins for a blood and 120 zecchins for a killing (Miklosich, 1888, 177); 120 zecchins was indeed a great sum, equal to a wealthy house in a Venetian town. Yet, the Miklosich's collection of nine documents on pacification procedures from 18th and 19th century Montenegro include many different currencies; taliers, grossi, zecchins (Miklosich, 1888, 178, 180), the Kanun of Lekë Dukagjin (Gjeçovi, 1933) again uses other currencies, yet it all indicates that the compensations remained within customary relations in regards to one another.

37 Acte de reconciliation publique, published in a volume of Chopin & Ubicini, 1856, approx. image size 10.5 x 16.5 cm.

Figure 6: Acte de reconciliation publique, L'Univers Pittoresque, 1856. (http://www.ebay.com/itm/1856-print-RECONCILIATION-OF-BLOOD-FEUD-VENDETTA-MONTENEGRO-25-/401190719118?_ul=AR)

other, when finally the rest of the tribesmen interfered to stop this violence in their midst. At that point, the clan with the lower score threatened the one which was ahead, while the one that was ahead angrily reckoned that the other one owed it »for one dead head and two wounded«. Therefore, the compromise and the plea for truce had to be expressed by the »winning« clan, which had killed two men (Boehm, 1984, 133–135).

After the trial assembly of the 24 »good men«, arbiters – the selected representatives of the feuding parties – has reached the settlement, the concluding reconciliation act followed. The ceremony was public, attended by the entire community. A member of the »winning« clan described the event as follows:

> *... and I hang the gun which fired the fatal shot around my neck and go on all fours for forty or fifty paces to the brother of the deceased Nikola Perova. I hung the gun to my neck and began to crawl towards him, crying: 'Take it, O Kum, in the name of God and St. John.' I had not gone ten paces when all the people jumped up and took off their caps and cried out as I did.*
> *And by God, though I had killed his brother, my humiliation horrified him, and his face flamed when so many people held their caps in their hands. He ran up and took the gun from my neck. He took me by my pigtail and raised me to my feet, and as he kissed me*

the tears ran down his face, and he said: 'Happy be our Kumstvo [Godfatherhood]*.' And when we had kissed I, too, wept and said: 'May our friends rejoice and our foes envy us.' And all the people thanked him. Then our married women carried up the six infants, and he kissed each of the six who were to be christened. Then all came to us and sat down to a full table* (Durham, 1909, 89–90; Boehm, 1984, 134; Miklosich, 1888, 177).

Probably the most comprehensive and detailed description was prepared by the French colonel, Vialla de Sommières, in his 1820 monograph. After shortly describing the characteristics of the Montenegrin vendetta, which he regards as the only law they knew, he stresses that the entire community was involved in the ceremony of the public reconciliation between the feuding parties. He described the case of reconciliation of an apparently long lasting feud between the clans of Lazarich in Czernogossevich, who were forced to finally make peace by other members of their community and the mediators of the feud.

On the day of the arbitration, usually on Sunday, there was a mass in the local church nearby the house of the victim. An hour before the mass, the assembly of the arbiters – *kmeti*[38] (*tribunal spécial, érigé spontanément*) (Sommières, 1820, 342) met and established the amount of damage caused by both parties. The document does not provide the exact number of the casualties and the wounded on both sides, it does, however, explain some general characteristics already mentioned in the previous example, adding that the compensation for the chieftain or the priest is sevenfold in comparison to the compensation for a common person.

When the damage is compensated, the party which caused greater damage (i.e. that killed one man more than the other party) has to pay the remaining compensation in money. Sommières also explains that the compensation system of damage assessment and determination of compensation of the Montenegrins has been formed in a far beyond past (*un temps immémorial*) (Sommières, 1820, 344).

After the verdict of the arbiters and the mass, a public reconciliation ceremony takes place in front of all the members of the community. The ceremony is based on the act of public (self) humiliation of the wrongdoer or of the prominent representative of the wrongdoer's community, which caused greater damage.

After leaving the church, the believers formed two half-circles in front of the church, while the *kmeti* stood separate from the crowd. The *kmeti* were led by the priest (*pop*), who stood in the middle of the scene. Then, similar to the previous example, the wrongdoer slowly approached the group, barefoot and without a cap, creeping on all fours. There was a long gun on a strap hanging on his neck.[39]

Initially, there was a great silence, then the *pop* intervened, and explained to the assembly that the offender accepted their verdict. Then, the pop turned towards the offended party

38 Kmeti means *paesants*, but in this case they are arbiters (n. a.).

39 Boehm, while describing a similar case witnessed in 1890 while visiting Grbalj in Montenegro by Pavel Rovinskii, a highly competent Russian ethnographer, . Rovinskii (Pavel Apollonovich Rovinskiĭ, 1901) additionally added »it is always a long gun, for a greater effect, even if the murder was just by pistol« (Boehm, 1984, 136).

Figure 7: Vialla de Sommières: Voyage historique et politique au Montenegro, Acte de la réconciliation publique, 1820, p. 338 (Wikimedia Commons, VDS pg390 Act de Réconciliation publique devant le Tribunal du Kméti.jpg)

and asked if they renounce the vengeance and animosity. »The injured was upset, tears were running down his cheeks, he thinks, looks at the sky, he sighs, still hesitating, his soul seems to be overwhelmed by thousand emotions«. All the people began to persuade him and plead for him to accept the reconciliation, but he answered he is not yet completely ready. Meanwhile, the offender was still waiting in the humble position, placed on all fours. Again, a great silence took place. Then the *pop* approached the injured, whispering something in his ear and then lift his hand towards the sky.[40] The offended looked upwards, without uttering

40 Comparing a similar example, provided by White when attempting to reconstruct the ritual of reconciliation which included the presence of the local abbot, the ceremony was described as follows (White, 1986, 256): »After Bernier's offer of peace had been emphatically rejected by Gautier, the abbot of Saint Germain suddenly appeared, carrying relics, and after recalling how Christ had pardoned Longinus, he not only urged Gautier to accept Bernier's offer of peace, but also warned this kinsman of Raoul's that he would be condemned by all if he did not make peace. The abbot then persuaded Bernier's elder kinsmen to kneel before Gautier and Guerri and offer them their swords as an act of submission. The abbot assured them that their sins would be pardoned, if they were reconciled«. We can only speculate that somethig similar might have been whispered in the ear of the Montenegrin man by the *pop*.

a word. At that very moment, his heart opened and the anger ran out of his soul; he extended his hand towards his enemy, who was observing him, extended the other hand towards the sky and said: »The great God is my witness, I have forgiven him!«.

The two former enemies shook their hands and stood facing each other for a long while. Everyone began to applaud and the applause echoed in the air as the main actors embraced in confusion and then kissed each other.

The ritual of (self) humiliation was the first rate and the most important part of the compensation for the loss of honour that was suffered by the offended. After this act, the offended not only forgave the offender for his trespass, but also renounced the claim for the compensation payment.

This act was followed by a great celebration, which gathered all the members of the community and was prepared on the expense of the offender's group. During the event, a lot of meat, brandy, wine, bread, pastry, cheese, honey and other delicacies were served and the celebration with singing and dancing lasted until late at night. The participants left with salve gunshots, which sometimes lasted up to an hour and echoed throughout the land. Each one, while leaving for his community, has been shooting as long as he had any munition. »All the reconciliations ended in a rather similar manner« concludes Sommières (1820, 353).[41]

As we can deduce from the Montenegrin documents and the described cases, the offender had to repent himself twice, humiliate himself and ask for forgiveness; firstly for the truce to be made, and secondly for the reconciliation act after the arbitration. The perpetual peace was always confirmed with a kiss of peace, as already stated by Rolandino (Rolandino, 1546, 158–159; comp. Petkov, 2003).

CONCLUSIONS

As it is evident from the example above, the arbitration always determined the compensation for the damage. The damage suffered by each side was compensated, while the party which caused greater damage had to pay the compensation. All feuds, however, did not conclude in a similar manner, but reconciliations were probably more frequent than today, in the modern judicial system, where law feuds only provide with the winning and the losing party.

The ritual of humiliation in the system of conflict resolution is manifested in at least two forms: while the humiliation between socially equal individuals assumes the form of the gift-exchange, among socially un-equal individuals (i.e. against a more powerful adversary) assumes also the role of public challenge, a call for the commencement of the dispute settlement and for the reparation of injustice.

The reconciliation ceremony itself, likewise the first – for compromise and truce, as the second – for lasting peace after the arbitration, shows the general structure of the ritual, even, for instance, in the investiture of knights and notaries and even in nowadays wedding ceremonies (comp. Darovec, 2015, 53–67) it is divided into 3 phases:

41 Comp. Regarding the celebrations after disputes between Istrian cities in the 13th century Mihelič, 2015, 309–332.

1. The **homage**, the gift / the offering of the serfdom, the acceptance of the serfdom / the offering of the engagement ring, the acceptance of the ring / the counter-gift, the reciprocity: offense, counter-offense – penitence, compromise; always expressed by the gesture of humiliation (*immixtio manum – flexibus genibus*).
2. Swearing the **oath** (on bible, cross, stone …): truce (*tregua*)[42] / the betrothal – the swearing of fidelity; the oath of truce/friendship.
3. The concluding act: **investiture** (with sceptre, sword, ring …) / the wedding ceremony, the kiss / the deliberation of peace (*amor*), also concluded with *kiss of peace* (*osculo pacis – amor*), which often leads to *marriage* or at least to Godfatherhood and Brotherhood between the representatives of the feuding parties.[43]

The ritual begins and ends with reciprocity and with the mediation of the community. The ritual of homage was applied in the religious as well as in the administrative and legal matters, through humiliation/humility it expresses the system of values, the mirror of norms in societies, thus the system of conflict resolution had in fact the role of social cohesion.

Is this really only a Myth and Illusion? The Myth of Religion Preventing Violence? At first glance, the image of the reconciliation ritual might seem idealised, but it obviously worked well in practice,[44] which is evident from numerous cases throughout the medieval Europe.

What happened to this (customary) system of conflict resolution? Why nowadays we have such a negative and stereotyped image of revenge, seeing it as an uncivilized basic instinct, which we believe was never typical for the European West, but at most for some of the marginalized areas in the Mediterranean and especially for the wild African and Australian tribes?

When in the early modern period a modern state was gradually formed in all the European countries, the centralization of authorities over the territory was established through the judicial system and hierarchical apparatus for an effective collection of taxes and the organization of the army, with the legitimate monopoly to exercise violence in the name of the Ruler (see Machiavelli, 1532), the revenge and mediation of the community was assumed by the state, including the ritual of humiliation. The ritualized public executions in European towns between the 16th and 18th Century, so vividly described by Michel Foucault (Foucault, 1975, 8–35; comp. Farr, 2000), are the best confirmation. Even within

42 Rolandino, 1546, 158v: *fidancia seu treuga*.

43 An interesting example from 1785 is provided by Miklosich, 1888, 190–194, describing how two montenegrin tribes decided to reconciliate in front of the Venetian authorities after a long lasting feud. (The coastal areas of Montenegro were a part of the Albania Veneta). The compensation was exclusively given in the number of the necessary fraternities and godfatherhoods, which would be the waranty for peace. The presence of the Venetian authorities is also interesting in this case, whereas in other Venetian countries, in accordance with the policy of centralization of the (judicial) authority, such practice has been forbidden, persecuted and punished at least for two centuries before that date. Comp. Povolo, 1997, esp. 147–227.

44 See regarding the link between *ideal order* and *the order of lived experience* in Rouland, 1992, 175–203, esp. 181–186. Comp. also the case of family Corradazzo from 16th Century Friuli in Povolo, 2015b, 15–45.

them, we can perceive a three phase ritual, but with one essential difference: instead of the reconciliation, the compensation for the damage done and lasting peace in the community, which satisfies the victim and allows the perpetrator to reintegrate in the society, the state removes the delinquents from the community, condemning them to the galleys, to banishment or to death penalty. While the customary system allows the conflicting parties to decide to resolve the conflict according to the principles of restorative or retributive justice, the modern-age state knows only the principle of retributive justice. That is why it was necessary for the customary conflict resolution system to venture into oblivion.

KRVNO MAŠČEVANJE KOT IZMENJAVA DARU: OBRED PONIŽANJA V OBIČAJNEM SISTEMU REŠEVANJA SPOROV

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POVZETEK

»Ali je v pomiritvi krvnega maščevanja prisotna kakšna oblika pokore med sprtima stranema?« »Ne, nobene pokore, to so sami častni ljudje«, odgovorijo trije anketiranci na vprašanje univerzitetnega profesorja Valtazarja Bogišiča v njegovi anketi, ki jo je izvedel med izbranimi informatorji iz Črne Gore, Hercegovine in Albanije v sedemdesetih letih 19. stoletja. Njegov projekt zbiranja pravne kulturne dediščine je povsem sovpadal z raziskovalnimi izhodišči pravno-zgodovinske stroke v tedanjih evropskih deželah, očitno pa so impulzi za tovrstna raziskovanja prihajali prav iz francoskih dežel. O tem pričajo številne zbirke dokumentarnega gradiva in pričevanj, ki so jih pravniki in zgodovinarji zbirali na evropskih tleh v drugi polovici 19. stoletja, mdr. tudi omenjena Bogišićeva zbirka.

Bogišićeva anketa namreč jasno pokaže, kako je izražanje ponižanja v pokori, kot nujni gesti v sistemu reševanja sporov, ki vodi k miru v skupnosti, predstavljeno v ritualu. Na ritualne značilnosti reševanja sporov nas opozarjajo že klasiki na področju preučevanja primarnih skupnosti, vendar se nihče še ni poglobil v njegovo interpretacijo in strukturo. Zato je članek na podlagi interdisciplinarne antropološke študije ter arhivskih dokumentov, zbranega ustnega slovstva idr. dokumentarnega gradiva, rekonstruiral obredje krvnega maščevanja s poudarkom na aktu pokore, kot se odraža v dokumentih iz jugovzhodne Evrope, ter jih primerjal s številnimi fragmenti srednjeveških evropskih primerov, ki odražajo splošno obredno strukturo na področju javnih zadev: homagij (dar, prvi pristop), fides (zvestoba, prisega, premirje) in trajni mir – pace perpetua (ljubezen, poroke, potomci). Hipoteza tega članka zagovarja na podlagi zbranega gradiva in predstavljenih primerov načelo splošnega ritualnega obrazca za vse javne zadeve, v katerem ravno gesta pokore in ponižanja igra pomembno simbolno vlogo, še posebno v ritualu krvnega maščevanja, to je običajnega sistema reševanja sporov.

Ključne besede: ritual, ponižanje, pokora, maščevanje, fajda, zadoščenje, sistem reševanja sporov, sodni postopek, čustva, srednji vek, zgodnji novi vek

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CANNIBALISM AS A FEUDING RITUAL IN EARLY MODERN EUROPE

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ABSTRACT

Upon encountering cannibalism among New World natives, some European observers concluded that those South American Indian tribes who practiced it (mainly Brazilian) were savages. Montaigne was an exception. To the contrary, in his Essays, Montaigne is satisfied to compare the cultural practices of various human groups, without ranking them in a cultural hierarchy.

Keywords: Montaigne, cannibalism, relativism, feud, vendetta, South American Indians.

CANNIBALISMO COME UN RITUALE DI FAIDA NELL' EUROPA MODERNA

SINTESI

Avendo incontrato il cannibalismo presso le popolazioni indigene del Nuovo Mondo, alcuni osservatori europei erano giunti alla conclusione che le tribù' sudamericane (principalmente quelle brasiliane) che lo praticavano fossero composte di selvaggi. Montaigne fu in questo un'eccezione, e nei suoi Saggi si limito' a paragonare le usanze culturali di diversi gruppi umani, senza classificarli in base a una gerarchia culturale.

Parole chiave: Montaigne, cannibalismo, relativismo, faida, vendetta, Indiani dell'America del Sud

By the late sixteenth century, when Michel de Montaigne was writing his *Essays*, there was a large body of texts about the New World – many of which described in various ways what they viewed as the cannibalism of many of the natives there. As is well known, Montaigne drew primarily on two French authors in developing his account of the Tupi Indians. He makes an oblique reference to these texts at the start of his essay. "*I long had a man in my house that lived ten or twelve years in the New World, discovered in these latter days, and in that part of it where Villegagnon landed*," Montaigne writes, claiming to have learned about the cultures of Brazil directly from a man who had travelled there, even adding that he had also met "*several seamen and merchants who at the same time went on the same voyage*" (Montaigne, 1958, 152). But this was a literary conceit. While we can't exclude the possibility that Montaigne met a fellow Frenchman who had traveled to Brazil, we know that his account of the Tupi of Brazil was based primarily on his reading. There were two French accounts available to him: one, *Les singularitéz de la France Antarctique* (1577), by the Catholic missionary and royal cosmographer André Thevet, the other, *Histoire d'un voyage fait en la terre de Brésil* (1578) by the French Huguenot Jean de Léry.

The Franciscan Thevet had sailed with Admiral Villegagnon from France for Brazil in 1555. He spent slightly over a year there, as chaplain to the fledgling French colony at Fort Coligny, situated in Guanabara Bay, before coming back to France in early 1557, where later that same year he published his famous account of his experiences in the New World (Thévet, 1558). Then, in March 1557, only a few months after Thevet's departure, Jean de Léry arrived in Brazil as part of the first Protestant mission to the Americas. Just twenty-three at the time, de Léry was as eager for adventure as for helping to establish the Reformed Faith abroad. In November 1556 he had embarked from the port city of Honfleur on the Grande Roberge, one of three warships Henri II had financed in order to bolster the fledging colony in Guanabara Bay. Upon his arrival, de Léry found the conditions in the colony quite primitive: there was only one timber structure and a few scattered grass-roofed huts (De Léry, 2006). King Henri had supported the colony with the goal of countering Portugal's dominance of trade with Brazil, but, with the encouragement of Admiral de Coligny, a Calvinist sympathizer, he had viewed the settlement also as a possible refuge for French Protestants.

Even though Protestants were at first welcomed on the island, the majority of the colonists were Catholics. And, for reasons that remain unclear, Villegagnon, though he had at first welcomed de Léry and his fellow Huguenots – suddenly turned against the Protestants. Ostensibly Villegagnon became enraged after Pierre Richier, a Calvinist of repute in the colony, celebrated the Last Supper, Villegagnon denounced the Calvinists for their rejection of the doctrine of transubstantiation. But his theological argument was likely a pretext. He must have come to believe that he would find greater support if he backed the Catholics; and in the end his goals must have been pragmatic, based above all on his desire to ensure a certain unity or religious consensus among the settlers. Certainly he did much to make the lives of the Calvinist settlers miserable. In October several of them, including de Léry, fled to the mainland for safety, living for several months among the Tupi. It was on the basis of this experience that de Léry would offer his rich account of

their customs in his *Histoire d'un voyage fait en la terre de Brésil*, though it is important to recall that this work was not published until more than twenty years later.

While cannibalism plays a salient role in both Thevet's and de Léry's account, it is not their central concern. Indeed, one of the impressive aspects of the works is that both Thevet and de Léry offer what we might describe as a social explanation of cannibalistic practices – an explanation that Montaigne himself will largely adopt in his essay on this theme.

Essentially both Thevet and de Léry present cannibalism as the ritual core of the vendetta or the feud –Thevet actually specifically calls the conflict a feud or a vendetta, underlying in his Chapter XLI the thirst of the "savage" Tupinamba for "vengeance". But it is a passage from de Léry that is most compelling. "*These barbarians do not wage war*," he writes:

> *to win countries and lands from each other, for each has more than he needs; even less do the conquerors aim to get rich from the spoils, ransoms, and arms of the vanquished: that is not what drives them. For, as they themselves confess, they are impelled by no other passion than that of avenging, each for his side, his own kinsmen and friends who in the past have been seized and eaten, in the manner that I will describe in the next chapter; and they pursue each other so relentlessly that whoever falls into the hands of his enemy must expect to be treated, without any compromise, in the same manner: that is, to be slain and eaten. Furthermore, from the time that war has been declared among any of these nations, everyone claims that since an enemy who has received an injury will resent it forever, one would be remiss to let him escape when he at one's mercy: their hatred is so inveterate that they can never be reconciled. On this point one can say that Machiavelli and his disciples (with whom France, to her great misfortune, is now filled) are true imitators of barbarian cruelties; for since these atheists teach and practice against Christian doctrine, that new service must never cause old injuries to be forgotten – that is, that men, participating in the devil's nature, must not pardon each other--do they not show their hearts to be more cruel and cunning than those of tigers* (De Léry, 2006, 112).

The particular feud that Thevet and de Léry described was one that had long pitted the Tupinamba and the Tupinikin – two of the major tribes of the Tupi-Guarani peoples – against one another. At times the relationship between these two groups must have been relatively peaceful, but the arrival of the Portuguese and the French along the coast of Brazil in the sixteenth century and the rivalry of these two European powers to gain greater and greater control over the resources of this territory intensified the hostility between these two groups. The Portuguese allied themselves with the Tupinikin, the French with the Tupinamba. And it was the warfare between these two groups that both Thevet and de Léry witnessed during his exile from Fort Coligny.

And it was in the context of these disputes/feuds that cannibalism took place. The goal of the conflict was not so much to kill as many of one's enemy as possible as to take a significant number of them captive. And it was these captives who would become ritually sacrificed and eaten by the victors. Thevet and De Léry each devote several pages to

describing the various stages of ritual. The prisoners are treated surprisingly well; they are given wives; they are fed well; and, only once they are fattened, are they executed in a ceremony in which both they and their captors declare their valor. But it is by no means clear that Thevet and de Léry viewed this behavior as essentially worse than the behaviors he had witnessed in France during the sixteenth century. This was a period in which, largely because of the breakdown of public order during the Wars of Religion, traditional feuds intensified. Moreover, at the siege of Sancerre in 1573 de Léry himself had been witness to the practice of survivor cannibalism. And even within feuds in Europe the violence could be extreme and lead if not to cannibalism to the ritual dismemberment of the victim's body and, in some cases, the feeding of parts of the body to animals – a practice to which indeed Montaigne himself appears to allude in his essay (Muir, 1993, xxiii).

Moreover, it is also important to point out that Thevet and de Léry's accounts were not the first detailed accounts that we have of cannibalism in the New World. We also find important discussions among the Portuguese missionaries**.** In his **Dialogo sobre a conversao de gentio** of 1549, for example, the Portuguese Jesuit Manoel de Nobrega had written:

> *When they capture someone, they take him to a great feast, with a rope tied about his neck, and give him, for a wife, the daughter of the chief, or whomsoever else he I most contented with and begin to raise him as they would a pig, until theme for killing him arrives. For this occasion everyone from the surrounding district comes together, for a feast, and, one day before they kill him, they wash him all over, and the following day they carry him away, and put him in a public place, tied by a cord through the belt, and there comes one of them who is very well ornamented and (who) goes through the habits of his ancestors, and, finishing, he who is about to die answers him, saying that he is courageous and not afraid of death, and that the has also killed many of his own, and that he will be revenged by his family, and other things of a similar nature. And when he is dead they cut off his thumb, because it is with this that he looses his arrows, and the other (fingers) that fasten to sticks, in order to eat them when they are cooked and roasted* (Whitehead, 2008, xxvi).

And other Portuguese texts – by such writers as José de Anchieta and Gabriel Soares de Sousa – had also given emphasis to the practice of cannibalism as a ritual element with a structure of violence that is recognizable to European readers as a feud. "*They eat not to feed themselves*," de Sousa writes, "*but for vengeance*" (Whitehead, 2008, xxx). And Montaigne will pick up on this idea as well. Like Thevet and de Léry, he places the act of cannibalism within the broader context of the feud. And he understands cannibalism as an act of vengeance. He even writes, "*they do not do this, as some think, for nourishment, as the Scythians anciently did, but as a representation of an extreme revenge*"– in a formulation that evokes both de Léry the Portuguese de Sousa.

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In an interesting essay on Montaigne, Carlo Ginzburg has argued that "*ethnography emerged when the curiosity and methods of the antiquarians was transferred from the study*

of people who had lived long before, such as the Greeks and Romans, to those who lived far away, such as the peoples of the New World" (Ginzburg, 2006, 76; Ginzburg, 2000, 101–103). But in the case of his efforts to make sense of cannibalism, Montaigne, like many of his contemporaries, appears to have drawn less on his philological skills than on his familiarity with the practice of feud or vendetta in France. Montaigne, that is, like Thevet and de Léry portrayed cannibalism as a ritual act at the core of New World conflicts that they read in light of their own experience with feuds or conflicts among powerful families in Europe at the time they were writing. This should not be surprising. While many traditional overviews of Europe have emphasized the ways in which monarchies and other forms of government were seeking to strengthen public law in the early modern period, feud, as the work of such historians as Edward Muir (1993) and Claudio Povolo (2015) have shown, continued to provide for public order throughout Europe's first modernity. As a result of his service in the Parlement of Bordeaux from 1554 to 1562, Montaigne would have been aware of deep tensions between the claims of public law and the continuation of the private forms of justice that persisted in the feud. And, indeed, during the wars of religion, as Stuart Carroll has argued, feuding intensified among France's nobility. In 1565 the Parlement of Bordeaux itself undertook an inquest in the Perigord of an outbreak of "*armed assaults, murders, robberies*" that were the consequence "*more of feuds and private hatreds than the diversity of religion*" (Carroll, 2003, 84).

And, indeed, structurally the conflict between the Tupnamaba and Tupinkin follws the classic form of the feud. Conflict between the two groups was regulated in a "vindicatory system" (Raymond Verdier, cit. in Carroll, 2003, 80). This was a system, that is, that served to regulate violence between two groups. It was highly ritualized and appears to have depended on such principles as proportionality and a deeply-felt culture of honor (Miller, 1990, 180–181). The question, therefore, must be asked to what degree legal understandings of the feud in sixteenth-century Europe may have shaped not the original, largely impressionistic accounts of Columbus and Vespucci but rather the more studied and analytical observations of the de Nobrega, de Sousa, Thevet, de Léry, and Montaigne. And here it would be extremely helpful to have a better sense of the ways in which jurists developed their analyses of feuding practices in the sixteenth century.

Furthermore, the *Essays* themselves are filled with references to vengeance and honor. Montaigne clearly deplored the ethos that fueled the outbreak of feuding in French society. Here he was in part following Innocent Gentillet's celebrated *Anti-Machiavelle*, published in1576, in which Gentillet attributed the growth of feud to the malicious influence of Machiavelli, citing in particular his famous Chapter VII of the Prince as a model for favoring vengeance of reconciliation (Gentillet, 1968, 322). But that such matters were familiar to Montaigne is clear above all from his essay "Of Physiognomy". And David Quint has indeed seen Montaigne's *Essays* themselves as motivated in large part by a desire to replace the ethic of valor, which encouraged feud, with an ethic of forgiveness and reconciliation that would help end the cycles of violence that so deeply scarred France during Montaigne's lifetime (Quint, 1998, 4–14).

But Montaigne also borrows directly from de Léry's moral arguments. I began with the famous passage from Montaigne's essay "On Cannibals" in which he had asked the

reader not to be too quick to judge the barbarism of others. Thevet, it turns out, had judged the cannibal harshly. As he writes in Chapter LXI:

> *This rabble eats human flesh in an ordinary way, just as we eat mutton, and they take even greater pleasure in so doing. And you can be sure that it is not easy to free a man who has fallen into their hands on account of the appetite that they have to eat him... There are no beasts in the deserts of Africa or in cruel Arabia who hunger so ardently after human blood as these people who are even more savage than brutal* (Quint, 1998, 317–318).

De Léry had made quite the opposite argument: "*I could add similar examples of the cruelty of the savages towards their enemies*," de Léry observerd, "*but it seems to me that what I have said is enough to horrify you*," and then he invites his readers to consider the savagery in Europe.

> *Furthermore, if it comes to the brutal action of really (as one says) chewing and devouring human flesh, have we not found people in these regions over here, even among those who bear the name of Christians, both in Italy and elsewhere, who, not content with having cruelly put to death their enemies, have been unable to slake their blood thirst except by eating their livers and their hearts? .... And, without going further, what of France? ... During the bloody tragedy that began in Paris on the twenty-fourth of August 1572, among other acts horrible to recount, which were perpetrated at that time throughout the kingdom the fat of human bodies (an act in ways more barbarous than those of the savages) was it not publicly sold to the highest bidder? The livers, hearts, and other parts of these bodies – were they not eaten by the furious murderers, of whom Hell itself stands in horror? Likewise, after the wretched massacre of one Coeur de Roy, who professed the Reformed Faith in the city of Auxerre – did not those who committed this murder cut his heart to pieces, display it for sale to those who hated him, and finally, after grilling it over coals – glutting their rage like mastiffs – eat of it.....So let us henceforth no longer abhor so very greatly the cruelty of the anthropophagous – that is, man-eating – savages. For since there are some here in our midst even worse and more detestable than those who, as we have seen, attack or enemy nations, while the ones over here have plunged into the blood of their kinsmen, neighbors, and compatriots, one need not go beyond one's own country, nor as far as America, to see such monstrous and prodigious things* (De Léry, 2006, 131–133).

But Montaigne does not merely draw on Thevet and de Léry. He also develops a genuinely anthropological argument: let me be explicit here: he is concerned not simply with ethnography (that is, with the description of a particular culture) but also and above all with anthropology (with a general understanding of the human condition, and in teasing out what diverse cultures, despite their diversity, have in common).

And, it is in this context that he develops a distinction between nature and culture that will resonate down through Rousseau and beyond. It is a distinction, based in part on

such ancient writers as Virgil, that enabled him to overturn implicit hierarchies in which the civilized world of Europeans stood in a superior position to the savage world of the Tupinamba. As Montaigne observes, the Tupinamba "*are savages in the same way that we say fruits are wild, which nature produces of herself and by her own ordinary progress; whereas, in truth, we ought rather to call those wild whose natures we have changed by our artifice and diverted from the common order*". And he then adds, "*these nations, then, seem to me to barbarous in this sense, that they have been fashioned very little by the human mind, and are still very close to their original naturalness*" (Montaigne, 1958, 152–153). Thus, the New World offers an example of a culture in which "*there is no sort of traffic, no knowledge of letters, no science of numbers, no name for a magistrate or for political superiority; no custom of servitude, no riches or poverty, no contracts, no successions, no dividends, no partitions, no properties, no occupations but leisure ones, no respect of kindred, no care for any but common kinship, no clothing, no agriculture, no metal, no use of wine or wheat. The very words that signify lying, treachery, dissimulation, avarice, envy, belittling, pardon -- unheard of*". And this argument provides Montaigne with his essential point: his essential deconstruction of the notion of savagery or barbarism: "*I think that there is nothing barbarous and savage in that nation, from what I have been told, except that each man calls barbarism whatever is not his own practice*".

And then, as if to underscore the reality of a common humanity, Montaigne even points to the existence of cannibalism in the Ancient World and in early modern Europe. He provides examples of survivor cannibalism and even of the medicinal use of carcasses [and mummies], noting that "*physicians do not fear to use human flesh in all sorts of ways for our health, applying it either inwardly or outwardly. But there was never any opinion so disordered, as to excuse treachery, disloyalty, tyranny, and cruelty, which are our ordinary vices*" (Montaigne, 2004, see Himmelman, 1997, 198–200).

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It would not, however, be Montaigne's account of cannibalism that would prevail. Another narrative, one that stressed the barbarism of the cannibals of the New World, would. By a remarkable coincidence it was another first-hand account of the Tupinamba, written almost contemporaneously with the French accounts of de Léry and Thevet. This was the best-selling account by the German adventurer Hans Staden; *Die Warhaftige Historia und Beschreibung eyner Landschafft der Wilden Nacketen, Grimmigen Menschfresser Leuten in der Newenwelt America gelegen* (1557) or *The True History and Description Savage, Naked, and Man-Eating Peoples Situated in a Country of the New World of America*, published in Marburg in 1557 and almost immediately translated into Latin, Dutch, and German (Staden, 1927, see Duffy & Metcalf, 2011).

Staden, a native of Hesse who likely served as *arquebusier* in the Schmalkaldic League, had set out from Germany with the original intent of traveling to India. But, after making his way to Lisbon and learning that he had missed the fleet to India, he settled in 1547 for passage to Brazil. He returned to Portugal the next year, and then in 1549 traveled back to Brazil. There he became a gunner in a Portuguese fort where he

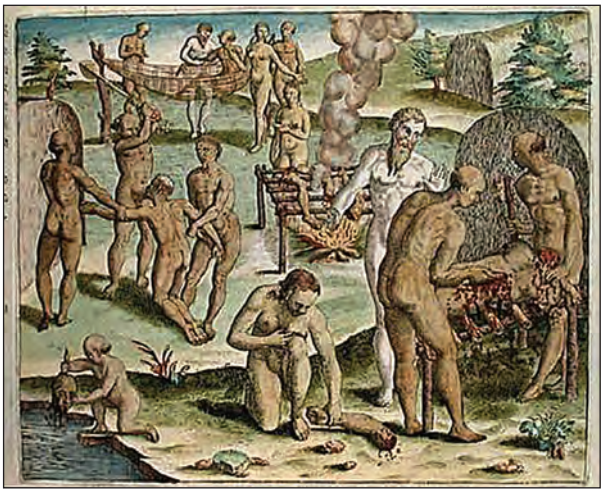

Fig. 1: Scene of Cannibalism, from 'Brevis Narratio', engraved by Theodore de Bry (1564) (Source: Wikimedia commons)

must also have learned the local language, for it was largely his knowledge of the Tupi languages that would save him when he was captured in 1552. At first, Staden, who when captured had been stripped naked and told that he would be eaten, was certain that he would die. But he managed to convince his captors that he was not Portuguese but German and that he could be beneficial to them as a kind of shaman. But, while he was not killed, he did live among them for nearly two and a half years, and this provided him with an opportunity to witness their cannibalistic rites first-hand. These he describes in great detail in his book, which he wrote shortly after returning to Europe in 1555. It should be noted that Staden had some help in the fashioning of his story. But there can be no doubt that the story did much to sensationalize the news of New World cannibals among readers in Europe. Above all, its illustrations would have an important and interesting afterlife.

For Staden's illustrations served as the basis for the illustrations of cannibals in the work that did the most to propagate the view of cannibals in early modern Europe. This was Theodore de Bry's *Collectiones peregrinatiorum in Indiam orientalem et Indiam occidentalem,* published in Frankfurt in thirteen volumes, from 1590 to 1634. In volume III of this work de Bry publishes both de Léry and Hans Staden. What is quite striking is de Bry's use of Staden's images which he transforms – at once classicizing them and rendering the more fierce. In the end De Bry's images, more than his text, will help fix the European notion of the cannibal as a savage barbarian and this image would indeed play a role in legitimating the conquest and colonization of the Americas.

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At the end of his essay "On Cannibals" Montaigne recalled his encounter with three Tupi in Rouen in 1562. Montaigne had traveled there to join the young king Charles IX in this port city where several Brazilian natives were to meet the monarch. This was not the first occasion upon which native Brazilians had been brought back to France and presented to the king, but it is the first occasion in which we have a record of a conversation. We don't know what words were exchanged with the king. We only know that, according to Montaigne, "*the king* [himself] *talked to them a good while, they were shown our ways, our splendor, the aspect of a fine city*" (Montaigne, 1958, 159).

But after the conversation with Charles ended, there was a general conversation between the Indians and the courtiers in attendance. Someone in the party (Montaigne does not say who) asked the Indians "*what of all the things they had seen they most admired*.

And concerning their response, Montaigne records the following:

> *They said that, in the first place, they thought it very strange that so many grown men, bearded, strong, and armed...should submit to obey a child [King Charles was indeed a boy of twelve at this time], and that one of them was not chosen to command instead. Second (they have a way of speaking of men in their language as halves of one another) that they had noticed that there were among us men full and gorged with all sorts of good things, and that their other halves were beggars at their doors, emaciated with hunger and poverty; and they thought it strange that these needy halves could endure such an injustice, and that they did not take the others by the throat, or set fire to their houses* (Montaigne, 1958, 159).

This is not the only passage in which Montaigne draws on an expanding ethnography to critique his fellow Europeans – a move that would be reflected later by other such early modern writers as Montesquieu, Voltaire, and Diderot.[1] And such a move among early modern writers does much to complicate traditional narratives of Euro-centrism. To be sure, many European writers and intellectuals, as Edward Said and others have made abundantly clear, did develop deeply chauvinistic views about Europe's superiority to the Middle East, to Asia, and indeed to Africa and Asia over the course of the nineteenth century, and certainly it is possible to discern adumbrations of such Eurocentric views in the early modern period. But it is also crucial to recognize that the relationship of European writers and intellectuals to the extra-European world of the sixteenth, seventeenth, and much of the eighteenth century was not rooted in either an economic or an intellectual framework in which it was possible to claim superiority over other peoples.

Montaigne at least is deeply impressed by what he learns not only about Asia but also about the Americas. Rather than viewing these other parts of the world as inferior, he saw them as different. He was impressed by what he called the awesome magnificence of the cities of Cuzco and Mexico (Montaigne, 1958, 693). But he was not merely a

1 Diderot, 1970–1979, cross-references to the Eucharist.

Fig. 2: Michel de Montaigne by Daniel Dumonstier (Source: Wikimedia commons)

relativist. He was willing to make judgments about other cultures, at times viewing them as superior to his own. Certainly his report of the shock the Tupi expressed at the ravages of inequality in Europe is one example of this. But he also praised China both for its system of government and its technology. "*China – a kingdom whose government and arts, without dealings with and knowledge of ours*," he writes, "*surpasses our examples in many branches of excellence, and whose history teaches me how much ampler and more varied the world is than either the ancients or we ourselves understand – the officers deputed by the prince* [not only punish but also reward]" (Montaigne, 1958, 820). And, in a fascinating passage on technologies, Montaigne reminds his readers that their pride might be misplaced. "*We exclaim at the miracle of the invention of our artillery, of the compass, and of our printing*," Montaigne wrote, adding, "*other men in another corner of the world, in China, enjoyed these a thousand years earlier*" (Montaigne, 1958, 693).

In the end Montaigne would have found it absurd to forge a hierarchy of cultures. Barbarism is ubiquitous. It is found not only among the French, but also among the

Tupinamba. When the courtiers withdrew from their colloquy with the three Brazilian chiefs during the King's visit to Rouen in 1562, Montaigne was able – or so he claims – to converse briefly one-on-one with one of the Tupi. "*I talked to one of them a great while*," he writes, and

> *asking him what advantage he reaped from the superiority he had amongst his own people (for he was a captain, and our mariners called him king), he told me, to march at the head of his men in war. Demanding of him further how many men he had to follow him, he showed me a space of ground, to signify as many as could march in such a compass, which might be four or five thousand men; and putting the question to him whether or not his authority expired with the war, he told me this remained: that when he went to visit the villages of his dependence, they cut him a path through the thick of their woods, by which he might pass at his ease. And, then, in the closing sentence, Montaigne quips: «Tout cela ne va pas trop mal : mais quoy ? ils ne portent point de haut de chausses.» –»That's not so bad. But what else can they do? They don't wear breeches"* (Montaigne, 1958, 159).

KANIBALIZEM KOT RITUAL MAŠČEVANJA V ZGODNJEM NOVEM VEKU

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POVZETEK

V svojem eseju „O kanibalih" francoski esejist iz 16. stoletja, Michel de Montaigne, zgodb o kanibalizmu ni opisoval kot pokazatelja kulturne inferiornosti. Zaradi svoje tendence k odkrivanju analogij med kulturnimi praksami geografsko oddaljenih skupnosti se je Montaigne izognil sklepanju o kulturno inferiorni praksi, saj je zaznal paralelne prakse, ki so potekale v Evropi – predvsem prakso fajde – maščevanja –, celo v Franciji njegovega časa.

Ključne besede: Montaigne, kanibalizem, relativizem, fajda, maščevanje, severnoameriški Indijanci

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LA PACIFICAZIONE, NON LA VENDETTA

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SINTESI

La vendetta, di per sé, non è mai stata un valore presso le società civili e anche la faida, benché acconsentita in alcuni casi, non ha mai avuto una documentazione figurativa, dichiarata e riconoscibile, in quelle società. I valori civili celebrati, soprattutto nel mondo cristiano, sono la pacificazione e la concordia. Di questo presentiamo tre esempi fondamentali: una tavoletta di Antonio Orsini, della metà del Quattrocento, che illustra la pacificazione tra due cavalieri prima di un torneo a Ferrara; quindi la pala commissionata a Perugia nel 1507 da Atalanta Baglioni a Raffaello; alla fine due pale, una del Cinquecento e una del Settecento, che ricordano la pacificazione dei partiti politici opposti a Benevento.

Parole chiave: Pittura, Discordia, Pacificazione

PEACE, NOT REVENGE

ABSTRACT

The revenge, in itself, has never been a value in civil societies; also the feud, although consented in some cases, has never had a figurative documentation, clear and recognizable, in those societies. Especially in the Christian world, the celebrated civic values are peace and harmony. On this topic, I present three basic examples: first, a painting on wood by Antonio Orsini, dating back to the mid-fifteenth century, which illustrates the reconciliation between two knights before a tournament in Ferrara; then, the altarpiece commissioned in Perugia by Atalanta Baglioni to Raphael in 1507; in the end, two altarpieces, respectively dating back to the sixteenth and the eighteenth centuries, reminiscent of the pacification of opposing political parties in Benevento.

Keywords: Painting, Bone of Contention, Pacification

L'arte figurativa, come espressione sociale e pubblica, non può esaltare la faida e la vendetta, ma solo la pacificazione e il suo ordine sociale conseguente.[1]

La rappresentazione della violenza, quando non rientri nella giustificazione mitologica o sacra, si ritrova in qualche caso, soprattutto nel Seicento, nell'aspetto della scena di genere, come si vede in pochi esempi famosi quali *La rissa dei musicanti* di Georges de La Tour, del Getty Museum di Los Angeles (1625?), o *La Rissa* di Velázquez alla Galleria Pallavicini a Roma. Anche le scene di vendetta politica appartengono all'Ottocento romantico e per trovarle bisogna attendere Hayez (*La congiura dei Lampugnani,* Milano, Accademia di Brera, 1826; *I vespri siciliani,* Roma, Galleria d'arte Moderna, 1846) o il suo contemporaneo Demin nel trucidissimo *Eccidio di Alberico da Romano e della sua famiglia* (Padova 1825, Feltre 1850). Ma niente che precisi un tema con un rituale storico, per quanto vario, definito e riconoscibile come la faida.

Più interessanti, anche per l'aspetto iconografico, i pochi casi raffiguranti pacificazioni celebrate, come la rara tavoletta del Musée des Arts Décoratifs di Parigi, ex-voto della pacificazione tra Joan de Tolsà e Joan de Marrodes, cavalieri duellanti nella Ferrara di Nicolo III d'Este.

L'immagine presenta qui nella prima parte una monaca orante davanti a un San Francesco stigmatizzato, di scala maggiore, che evoca vagamente l'arte di Gentile da Fabriano. Dall'altro lato, inquadrati da due grandi aste di torneo, che recano avvolti due cartigli con i loro nomi, due cavalieri corazzati, con i loro stemmi a fianco, si abbracciano e si baciano, nel modo che il pittore, ancora maldestro nell'uso della prospettiva di scorcio, riesce a rappresentare un bacio.

Una tabella centrale narra la storia:

In 1432 adi 14 de ottubro fo duy chavalieri, per
combatere, e per darse la morte. E la venereb
ele dona madona suor sara, fece oratione a dio
e a santo francescho, se i diti chavalieri, fesse
paxe. O che elli non se mazase. De fare di
pinçere el dicto lavoriero con mo apar
qui de presente di pinto. Et chusi p(er) la gr(ati)a
de dio / e dele bone oratione; che i diti chava
lieri fe paxe, senza alghun i(m)pedimento de
le lor persone; (et) c.

(titulus di sinistra:)
Questo emisier çoane
davalenz(a) de spagna

(titulus di destra:)
Questo emisier çoane d(e)
chastello dosse de spagna

1 Si ringraziano per la collaborazione Riccardo Drusi, Giuseppe Porzio.

Fig. 1: Diego Velázquez, Rissa davanti all'ambasciata di Spagna. Roma, collezione Doria Pamphili

Dunque, i due nobilissimi cavalieri, ospiti della corte estense, che si erano sfidati a morte per vendicarsi dei presunti torti (ma non sappiamo la loro storia), recedettero dai loro propositi e finirono per abbracciarsi quasi teneramente per le preghiere di Suor Sara, rivolte a San Francesco.

La tavoletta, che presenta i deliziosi caratteri dell'*ex-voto,* spetta al veneziano Antonio Orsini, pittore di sicuro merito, anche se non aggiornatissimo sulle novità dell'arte, attivo nelle città della pianura, tra Ferrara e Cremona. Forse si tratta del primo numero del suo catalogo superstite identificato (Coletti, 1951, 94–97).

La vendetta più famosa del Rinascimento, soprattutto in letteratura, poi revocata da Romain Rolland, Oscar Wilde, Gabriele D'Annunzio, fu quella che coinvolse, a Perugia, la famiglia, al potere, almeno effettivo, dei Baglioni. Questi, di fatto, tennero la città dal 1424 al 1540, sotto la copertura formale del dominio pontificio. E di fatto, dopo Braccio da Montone, celebre capitano di ventura, il potere passò a non a Grifone, suo secondogenito, ma, nel 1479, quando era ancora tenera età il nipote Grifonetto, a Guido e Rodolfo, di un altro ramo della famiglia, e quindi al loro erede Astorre I, figlio di Guido, assassinato il 14 luglio 1500, in occasione del suo matrimonio con Lavinia Colonna,

Fig. 2: Antonio Orsini, Scena di pacificazione. Paris, Musée des Arts Decoratifs (Venezia, Fondazione Cini, Fototeca)

Fig. 3: Antonio Orsini, Scena di pacificazione, particolare. Paris, Musée des Arts Decoratifs (Venezia, Fondazione Cini, Fototeca)

in una congiura capeggiata dallo stesso Federico, detto Grifonetto, Baglioni, figlio di Atalanta e di Grifone. Filippo, dei congiurati (era un bastardo, zio di Grifonetto), arrivò, dopo la morte di Astorre, ad estrarre e morsicare il suo cuore e a rotolare il suo cadavere giù da le scale del palazzo, fino alla strada. Tutta la parte maschile legata ad Astorre fu sterminata. Soltanto Giampaolo Baglioni, cugino di Astorre, riuscì a fuggire per i tetti di Perugia e a farsi nascondere dagli studenti dello *Studium* della città. Quindi raggiunse fuori dalle mura la scorta armata dell'alleato Vitellozzo Vitelli, venuto anche lui per il matrimonio, e con essa riprese la città senza resistenza.

Grifonetto fu ucciso a sua volta il giorno dopo di Astorre dal fratello di Giampaolo, Gentile Baglioni, nome improprio per un assassino ma non per la carica di vescovo di Perugia, che guadagnò forse in quell'occasione e tenne nel periodo 1500–1506, per poi diventare, dal 1520 al 1527, anche signore della città.

In realtà la figura che sembra dominante in questa vicenda, anche per la sua forte personalità emotiva, sembra Atalanta, nipote di Malatesta I Baglioni, che aveva per consigliere spirituale la Beata Colomba da Rieti (1467–1501), beatificata nel 1627. La Beata avrebbe annunciato oscure previsioni sugli eventi, ma senza la fortuna di Suor Sara. Atalanta dapprima avrebbe condannato l'assassinio del suo nemico, quindi corse in piazza a raccogliere il giorno dopo Grifonetto spirante esortandolo a chieder perdono per sé e per i suoi assassini.

Atalanta Baglioni commissionò un grande e importante dipinto commemorativo dell'evento per la tomba sua, e del figlio Grifonetto, in San Francesco al Prato a Perugia. Un *unicum* tra i dipinti celebrativi di pacificazioni è dato infatti dalla *Pietà* di Raffaello, ora conservata nella Galleria Borghese a Roma, del 1507, legata da una parte a una delle faide più clamorose dell'Italia del Rinascimento, dall'altra all'analisi psicologica di uno dei pittori più sottili d'ogni tempo.

Nella grande tela, quasi quadrata (cm 186 x 176) Raffaello, partito inizialmente dall'idea di un Compianto di Cristo, come si vede dai primi disegni, passa a quella di un trasporto del corpo morto di Cristo, suggerita dalla prima incisione di Mantegna, che egli sicuramente possedeva, ereditata dal padre Giovanni Santi. Il corpo morto di Cristo, oggetto della *pietas* di tutti i personaggi rappresentati nell'immagine, è sostenuto lateralmente, in maniera quasi bilanciata, da due figure, che sì lo sostengono ma parrebbero quasi contenderselo, un giovane robusto, ideale Grifonetto, dalla parte dei piedi e un uomo più anziano dalla parte della testa, che imita l'espressione del Cristo ma assomiglia anche a immagini postume di Giampaolo Baglioni, il vincitore della congiura. Al centro, protagonista indubbia dell'immagine, è una donna che corre a sorreggere la mano del Cristo morto, indubbiamente Atalanta che uscì di corsa nel mattino fatale a sorreggere Grifonetto morente. Dietro a questo gruppo è lo svenimento della Vergine, con figure tanto partecipi di bellezza ideale, quanto tra loro indistinguibili. Atalanta è, emblematicamente, sdoppiata nella Vergine svenuta e nella patetica dolente centrale. Grifonetto lo è altrettanto nei ruoli del vigoroso portatore e del Cristo morto. Sopra la testa del Cristo è un'altra giovane donna, in atteggiamento orante, tradizionalmente identificata con la vedova di Grifonetto, Zenobia Sforza.

Ma nei chiasmi altalenanti delle teste, che ripetono il ritmo altalenante di questo trasporto, che non va da nessuna parte, subito accanto alla testa della patetica soccorritrice

Fig. 4: Raffaello, Trasporto del corpo morto di Cristo (Roma, Galleria Borghese)

compare a sorpresa quella di San Pietro, un santo che non partecipa mai normalmente a queste scene di deposizione. La sua presenza sta qui certo per il potere della chiesa, che nominalmente sempre dominava Perugia, poi di fatto amministrata dagli indegni Baglioni. Non è chiaro se la sua figura sia stata voluta dai Baglioni o dal pittore, che comunque l'ha messa bene in rilievo. Forse non è un caso se nello stesso anno Raffaello arriva a Roma, direttamente accolto nella corte papale.

Ma nel drammatico compianto la vera pacificazione, alla fine, è data dal paesaggio all'orizzonte, al tempo stesso famigliare ed edenico, di alberi, di acque, di montagne.

Giampaolo Baglioni, fu signore di Perugia fino al 1520, quando fu attirato a Roma e decapitato da papa Leone X, quindi il potere passò ancora al fratello Gentile fino al 1527. Nel 1540 i Baglioni, con Rodolfo II, persero definitivamente Perugia (cfr. Gurrieri, 1938).

Anche la vicenda dei Baglioni, come si vede, rientra però in una serrata vicenda di rancori famigliari e non corrisponde ad altra logica che la passionalità della vendetta.

Il dipinto, tanto tristemente emblematico della storia di Perugia, non poté tuttavia esser conservato per sempre in città. Nella notte tra il 18 e il 19 marzo 1608 fu prelevato dal convento dei minori conventuali dalle guardie del capitano pontificio di Perugia, pur con l'opposizioni dei monaci anziani, per portarlo a Roma, nella Galleria di Scipione Borghese, segretario di stato ma soprattutto nipote del papa regnante, Paolo V, Camillo Borghese. Gli anziani frati si preoccupavano giustamente "...del sinistro concetto che si prenderebbe la città, vedendo che egli si privino della miglior cosa che abbino" (de Vecchi, 2006, 4).

Scipione Borghese mancava di Raffaello nella sua Galleria e, nel formarsela, non aveva esitato a ricorrere ai mezzi più disinvolti, come quando confiscò la collezione di Giuseppe Cesari, il Cavalier d'Arpino, il pittore allora più famoso a Roma, mettendolo anche in carcere. Scipione era affettivamente legato a Perugia, dove aveva trascorso il periodo giovanile nello *studium* cittadino e aveva visto là, forse tante volte, il dipinto di Raffaello. Aveva incontrato allora, sempre nell'occasione dei suoi studi, Stefano Pignatelli, che non apparteneva alla omonima illustre nobilissima famiglia napoletana, ma a una famiglia borghesissima di boccalari perugini. Scipione, salito alla porpora, si portò il compagno a Roma, suscitando naturalmente l'avversione e lo scandalo del partito avverso ai Borghese, soprattutto degli stranieri. Lo zio papa, Paolo V, ordinò diplomaticamente allora di allontanare Stefano Pignatelli. Ma Scipione, come l'Antioco della storia, si ammalò sempre più gravemente e si decise a guarire soltanto quando il papa, che teneva evidentemente molto a quel nipote, riportò l'amico nella sua casa. Più tardi Scipione ottenne anche la porpora cardinalizia per Stefano Pignatelli. Questo è riportato solo per mostrare che il cardinal-nipote sapeva ottenere sempre tutto quello che voleva dallo zio dispotico e autoritario.

Una delegazione di perugini si precipitò subito a Roma per chiedere la restituzione del dipinto.

Scipione protestò: "...disgusto e sdegno...parendogli che tutto si facci per il disprezzo della persona sua" (de Vecchi, 2006, 4). Ma lo zio papa, ancora una volta, con un *motu proprio* dell'undici aprile 1608, dichiarò che il dipinto era "...donatione pura, mera, perpetua et irrevocabile" alla sua persona e alla sua famiglia (de Vecchi, 2006, 4).

Fu così un'altra violenza e ai perugini sudditi non restò alcuna possibilità di vendetta. Il papa fece inviare a Perugia una copia di Lanfranco. Il quadro originale fu invece al Louvre, tra il 1797 e il 1815, con Napoleone.

Tra i dipinti che celebrano invece pacificazioni civili sembrano esemplari quelli che ricordano la "Pace di Benevento" siglata il 28 febbraio 1530 alla conclusione di un lungo conflitto cittadino tra la fazione favorevole al pontefice e quella favorevole all'imperatore. A ricordo dell'evento il Comune eresse a sue spese nella cattedrale un altare intitolato alla

Fig. 5: Gian Lorenzo Bernini, Papa Paolo V (Camillo Borghese) (Roma, Galleria Borghese)

Fig. 6: Gian Lorenzo Bernini, Scipione Borghese (Roma, Galleria Borghese)

Vergine, mediatrice della pace e poi nota appunto come "Madonna della pace" (Borgia, 1769, 480–481). L'altare andò poi distrutto nel terremoto del 1688.

L'iconografia del fatto storico si era intanto consolidata, come mostra la pala di Donato Piperno, del 1593, conservata oggi nel Seminario Vescovile di Benevento. Si tratta di una tela con la Vergine il Bambino in alto tra gli Angeli e sotto, ai lati, i santi Giovanni Battista e Pietro. Anche qui San Pietro rappresentava evidentemente la parte papale.

Al centro, in un'apertura di paesaggio, stanno due gruppi di soldati, dai caratteri e dalle fogge degli abiti molto arcaicizzanti, manieristici, con, al loro centro ancora, i loro capi che si abbracciano. Tutta l'immagine è ancora molto arcaica e ingenua e rientra perfettamente nel gusto della devozione popolare. Nel 1725, in occasione del Giubileo, papa Benedetto XIII Orsini fece erigere un nuovo altare nella cattedrale, dotandolo della pala del celebre pittore Paolo de Matteis, che ancora si conserva nel Museo del Sannio (Napoletano, 2011, 93). De Matteis, noto ora solo a specialisti e collezionisti, fu pittore assai considerato nell'età tardobarocca, e dipinse anche per Vienna, Verona e Bergamo. Ma fu per breve tempo anche alla corte del Re Sole. In questo dipinto egli mette da parte le raffinatezze delle sue opere mitologiche per abbandonarsi a un clima più popolare, più comprensibile e condivisibile per gli abitanti di Benevento. Sotto la scena sacra che sta in alto, tra le nuvole, s'incontrano e si danno la mano due emblematici rappresentanti dei

Fig. 7: Donato Piperno, Madonna della Pace (Benevento, Seminario Arcivescovile)

Fig. 8: Paolo De Matteis, Madonna della Pace (Benevento, Museo del Sannio)

partiti storici in conflitto. Risultano abbigliati in uno strano modo, che forse voleva essere un costume storico cinquecentesco agli occhi degli uomini del Settecento, ma che a noi fa l'effetto di un costume di carnevale. Anche i volti dei due personaggi, molto caratterizzati e per niente idealizzati, sembrano venire dal mondo popolare delle maschere. La rievocazione di De Matteis, altre volte pittore aulico senza confronti, è qui quella di una sagra popolare, che festeggia un evento che è ormai solo occasione di festa ma di cui forse non si ricorda o si comprende bene il significato originario antico.

Tutti gli esempi riportati confermano che è la pacificazione ad essere consegnata alla celebrazione della storia, e non la vendetta, pur se in una sua forma di regolamentazione in qualche modo definita, come la faida, in tutte le sue sopravvivenze sociali scoperte o più o meno mascherate. Va da sé che le vicende riconsiderate qui, delle opere pittoriche, vedono protagonista dall'inizio, o alla fine, la Chiesa Romana, la cui forza, ufficialmente, si basa sul perdono e sulla concordia. Così è nel caso della sconosciuta monaca ferrarese, che tanto sconosciuta ai suoi tempi non doveva essere, così è per la Perugia del tempo dei papi Della Rovere, Medici e Borghese, per la Benevento del tempo del papato degli Orsini.

POMIRITEV, NE MAŠČEVANJE

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POVZETEK

Maščevanje samo po sebi v odnosu do civilizirane družbe ni bilo nikdar razumljeno kot vrednota in fajda, kljub temu, da je bila v nekaterih primerih dovoljena, v teh družbah ni bila nikdar jasno deklarirana in priznana. Priznane vrednote civilizirane družbe, predvsem v krščanskem svetu, so pomiritev in harmonija.

V članku so bili predstavljeni trije temeljni primeri: slika Antonija Orsinija iz prve polovice 13. stoletja, ki ponazarja pomiritev med dvema vitezoma pred turnirjem v Ferrari; oltarna slika v Perugi iz leta 1507, ki sta jo pripravila Atalanta Baglioni in Rafael; ter dve oltarni sliki, ena iz 14. in ena iz 16. stoletja, ki prikazujeta pomiritev političnih nasprotnikov v Benventu.

Ključne besede: slikarstvo, nesložnost, pomiritev

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THE REVENGE OF THE DEAD. FEUD, LAW ENFORCEMENT AND THE UNTAMEABLE

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ABSTRACT

During the High Middle Ages, Church authorities tried to restrict feuds amongst the nobility. This led to a gradual shift in mentality, and one aspect of this process is scrutinised here. Since feuding was less encouraged, the hypothesis of this paper is that tales of the returning dead are reflecting this shift in attitudes. By closely looking into medieval tales about the dead, it is shown that such tales only partially show such an approach, trying to persuade noblemen to refrain from feuding. The harming dead, however, are of another nature, inverting the cult of saints and reflecting the medieval model of the afterlife.

Keywords: Feud, Ghosts, Dead, Afterlife, Middle Ages, William of Newburgh

LA VENDETTA DEI MORTI. FAIDA, APPLICAZIONE DELLA LEGGE E GLI INDOMABILI

SINTESI

Nel alto medioevo, le autorità ecclesiastiche cercavano di limitare la faida tra i nobili. In conseguenza, si cambiava la mentalità della società. Un aspetto di questo cambiamento é esaminato in questo articolo, cioè come le narrazioni dei morti che tornano per interferire con i vivi riflettino questo cambiamento negli atteggiamenti. Analizzando questi episodi nelle cronache medievali, si può dimostrare che soltanto una parte di queste storie cercava di convincere i nobili di omettere la faida. I morti che nocciono sono di un'altra natura, e specchiano sia il culto dei santi sia il concetto medievale dell'aldilà.

Parole chiave: faida, fantasmi, morti, aldilà, medioevo, Guglielmo di Newburgh

That the corpses of the dead, moved by some kind of spirit, leave their graves and wander around as the cause of danger and terror to the living before going back to tombs which open up to receive them, is not something which would be easily believed, were it not for the fact that there have been clear examples in our own time, with abundant accounts of such events. Nothing of the sort is reported in books of former times, which those of us who are inclined to study might meditate upon, and surely, since these ancient books recorded the everyday and matter-of-fact events of former times, they would not have been able to suppress accounts of stupefying and horrible events if indeed they had occured (William of Newburg, 1856, vol. 2, 185–186).[1]

This quotation, taken from the twelfth century English chronicler William of Newburgh, is striking for two reasons. First, he stresses a picture very familiar to our own imagination: tombs opening up to receive vampires, mummies or bloodthirsty undead are part of our popular image of the returning dead. Secondly, William stresses that such stories are new to him. In an age where tradition is cherished and the ways of the old are venerated, it is remarkable that a chronicler of the Middle Ages tells us that something is new, unheard of, and a recent development. Without a doubt, William wants to stress how disturbing these stories really are. Something is changing in his world, and in this article I would like to try to uncover what it was.

Working for my last book on the history of the corpse in the Middle Ages, I noticed that the Dead gradually become more cruel, more involved in the matters of the living during a slow process starting from during the twelfth century (Schmitz-Esser, 2014). Reflecting on it, I posed myself a rather simple question: Could there be a relation between the eleventh and twelfth century curtailment of feuds and the development of more violence among the Dead? The basic theory is rather simple: since it is well established that ideas of *Treuga Dei*, Gottes- and Landfrieden developed in the eleventh, twelfth, and thirteenth centuries, and that they were followed by new laws stressing the central authority of Popes, Emperors, and Kings all over Europe, it might well be that nobles felt it to be more difficult to resort to private violence to resolve their disagreements and to re-establish offended honour. Or, to be more precise, it was the result of the separation of the private and public spheres and their functioning together, itself a process of modernisation, if we like the old-fashioned teleological view. Such limitations by a society which sought new ways to solve conflicts must have caused discussion between different generations as well as ill-feelings, and problems within daily life. So, maybe, the older ways of dealing with things supposedly persisted in the liminal spheres of medieval culture. It is easy to imagine that a nobleman unable to settle his scores by force due to restrictions of new laws and the need to comply with Church norms, was still apparently capable to do so after his death and to return in order to interfere in this world without regard for modern rules of society. Thus, the taming of the living resulted in the appearance of the untameable dead. That such a return of the

1 English translation by Joynes, 2006, 137, who provides English translations to many of the texts quoted here in their Latin edition.

dead would be theoretically possible, is part of medieval beliefs of the afterlife and of an ongoing relationship between body and soul after death.

Unfortunately, the more I thought about the concept and the more I searched to gather the sources for my argument, the more complex the picture became. Although such a development may have been a reason for the change in attitudes toward the dead, it certainly was only part of a series of changes that helped to create a picture of the returning dead that is still very much the basis of our own fiction about the undead. I'll try to summarise my findings here and would like to open up a discussion on this relationship between feud and the untameable dead.

So, what kind of stories was it that William of Newburgh found disturbingly new? Of his four accounts, I would like to cite just the most important one for our discussion (William of Newburg, 1856, vol. 2, 182–190; translated in Joynes, 2006, 134–142; cf. Schürmann, 2009; Schmitz-Esser, 2014, 454–459; Gordon, 2015). It is the tale from a castle in Yorkshire. We are told that there was a wicked officer, jealous of his wife. One day, he pretended to be away from home and hid in the house to watch his wife committing adultery with his neighbour. He watched them from a beam in the roof which cracked. He not only caught her red handed, but also seriously injured himself, as he fell. The wife, tried to explain away his story of her adultery to him and others as part of a feverish dream. However he could not be cured and unfortunately, the man refused the last ointment and communion offered by a priest. Therefore, when he died of his wounds, he was properly buried, but soon the parishioners realised that he was wandering around at night, followed by howling dogs and spreading a disease which killed many of the villagers. Finally, two brothers, who had lost their father due to this illness, took their mattocks and opened the grave, found the body full of blood, dismembered the corpse, took the heart out of the body and burnt it on a pile outside of the town.

The dead man actually has two good reasons for coming back from the afterlife: neither the *rite de passage* was done properly, nor could he reasonably feel satisfied with the wrong that was done to him by his wife. If one turns to the stories of the returning dead, these are two of the five major reasons for their unrest. The five are: (1) Unfulfilled duties of the living towards the dead person - like a last will not executed, especially if linked to a religious institution that should pray for the soul: An example is the story of Herveus, narrated by a Chronicler from Marmoutier (De rebus gestis in majori monasterio saeculo XI, 1853, 409–411, ch. 8); (2) unfulfilled duties of the dead person (which particularly interests us in our context here); (3) the announcement of death: many early and high medieval writers – like Bede (Beda Venerabilis, 2005, 1, 242–246, b. 4, ch. 9, and 2, 50–56, b. 5, ch. 9), Thietmar of Merseburg (Thietmar von Merseburg, 1935, 18–19, b. 1, ch. 13), Rodulfus Glaber (Rodulfus Glaber, 1989, 222, b. 5, ch. 1,6), Peter the Venerable (Peter the Venerable, 1854, 876, b. 1, ch. 11), or Caesarius of Heisterbach (Caesarius von Heisterbach, 2009, vol. 5, 2170–2174, b. 10, ch. 62–64) – state that an encounter with the dead announces the death of the person meeting them; (4) an unnatural or untimely death; or (5) an incorrect *rite de passage*, like in the quoted case of the castle's official.

One of the remarkable aspects of William of Newburgh's story lies in the physicality of the dead body which is described in such a detail that I am inclined to believe the story really

did take place in twelfth century Yorkshire and was not mere fiction. Moreover, the dead man is described as a "sanguisuga" [leech], sucking the blood of the living; he is not only advising the living or reprimanding them, but actively attacking their health and killing them. It is the first time that European tales of the undead give such a clear reference to a vampire, although our modern idea and the term itself are only starting to evolve during the early modern period (cf. Lecouteux, 2001; Seipel, 2008). Bram Stoker and the gothic novel of the nineteenth century are yet to come, but the idea of a bloodsucking undead is already mentioned here. There have been older stories of encounters with the dead in the Christian tradition, but they are of a different nature. Normally, the dead return because they have to interfere on their own behalf, be it to admonish the living about not properly carrying out their last will, or be it to ask for prayers and offerings for their soul. The living and dead were not distinguished in quite the same way in premodern society as they do today: in a medieval perspective, they still had a very real and consequential connection to one another. Gregory the Great, for example, recounted stories of the dead serving in a public bath for their sins and asking for prayers and offerings for their soul, so that they could be released from their punishment (e.g. Gregory the Great, 1980, 3, 184–188, b. 4, ch. 57). When William of Newburgh referred to the books he read, we can almost be certain that the "Dialogues" of Gregory the Great have been part of this library; the Church father's writings were widely copied and easily available, and he is the only major authority who talks about the dead in great detail, distinguishing himself in his graphic detail from the influential, but rather theoretical teachings of Augustine on the topic.

However, if we can exclude an older Christian tradition, where did the idea of the harmful dead come from? One has often argued that an older, pagan tradition may have played a role. Are these not stories of the dead, of ghosts and the returning, all folklore and sign of the old, pagan believes of simple people not yet readily Christianised? Historians, such as Jean-Claude Schmitt, have already remarked how similar stories are transmitted to us: in Latin, in written texts, mainly by Christian clerics, often from noble background and well educated (for a more complex discussion, cf. Schmitt, 1994). Thus, it seems highly improbable to suggest their tales are closely linked to the commoners of the epoch. The romantic view of an old, pagan, "Germanic" world of "the people" on the one side and the Christian, erudite world of a politically influential, Latin elite on the other, is an *idée fixe* of nineteenth and twentieth century thought. Since ideologies of both the left and the right have made ample use of it, one can not stress enough how uncritical such a reading of our sources is. Nevertheless, most reflections on Ghosts and the Dead take such a contradistinction as given and as their parting point for any discussion. On the contrary, I want to show that the world of the elite played a major role in the development of new attitudes towards the dead during the High and Late Medieval Period.

Coming back to the argumentation of Jean-Claude Schmitt, one can stress that the authors of our ghost tales are themselves pretty much part of the medieval elite. If they insist on the possibility of the dead returning, they often do so to promote their own ideas about society. It is no wonder, then, that we enter the realm of normative discourse here, and, consequentially, to end feuds was one of the major themes included in such high medieval ghost stories. In a collection of miracles from the monastery of Sainte-Foy in Sélestat in the Alsace region, we are told the tale of Walter of Diebolsheim. During a

miraculous incident, Walter encountered two groups of dead persons, one clad in white robes, the other one in red. He learns that the white are waiting for their final relief and a place in heaven, and Walter finds among them count Conrad, his former lord, who had died in the year 1094. The souls in red are waiting for their place in hell and are described as suffering because of their lack of good deeds and penitence during their lifetime. Amongst them are nobles who had died in battle without being able to repent their evildoings (De fundatione monasterii S. Fidis Sletstatensis, 1888, 997–1000; cf. Schmitt, 1994, 125–130; Schmitz-Esser, 2014, 521). The story coincides with the restrictions of private warfare in canon law: In 1119, the council of Reims not only threatened those who offended the peace within the diocese with excommunication, but also it explicitly forbade their Christian burial (Schmitz-Esser, 2014, 516). Tales like those of the vision of Walter of Diebolsheim underline the need for lay noblemen to obey these rules and to refrain from violence.

Other authors of accounts about the returning dead are even clearer in their disdain of feuds. In the first half of the twelfth century, Peter the Venerable, the famous abbot of the monastery at Cluny, included the story of the noblemen Bernard le Gros into his "De miraculis". Bernard, who during his lifetime frequently raided the abbey's territory, finally converted and repented his ill doings, made a vow to become monk and went on a pilgrimage to Rome. Since he died on the way, he was not able to return and take monastic orders at Cluny during his lifetime. However, some years later, he appeared to one of the stewards of the monastery and asked the favour of the monks' and the abbot's prayer for his soul (Peter the Venerable, 1854, 874–876, b. 1, ch. 11). The morale of the story is apparent: instead of feuding with monasteries, lay noblemen should revert themselves to the ways of a virtuous life and stop fighting their neighbours. To make this argument against feuds more colourful and to advertise a virtuous lifestyle, Peter added the detail of a fox-furred cloak that Bernard was wearing during his apparition: as we learn during the tale, it was once given by him to a poor man as a gift, so it now gives him comfort in the afterlife.

One may add Caesarius of Heisterbach's story of Frederic of Kelle, a knight who appeared to Erkenbert, a father of a fellow friar at Heisterbach. Tormented by sheep-skins that burnt him and a heavy slab of earth to bend his back, the knight was quite literally tortured by his sins: he had stolen the sheep-skins from a widow and acquired land unlawfully, asking his kin to return this property. However, his heirs decided to leave him to his torment and to hold on to their possessions (Caesarius of Heisterbach, 2009, vol. 5, 2210–2212, b. 12, ch. 14). A third story of this kind, slightly earlier and dating to the eleventh century, is told by Otloh of St. Emmeram. It is the tale of two knights meeting the ghost of their father, tormented by armour burning him on every touch, imploring them to give back land to a monastery he once stole from the monks. This time, the sons were more generous than their peers in Caesarius' story. Remarkably, Otloh ascribes his story to Pope Leo IX himself, who is said to have met the brothers on one of his visits to Germany and retold their story as an example for the protection of monastic property (Othloh von St. Emmeram, 1989, 67–69, ch. 7). All three stories are therefore directly linked to Church and monastic reformers: To Pope Leo in the case of

Otloh in the eleventh century, to Cluny in the case of Peter the Venerable in the twelfth century, and to the young Cistercian order and their branch at Heisterbach in the case of Caesarius in the early thirteenth century. It is not simply a coincidence: well known as an effect in the case of medieval charters, often invented by monastic communities to defend their claims, ghost stories were part of their use of the pen to counteract the swords of their noble neighbours threatening their many riches and maybe their very existence. In this light, ghost stories are part of a feuding society. They are a reflex of the learned and the religious to disabuse and to obstruct lay noblemen from such practices by appealing to their bad conscience.

By looking at the examples of Otloh of St. Emmeram, Peter the Venerable, and Caesarius of Heisterbach, we saw a group of stories recounting the return of the dead in the context of feuds. They are against such conflicts, and there is little doubt that they are the one-sided by-product of the feuds between monasteries and lay noblemen. The feuding aristocrats were not writing down their claims, and the deeds of their swords are only known to us if they made it into the writings of the clerical elite. From here, another kind of story evolved, featuring the dead knight in his role of perpetrator and evildoer, but unlike the miracle of Sainte-Foy, they were not returning as a single individual, but in the context of a whole army. The anglo-norman chronicler Orderic Vitalis tells the story of a priest named Walchelin who encountered such an army of the dead. Of course, it is just during his conversations with the strange knights he encounters that he finds out about them; trying to steal one of their horses, it is the nobleman William of Glos who tries to persuade Walchelin to bring his message to his son and wife. He is part of this host and tortured for his many sins, and the biggest one of them is the unrightful appropriation of a mill his heirs should return to their rightful owners. But Walchelin does not want to help the sinner, and he is approached by another knight, Robert, his own brother, recently died on an expedition in England. Becoming a priest and praying for his father and his brother, Walchelin is assured that his offerings already have lightened the burden of his brother and helped to save his father from further punishment. There is no doubt that the message of the story is to frighten and to instruct noble knights not to steal, to be impartial and to refrain from vain and proud behaviour. As part of his punishment, Walchelin's brother Robert has flames bound to his feet that not only burn him constantly, but feel heavy as Mont Saint-Michel. They are in the place he always wore shining pointed spurs. The direct monastic attack to the living style of the aristocracy couldn't be more striking. To make his point more convincing, Orderic names several other noblemen from the retinue of Herlequin, the strange name given to this appearance, thus making clear to his audience that this apparition is made up from real men. Landry of Orbec, for example, is said to have tried to shout out loud to ask Walchelin for help, but his companions shouted louder. Thus, he is adequately punished, as Orderic explains: Never listening to the witnesses in court seriously if it was not to his own favour as a very partial judge, he is condemned not to be heard now suffering in the afterlife (Orderic Vitalis, 1973, 4, 236–250, b. 8, ch. 17; cf. Schmitt, 1994, 115–145). Although this kind of story is new, the morale is not. In our context, the idea of restraining violence by the nobility is striking, but, as I have already stressed, this fits well within the context of the individual knights we have seen

returning before. The returning dead are again part of a normative discourse, illustrating the importance of compliance with the ideas of Christian virtue for lay people, especially if they are mighty, influential and, above all, well armed.

So, if this wave of such ghost stories are inspired by the battle for a reduction of feuds led by erudite monks, familiar with the lay aristocracy's way of life, what about the violent returners like the Yorkshire officer described by William of Newburgh? This appearance of the dead as avenging themselves, of evil dead that harm the living, does not seem to be connected to feuds, as I suggested in the first place. Looking at the evidence, a clear connection to feuding does not exist, there is a clear distinction with the returning knights of the tales I quoted before. All of these stories relate to the dead in a state of "in-betweenness", waiting for their judgement in the afterlife. They are punished, but the reason for their appearance is to ask for the help of the living. This is true, for example, in the case of Walter of Diebolsheim, meeting his former lord, Count Conrad. The distinction of the dead in between Heaven and Hell into two categories, the white and the red, reflects Augustine's ideas of the *non valde boni* and *non valde mali*, the "not so good" and the "not so bad". But the *sanguisuga* of William of Newburgh is not one of these. He is part of the *valde mali*, the "very bad", whose place is in Hell (Augustine, 1969, 108; as to the Augustinian distinction of the souls in Afterlife and Christian ideas about the Eschata, cf. Le Goff, 1984; Bynum, 1995; Dinzelbacher, 1999; Angenendt, 2007, 104–106; Schmitz-Esser, 2014, 25–32). As I have argued elsewhere, during the eleventh and twelfth century, the idea developed, that these very bad persons had similar characteristics as their counterpart, the "very good". Since these saints lived in their relics and could provide miracles, it was only logical to assume that the "very bad" could do similar things. Burning their corpses was a consequent development, and it was one of the reasons for the punishment of heretics and witches by burning them (Schmitz-Esser, 2015).

It is revealing that there is no or little connection to feuding in this latter group of the "very bad" such as we saw for those in between Hell and Heaven: Feuds were thought to be part of the daily practice of the aristocracy, and although it could be interpreted as a crime, an offence and an unchristian behaviour, it nevertheless felt like a minor sin, punished by the lord, but not automatically resulting in eternal damnation. This somewhat ambivalent approach towards a fighting elite is not untypical for medieval society. Another example may confirm: Although jousting and tournament were forbidden by canon law and resulted in the excommunication and eventually the non-burial of knights that died during this martial activity, normally such a verdict would not be enforced in practice, or at least not consequently enforced (Beaulande, 2006; Schmitz-Esser, 2014, 520–525; on medieval excommunication, cf. Jaser, 2013). When Geoffrey, the brother of Richard Lionheart and John Lackland, died in a tournament, he was interred at Notre-Dame de Paris, in the very presence of the King of France himself (Rigord, 1882, 68–69). For a church relying on the force and the donations of the lay aristocracy, it was impossible to really enforce ideas of peace, harmlessness and virtuous behaviour in knights of the epoch. However, to threaten those breaking these rules, especially if they damaged the Church's property, was a comfortable way to encourage doubt about such acts of violence, eventually resulting in conversion and donation. This only made sense if the dead of the

elite were thought to be in the position of Purgatory, punished, but not in hell, redeemable, but not yet redeemed. Stories of the returning dead could therefore be part of a spectre of the punishments of an afterlife, keeping noblemen under control and helping the Church institutions to establish their position as the only brokers of salvation. The dead became part of this endeavour, although the stories of the very wicked, those who come back, suck our blood, and harm the living, are not the direct result of a feuding society. It was only with the gothic novel, the vision of premodern Eastern Europe by Bram Stoker, that feuds and undead were coming together once again.

MAŠČEVANJE MRTVIH. FAJDA, KAZENSKI PREGON IN NEUKROTLJIVI

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POVZETEK

William Newburgh je bil prvi srednjeveški avtor, ki je v 12. stoletju pripovedoval zgodbo o pivcu krvi ("sanguisuga"), to je mrtvec, ki se škodoželjno vrne k življenju, da bi sesal energijo iz živečih. Pri tem pravi, da gre za nov pojav; po analizi srednjeveških pripovedi o vrnitvi mrtvecev tudi sicer lahko trdimo, da je to zelo verjetno res. Starejše zgodbe o mrtvih poudarjajo njihovo stanje gorja med peklom in nebesi in napeljujejo k usmiljenju in molitvi zanje s strani živečih. Ker so bile napisane s strani klerikov, je namen teh pripovedi precej očiten: Plemeniti aristokrati so pozvani k izpolnjevanju idealov harmonične družbe, da si po svojih najboljših močeh prizadevajo h krepostnemu življenju in podpirajo meniške redove ter tako zaščitijo svoje duše in pomagajo Cerkvi pri gradnji krščanske skupnosti. Po drugi strani so pripovedi škodoželjnih mrtvecev Williama Newburgha povsem druge narave: Te potrjujejo misel, da so duše hudobnih že tekom življenja v Peklu. Ti, torej, ne morejo biti odrešeni. Te zgodbe torej niso primerne za to, da bi napeljevale k vzdržnosti pred maščevanjem, saj ne ponujajo možnosti za izboljšanje ali spremembo načina življenja aristokratske elite.

Ključne besede: fajda, duh, mrtvec, posmrtno življenje, srednji vek, William Newburgh

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LA VENGEANCE ET LE CONSULAT À VICENCE DANS LA SECONDE MOITIÉ DU XVI^{e} SIÈCLE

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EXTRAIT

L'objectif de cette analyse est de saisir les actes de violence (vengeances) commis à Vicence et dans son territoire dans la seconde moitié du XVI^{e} siècle, des actes transmis à la juridiction du tribunal citadin (le Consulat), composé de douze nobles locaux, parmi lesquels quatre consules *provenant du Collège des Juges – expression des statuts et de l'idéologie nobiliaire, ainsi que des valeurs politiques et culturelles de la* Respublica *vicentine –, qui s'occupent soit de justice civile, soit de justice pénale, toujours en présence du podestat, qui est un patricien vénitien, et de sa cour (assesseurs). L'intérêt ainsi prêté aux différentes manières d'évaluer et de juger les auteurs d'actes violents criminels (concepts de réparation et de punition, défenses judiciaires offertes aux prévenus) selon les normes insérées dans les pratiques du tribunal vicentin, permet de dégager le rôle assumé par la justice locale, avant que certaines affaires ne soient éventuellement transférées dans les grands tribunaux vénitiens (Avogaria di Comun, Conseil des Dix) ou déléguées dans d'autres cours prétoriennes de la Terre Ferme vénitienne (par exemple, à celle de Padoue). Il est aussi possible de considérer les sentences prononcées (bannissement perpétuel, bannissement à durée déterminée, bannissement* ad inquirendum*) dans la seconde moitié du XVI^{e} siècle et de dégager comment les acteurs de la justice et les justiciables utilisent le droit et l'outil judiciaire.*

Mots-clefs: Consulat, consuls, vengeance (faida), coutumes, justice réparatrice, justice punitive, rites judiciaires, bannissement, bannissement ad inquirendum, *défense* per patrem*, sauf-conduit, paix, négociation*

LA FAIDA E IL CONSOLATO A VICENZA NELLA SECONDA METÀ DEL CINQUECENTO

SINTESI

L'obiettivo di questa analisi è di cogliere gli atti di violenza (faide) commessi a Vicenza e nel suo territorio nella seconda metà del secolo XVI, atti trasmessi alla giurisdizione del tribunale cittadino (il Consolato), composto da dodici nobili locali, di cui quattro

consules *provenienti dal Collegio dei Giudici – espressione degli statuti e dell'ideologia nobiliare, nonché dei valori politici e culturali della* Respublica *vicentina – che giudicano sia nel foro civile che in quello penale, e sempre in presenza del podestà, un patrizio veneziano, e della sua corte (assessori). L'interesse è così prestato ai vari modi di valutare e di giudicare gli autori degli atti di violenza (concetti di risarcimento e di punizione) secondo le norme inserite nelle pratiche del tribunale berico, e ci permette di evidenziare il ruolo svolto dalla giustizia locale, prima che certi casi siano eventualmente trasferiti a tribunali veneziani (Consiglio dei Dieci, Avogaria di Comun) oppure delegati ad altre corte pretorie di Terraferma (per esempio, a quella di Padova). Ci consente inoltre di considerare le sentenze comminate (bando perpetuo, bando a durata determinata, bando* ad inquirendum*) nella seconda metà del secolo XVI e di cogliere come la giustizia viene usata dai vari attori (giudici, imputati, vittime).*

Parole chiavi: Consolato, consoli, faida, consuetudini, statuti, giustizia riparatrice, giustizia punitiva, riti giudiziari, bando, bando ad inquirendum, difesa per patrem, salvacondotto, pace, negoziazzione

La conflictualité nobiliaire est intense en Terre Ferme vénitienne dès le début du XVI^e^ siècle et se trouve réprimée par les autorités politiques locales, les villes étant divisées par des luttes de factions qui conduisent à des vengeances (*faide*) que le patriciat vénitien cherche à combattre (Povolo, 1980, 1997, 2011, 2015a; Muir, 1993; Bianco, 1995). L'étude de ces dissensions permet de dégager la façon dont sont gérées la violence et la criminalité à la fois par les aristocraties urbaines, à la tête des conseils municipaux; par les tribunaux des villes du *Dominio* et par le patriciat de saint Marc, une gestion de la criminalité qui rend perceptible l'existence d'une « séparation juridique » – tout comme culturelle et politique – entre l'univers diversifié de la Terre Ferme et celui de Venise du début du XV^e^ siècle à la fin du XVIII^e^ siècle (Cozzi, 1980, 1984; Povolo, 1994, 1997, 2006, 2010). L'analyse de l'activité d'un tribunal de la Terre Ferme – le Consulat de Vicence dans la seconde moitié du XVI^e^ siècle – présente l'intérêt de cerner la mise en pratique de deux traditions judiciaires en matière de répression pénale: il y a, d'une part, celle issue du système romano-byzantin qui privilégie la fonction punitive de la sentence qualifiée de *State law*; et, d'autre part, celle de la *community law*, la sanction étant tenue pour réparatrice, censée rétablir l'honneur lésé de la victime et accabler l'auteur de l'acte condamné (Langbein, 1974; Van Caenegem, 1991, 1992; Povolo, 1997, 2007, 2016; Cario, 2010). Dans ce dernier cas, l'atteinte est évaluée dans un contexte privé et résolue par la communauté, la négociation reposant sur des pratiques informelles qui tendent à apaiser les tensions déclenchées par l'acte violent. Cette situation duelle (*State law*, *community law*) souligne la mise en pratique de deux types de justice, l'une punitive, l'autre réparatrice, les deux pouvant néanmoins coexister et admettre un système hybride avant que ne s'impose, au XVII^e^ siècle, le caractère étatique – et punitif – de l'administration judiciaire dans la République de Venise (Povolo, 2007).

La justice punitive s'identifie aux exigences politiques du pouvoir central et fait face à une justice réparatrice dominée par les valeurs et l'idéologie communautaire (honneur, vengeance, coutumes) qui soutiennent les innombrables *faide* divisant les sociétés de la Terre Ferme. L'affirmation de la justice punitive est réalisée par les juristes, la logique politique se situant à l'opposé des valeurs qui marquent l'identité des communautés et la notion de la paix, laquelle doit être entendue comme le garant d'une hiérarchie sociale fondée sur l'honneur et la préséance: on passe ainsi, peu à peu, de « l'ordre de la paix à l'ordre public » (Povolo, 2007).

Dès le début de la formation de l'État régional par Venise au XV^e^ siècle, les villes de la Terre Ferme, devenues sujettes, ont pu conserver leurs statuts, privilèges et prérogatives: Vicence voit ainsi préservé son tribunal civil et pénal, le Consulat, magistrature composée de douze nobles, quatre provenant du Collège des Juges (*consules iudices*) – des professionnels du droit commun, défenseurs des traditions judiciaires et des valeurs de la *Respublica* vicentine face au pouvoir central –, et huit consuls laïques (*consules milites*), issus des rangs des députés *ad utilia*, magistrature de nature oligarchique (Povolo, 1980, 1986; Faggion, 1998). À l'instar des autres grands centres urbains du *Dominio*, il y a, à Vicence, deux recteurs vénitiens, des patriciens élus par leurs pairs au Grand Conseil de la capitale, afin que ceux-ci mènent durant seize mois l'activité soit de podestat (sphère judiciaire), soit de capitaine (sphère militaire et fiscale). Le Consulat détient un pouvoir

délibératif ancestral, au même titre que le podestat et la cour prétorienne de ce dernier composée d'assesseurs, au nombre de trois (le vicaire prétorien, le juge du Maléfice et celui de la Raison), lesquels ne peuvent pas être originaires de la ville et du territoire dans lesquels ils sont appelés à exercer leurs tâches (Povolo, 1980, 1991).

Puissant tribunal urbain entre les mains des élites locales, le Consulat limite l'activité judiciaire du podestat qui est tenu de respecter les normes et les procédures en vigueur: les statuts citadins figurent en effet comme la source première à laquelle doivent se conformer les administrateurs de la justice pénale, le podestat ne pouvant pas agir seul, ni en toute liberté. Les pouvoirs coercitifs étendus du Consulat attribuent à ses douze membres le prestige et la prééminence politique: le tribunal vicentin est un instrument qui permet d'éviter les lois, de couvrir des délits et des abus commis dans la ville et son *contado*, selon une logique de la réparation garantie par la coutume et les statuts (Povolo, 2016). Déjà, lors de l'ouverture d'un procès, les consuls – défenseurs des pratiques judiciaires, sociales et culturelles locales – ont le droit de s'exprimer en premier, de donner leur avis, en précédant aussi bien les assesseurs de la cour prétorienne que le podestat lui-même, une séance judiciaire ne pouvant pas être tenue sans la présence des consuls ou, au moins, de sept d'entre eux.

Les membres du tribunal délibèrent sur la sentence à prononcer, un privilège partagé avec le podestat et la cour prétorienne. La dénonciation d'un crime se fait à l'office du Maléfice; une fois celle-ci enregistrée, seul un consul se transfère sur le lieu où s'est produit l'homicide et où il recueille les premiers témoignages sans devoir être assisté par le juge du Maléfice. Les premières expertises et les témoignages ayant été réalisés, le consul remet le procès instruit à l'office du Maléfice et donne son avis sur celui qui doit être appelé soit en tant que témoin, soit en tant que prévenu. L'instruction est achevée par le juge du Maléfice qui prépare un résumé en présence des consuls, du podestat et des assesseurs (Viggiano, 1985; Povolo, 1991). C'est au cours de cette phase que les avocats des deux parties interviennent et communiquent, par écrit ou de vive voix, leur opinion, le procès se déroulant à portes ouvertes. Celles-ci closes, tous les membres s'expriment, expliquent leur choix et, enfin, votent.

À défaut de pouvoir disposer des procès instruits par le Consulat au XVI^{e} siècle, qui ont disparu, il est possible de se rapporter aux indications, toutefois peu détaillées, qui figurent dans les registres des bandits – bannis – du tribunal, selon des règles communes à d'autres villes d'Italie (Cavalca, 1978), et rangées en trois rubriques: la première concerne la date de la mise par écrit de l'accusation (la *signatura*) et les éventuels changements ayant trait à la sentence; la deuxième indique le nom des prévenus; enfin, la troisième, la sentence. En dépit de la parcimonie des informations fournies, on connaît les peines infligées et les éventuelles modifications apportées à celles-ci. Dans la seconde moitié du XVI^{e} siècle, le tribunal vicentin applique une administration pénale propre sur le plan local, une justice réparatrice où les valeurs culturelles et politiques, ainsi que l'idéologie nobiliaire, sont défendues; il rend perceptible l'existence du système vindicatoire, les logiques de la négociation, de la réparation et de la pacification, alors que le pouvoir central, caractérisé par la mise en œuvre d'une justice punitive et la notion de l'ordre public, se fonde sur le principe de l'autorité et fait intervenir le Conseil des Dix ou l'Avogaria di Comun, afin de briser les

solidarités urbaines, ou délègue les affaires instruites dans d'autres cours prétoriennes de la Terre Ferme dans le respect des traditions judiciaires locales.

LE SYSTÈME VINDICATOIRE ET LA NÉGOCIATION

À l'instar des autres tribunaux citadins de la Terre Ferme, le Consulat de Vicence a pu maintenir son contrôle sur la criminalité et la vengeance (*faida*), en trouvant des solutions juridiquement acceptées et cautionnées par la coutume et les statuts locaux. Ces derniers légitiment la notion (et la préservation) de l'honneur aristocratique (pureté et ancienneté du lignage) tout comme la recherche d'une paix à conclure entre les parties antagonistes (Povolo, 1997, 2007). Composé d'une élite d'hommes de loi recrutés en fonction de leur formation universitaire en droit, de leur noblesse et de leurs réseaux, le Collège des Juges de Vicence permet à l'aristocratie de jouer un rôle de médiation, de négociation et de compromis dans le cadre de la coutume et des procès instruits par le Consulat (Povolo, 1997, 2004, 2007; Faggion, 1998, 2002, 2007). Les familles nobles du *Dominio*, en lutte pour les pouvoirs locaux et la défense de leur *status*, menacées par l'émergence de groupes sociaux nouveaux et riches (marchands, juristes, médecins) – désireux d'obtenir la voix politique au sein des Conseils municipaux –, sont entraînées dans des conflits qui mettent à jour une opposition entre la hiérarchie de l'honneur, liée au *status* nobiliaire, et la hiérarchie de la richesse, qui se rattache aux compétences professionnelles et au talent. L'intensité des dissensions rend compte d'un langage de la violence et de la vengeance qui est finement articulé et dépend d'un code de comportements et de règles spécifiques et rationnelles, motivés par la préservation de l'honneur face à l'affirmation de groupes émergents fortunés qui aspirent à la reconnaissance sociale et à la participation aux affaires publiques. Aussi les familles en litige se trouvent-elles amenées à rechercher une réparation selon des procédés cautionnés par les élites citadines, la coutume et les lois municipales; par le Consulat et le Collège des Juges, qui instaurent un nouvel équilibre rompu par l'homicide, des pratiques réparatrices cependant désapprouvées par le groupe dirigeant vénitien qui veut rompre la logique de la réciprocité et affaiblir l'autorité nobiliaire traditionnelle au profit des intérêts des groupes émergents, nouveaux interlocuteurs du pouvoir central.

De prestigieuses familles de l'aristocratie de Vicence, telles les Capra et les da Porto, à la tête de puissantes factions qui se disputent l'hégémonie urbaine, ou la *Casa* Trissino, composée de plusieurs lignages (*colonnelli*), connaissent des différends importants dont le seul langage possible, en mesure de rétablir une paix acceptée par tous et idéalement durable, est celui de la vengeance et de sa ritualisation, l'idée de parité à instaurer entre les parties antagonistes étant essentielle (Povolo, 1997, 2015a; Faggion, 2002, 2007). Aussi l'héritage de Ciro Trissino « dal Vello d'Oro » – une branche issue du *colonnello* des Miglioranza – accordé par son père l'illustre humaniste Giangiorgio, l'ami des papes Médicis et de l'empereur Charles Quint, soulève la jalousie, le ressentiment et la formation de groupes rivaux au sein de la famille et de la parenté. Ces sentiments sont à l'origine de plusieurs homicides perpétrés par des membres de la *Casa* Trissino dans le dernier tiers du XVI^{e} siècle, des gestes criminels qui réclament une réponse de la part

des personnes offensées: après des années de tensions familiales, Ciro est assassiné le 4 février 1576 dans sa demeure de la localité de Cornedo; puis, le 8 avril 1583, au nom de la réparation obligée et du code de l'honneur à préserver, son fils Marcantonio, témoin du crime perpétré en 1576, se venge et assassine à Vicence, le jour du vendredi saint, son cousin Giulio Cesare qu'il tient pour responsable de la mort de son père (Povolo, 2015a; Faggion, 2002). Quoique de tels meurtres caractérisent la vie des cités de la Terre Ferme depuis les premières décennies du XVI[e] siècle, l'émotion est chaque fois très forte à Vicence. Certains Trissino – Ippolita, la mère de Giulio Cesare, et Francesco, l'oncle de celui-ci – demandent une réparation qui soit pensée à Venise – au lieu du tribunal local qui participe des idéaux, réseaux et factions nobiliaires –, et les autorités se mobilisent. Aux yeux de la partie blessée, les « dal Vello d'Oro » en 1576, l'honneur mérite d'être restauré, ce qu'accomplit Marcantonio en 1583. Mais la logique de la réciprocité nécessite également une réponse au meurtre de Giulio Cesare. Ainsi Ranuccio Trissino, en décembre 1588, tue l'épouse et le nouveau-né de Pompeo, frère aîné de Marcantonio.

Ces différents crimes, qui ont défrayé la chronique de l'époque, passent pour avoir été mus par un acte irraisonné, sauvage et aveugle, alors que celui-ci se fonde en réalité sur un code de l'honneur spécifique, légitimé par la coutume et les statuts, une pratique interrelationnelle qui se trouve exprimée par la rhétorique et la culture judiciaire (Povolo, 2004, 2015a, 2015b; Faggion, Regina & Ribémont, 2014). Les mots de l'émotion (« *odio* », « *ira* », « *furore* »), abondamment utilisés par les justiciables et les hommes de loi, rendent compte des stratégies mises en acte par tous ceux qui sont amenés à solliciter la justice, à atténuer et à modifier l'évaluation que doit émettre le juge. C'est ainsi qu'au mois d'avril 1583, le Consulat instruit un procès criminel contre trois membres de la famille Tagliaferro – Giordano, fils d'Alberto; Marco, fils de feu Battista; Giordano, fils d'Andrea –, et contre Girolamo Scalzeto, tous originaires de la localité de Celsano (BCB-Vi, AT, SC, 1138, f° 269v°):

> *contra quos* [les Tagliaferro et Girolamo Scalzeto] *processum fuit per nos* [les membres du Consulat] *et curiam nostram* [la cour prétorienne] *ad denunciam decani ville Celsani secundum processum formatum per spectabilem dominum consulem de eo et super eo quod in die lune post diem Pasquatis Resurectionis Domini Nostri Iesu Christi 16 aprilis* […] *ad ecclesiam sancti Sepulchri ex ortu rixa inter illos de Tagliaferro et non nullos mollendinarios a ponte barbarani cum in dicta rixa remansirent vulnerati Andreas supradictus et Marcus Tagliaferro* ***irra*** *et* ***furore*** [nous soulignons].

Le langage de l'émotion contribue à atténuer la gravité d'un crime qui passe dès lors pour un homicide pur perpétré sans préméditation, comme l'atteste en avril 1583 l'assassinat de Giulio Cesare Trissino par Marcantonio Trissino, emporté dans son acte sanguinaire par la « fureur » (Povolo, 2015a), alors que des expressions telles que « *homicidio insidioso* », « *homicidio commesso cum malis qualitatibus* » ou « *homicidio pensato* » (« *homicidio apensato* »), renvoient à un acte prémédité, le plus souvent exprimé par les termes d'excès et de rixe (« *pro excessu* », « *rixa* », « *rissa* »), à une vengeance conduite grâce à un « *auxilium* » prêté par des proches et des amis, censée restituer l'équilibre brisé

entre des groupes antagonistes, à l'instar de ce qui se produit, également en avril 1583, avec les Tagliaferro, responsables de la mort de Vincenzo Luchete. Se fondant sur la coutume et les statuts, le Consulat parvient à envisager des solutions qui relèvent de la justice réparatrice, l'ordre de la paix étant souhaité par tous, reposant soit sur la rédaction d'un acte de réconciliation, soit sur le versement d'une somme d'argent qui constitue un dédommagement négocié entre les parties, soit sur les deux. Aussi, dans la *Prattica Criminale* publiée en 1622, le chancelier vénitien Lorenzo Priori, actif dès 1570 dans les chancelleries des villes de la Terre Ferme, au service des patriciens élus podestats, écrit que:

> […] *i liberati et assolti non possano ritornar nella città o luogo di dove fossero stati banditi se non haverà la* ***carta della pace dell'offeso*** [nous soulignons]*, et havuta non possa né anco in essa andare se non dopo finito il tempo di quel rettore che l'haverà bandito* [...]*. Et per quella legge 1540 18 decembre il bandito non si può liberare se non sei mesi dopo quel reggimento che l'haverà bandito, et conviene anco havere la* ***carta della pace con l'offeso*** [nous soulignons]*, legge 1568 12 ottobre* (Priori, 2004, 62, 64; Marcarelli, 2004; Menegon, 2004).

L'affaire de Pietro Bartolomei est révélatrice de ces résolutions admises par le tribunal vicentin. Quoiqu'il ne soit pas possible de connaître les détails de l'homicide perpétré par Pietro Bartolomei, originaire de la localité de Valle Tosina, on apprend que celui-ci est absous le 11 avril 1573 et doit payer une somme de cent livres: « *Absolvatur a poena homicidii et pro excessu in libris centum parvorum Magnificae Comunis quarum quarta pars ex arbitrio et hoc ante quod exeat ex carcere* » (BCBVi, AT, SC, *Libri dei Banditi*, 1106, f° 14v°). Il est probable que les protagonistes se soient réconciliés, moyennant le versement d'une somme d'argent à la partie lésée, comme c'est sans doute le cas, le même jour, pour le noble Giovanni Capra, fils de l'homme de loi Alessandro, membre du Collège des Juges, dont « *soluta fuit post publicationem in contatis ut in autentico* […] *Joannes Capra quondam spectabilis legum doctoris domini Alessandri excusatus, in libris centum parvorum Comuni Vincentiae quarum quarta pars pro toto excussu ex arbitrio* » (BCBVi, AT, SC, *Libri dei Banditi*, 1106, f° 15r°). Le cas des frères Antonio Maria et Andrea Branzi Loschi, fils du noble Marcantonio, s'avère également instructif à cet égard: le 30 janvier 1583, ces derniers sont inculpés de voies de faits contre un autre noble, Giuseppe Fracanzan, à l'encontre duquel ils nourrissent de la haine (« *odium* »). Ils sont tenus de régler la somme de trois cents livres, que leur père Marcantonio se charge d'acquitter, destinée à la Commune de Vicence, car la sentence a été commuée en peine pécuniaire, donc atténuée, en raison de la paix conclue entre-temps (BCBVi, AT, SC, 1138, f° 273):

> *Antonius Maria et Andreas fratres filios domini Marcantonii Brantii de Luschis contra quos processum fuit et est per nos et curiam nostram super querella contra eos per viam constituti instituta per dominum Joseph Francazanum et processu super ea formato de eo quod cum predicti querellati* ***odium*** [nous soulignons] *prosequentes in*

dictum dominum Joseph […]. *Antonius Maria et Andreas de Branciis condemnentur in libris tercentis denariorum parvorum insolidum comuni Vincentiae quarum quarta pars applicetur reparationi pontium iuxta partem* ***mitigata pena propter pacem*** [nous soulignons] *pro toto excessu ex arbitrio quas libras tercentas solvere debbeant antequam exeant* [...].

L'affaire instruite le 1er septembre 1584 concerne une autre vengeance commise par les frères Pietro, Parisio, Guerino et Mandricardo de Bavis, de la localité de San Giovanni Illarione, tout comme par Francesco Soprana et Bernardino Birono, qui sont bannis et condamnés à dédommager Giovanni Carlotto, le fils du défunt, ainsi que Zeno et Domenico Carlotto (BCBVi, AT, SC, *Libro dei Banditi*, 1107, f° 4r°). Les six inculpés sont donc

perpetuo banniti de Vincentia, Padua, Verona, Tarvisio et suis districtibus a Plavi et Mintio citra et de inclita Civitatis Venetorum et Ducatu ***pro homicidio insidioso et appensato comisso*** [nous soulignons] *et si pervenerint quod decopentur et eorum cadavera in quattuor partes dividanda appendendas super furcis locis solitis et salvis promissis insolvendis ad dandum filio Joannis defuncti ducatos centum correntes et Zeno et Domenico Carlotto ducatos 50 pro quoque pro eorum iniuria, damnis, salvo iuro procedendi contra alios liquidendos.*

Les affaires de vengeance sont peu explicitées dans les registres du Consulat: l'indication de « *mandante* » permet pourtant de relever l'existence de ce type de crime très diffus au XVIe siècle. Ces cas ne sont pas publiés, lorsque les prévenus se présentent spontanément en prison (« *se personaliter carceribus presenterunt* »): il en va ainsi du « *mandante* » Gasparo Cribele, de Lorenzo Cribele et de Girolamo Zupega, deux « *mandatarii tutti de Zossan districto de Vicenza* » (BCBVi, AT, SC, *Libro dei Banditi*, 1106, f° 44r°), accusés d'« *homicidio apensato*». De façon analogue, le 31 janvier 1587, les frères Giovanni, Gasparo et Giovan Maria Lorenzoni sont qualifiés de « *mandates* », tandis que les frères Mioto et Giovanni Zamfrati, les frères Battista et Andrea Mallosi, et Stefano Pazzola sont les cinq « *mandatarii* » d'une vengeance qualifiée d' « *homicidio apensato et convincto* » (BCBVi, AT, SC, *Libro dei Banditi*, 1106, f° 52r°).

Dans le cadre coutumier et statutaire, même les actes les plus violents, ayant provoqué la mort, peuvent donc être résolus à l'amiable entre les parties concernées, grâce à un compromis qui conduit le notaire à officialiser la pacification obtenue en rédigeant un document: ainsi, le 20 juillet 1564, les frères Andrea et Battista Zanco, fils de Bartolomeo, « *non fuerunt publicati quia Andreas* ***habuit pacem*** [nous soulignons] *et solverunt actum* ». Andrea est banni initialement pour une durée de trois ans de Vicence et de son territoire, de la ville de Bassano et pour trois mille au-delà des confins. Cependant, la paix ayant été scellée, il est décidé qu'Andrea Zanco « *sit absolutus a banno* », grâce au règlement d'une somme de 50 livres pour l'offensé, lequel doit également recevoir cent livres de Battista (BCBVi, AT, SC, *Libri dei Banditi*, 1105, f° 10v°). La recherche de la paix s'avère essentielle comme le prouve, par exemple, le 22 septembre 1565, Giuseppe Sutoris, fils de « *messer* » Michele, de Vicence, qui est condamné à un bannissement de trois ans, à un

emprisonnement de trois mois et à une récompense (*taglia*) de 25 livres, l'inculpé pouvant se libérer de sa condamnation à la condition de conclure un acte de paix avec Gasparo Cremona, le père du défunt Stefano, et de lui remettre 50 ducats en or (BCBVi, AT, SC, *Libro dei Banditi*, 1105, f° 28v°): « *bannitus de Vincentia et vincentinu districtu et de Bassano ac de aliis locis per annos tres proximos futuros et donec ad penam carceris per menses tres et iterum revertatur cum talea* [prime pour la capture] » de 25 livres, « *cum declaratione predictus Joseph possit se liberare a banno predicto* ***habita pace*** [nous soulignons] *a Gaspare Cremona patre Stephani defuncti solvendo eidem ducatos quinquaginta auri* ». La mention du banni Giuseppe Sutoris est biffée du registre du Consulat le 24 septembre 1568, car la durée de la condamnation a expiré: l'inculpé peut désormais être intégré dans sa communauté.

Sous le « *reggimento* » du podestat Andrea Dolfin, Alvise Trissino, fils de Pietro, et Battista, son « *carocerius* », sont inculpés le 23 décembre 1586 d'une agression commise contre Raimondo Paltono, le nom du noble vicentin ayant été biffé le lendemain du registre du Consulat, en raison de la pacification réalisée avec la partie adverse (BCBVi, AT, SC, *Libro dei Banditi*, 1107, f° 51v°):

> *Quod dictus Aloysius sit banitus de Vincentia et vincentinus districtus et de Bassano et eius territorio et per tria milliaria ultra confines bassani et de quattuor locis per annos quinque; et sit extra protectionem et possit impune offendi, et si conductus fuerit stet clausum in carcere per menses tres et postea revertatur ad banum tunc incepturum et solvat captoribus libros 25, et salvis promissis condemnetur in ducatis centum per ipsum dandis Domino Raimondo Paltono pro eius iniuria quos solvat antequam exeat ex carcere cum declaratione quod secuta* ***pax inter ipsos*** *quod* ***intelligatur absolutus a dicto banno*** [nous soulignons] *et banitus tantum modo per annum de Vincentia et burgis ad penam carceris per mensem, et contra Baptista ultrascriptus non procedatur.*

Le registre mentionne l'arrangement accompli au nom de la justice et de l'ordre, hors des salles du tribunal, Alvise Trissino s'étant engagé à faire la paix avec la victime Raimondo Paltono:

> *Cancellatum nomen et bannitum contrascripti Domini Aloysii Trissini mandata clarissimo potestatis* [Andrea Dolfin] *ita comittere suo excellentissimo domino vicario ex relatione Philomeni per et hoc* ***stante pace secuta intervenientem dictum dominum Alyosium*** [nous soulignons] *ex una et Raymondum Paltronum ex alia ut constat instrumento rogato per Dominum Benedettum Bascianum notarium publicum sub die 24 mensis septembris.*

Fidèle à la négociation et à la préservation des hiérarchies sociales, le Consulat prononce ainsi des peines qui sont souvent modifiées au fil du temps: c'est par exemple le cas de Giovanni Caltran, fils de feu Pietro, « *vincentinus civis dictus Nodarin* », qui est signalé dans les registres du tribunal le 3 août 1585, puis le 2 septembre 1598 (BCBVi, AT, SC,

Libro dei Banditi, 1107, f° 19v°). Le 3 août 1585, Giovanni Caltran et Agostino, fils de feu Gregorio de Agostini, surnommé Merlo, de la localité de Caltrano, sont condamnés au bannissement pour une durée de douze ans ou à l'emprisonnement en cas de capture et, dans ce cas, avec la promesse d'une prime de 50 livres pour ceux qui les appréhendent; à une somme de 150 ducats à régler à l'une des deux victimes, Giacomo, et de 25 ducats destinée à Pietro Rancio, « *similiter offenso* », avant de sortir de prison:

> *de Vincentia et vicentino districtu et per 15 miliaria ultra confines et de aliis terris et locis per annos duodecim ad poenam carceris* ***cum talia libras quinquaginta danda captoribus*** *et salvis promissis in ducatis centum quinquaginta currantibus pro ipsos in solidum dandis Giacomo offenso, et similiter in ducatis viginte quinque in solidum solvandis Petro Rancio similiter offenso pro eorum iniuriis, damnis et quas condemnationes solvere deberant* ***ante quam exeant ex carceribus*** [nous soulignons].

Finalement, le 2 septembre 1598, sont biffés du registre le nom du contumace Giovanni Caltran et la mention de la peine, « *cancellatum nomen et bannitum contrascripti Joannis Caltrani in executione mandati clarissimi domini potestatis* », alors que figurent les indications relatives à son bannissement perpétuel, sous peine de mort en cas de capture à l'intérieur des terres dont il a été exclu: « *perpetuo bannitus de Vincentia et vincentino districtu et per 15 miliaria ultra confines et de inclita Civitate Venetiarum et Ducatu et de aliis terris et locis ad poenam capitis per homicidio puro* », la pacification n'ayant pas été réalisée (BCBVi, AT, SC, *Libro dei Banditi*, 1107, f° 24r°). Il arrive aussi que soit rayé le nom du prévenu si celui-ci se présente spontanément à la justice et effectue sa défense, avant même la diffusion du mandat du podestat qui le cite à comparaître: le 17 novembre 1584, Francesco Zambonini, surnommé Cechon, fils de feu Bernardino, originaire de la localité de Quinto, est inculpé d'homicide pur, mais le mandat n'a pas été « *publicus quia ante publicationem fuit* [Francesco Zambonini] *detentus et admissus ad faciendum deffensiones suas* » (BCBVi, AT, SC, *Libro dei Banditi*, 1107, f° 8r°). Néanmoins, quelques semaines plus tard, le 5 décembre, après avoir pu se défendre et avoir subi les interrogatoires, sa peine est fixée, le Consulat ayant décidé que Francesco Zambonini soit envoyé à Venise, puni de la peine des galères pour trois années consécutives et, en cas d'inaptitude, emprisonné durant six mois, avant d'être banni définitivement: « *Venetias ad serviendum super trimeribus condemnatus in compendibus per remiga per annos tres continuos et sine erit habilis quod stet clausus in carcere reato per menses sex et postea sit bannitus perpetuo de Vincentia et districtu 15 miliaria 4 locis Civitatis Venetorum et Ducatu cum pena carceris* » (BCBVi, AT, SC, *Libro dei Banditi*, 1107, f° 10r°).

CONTRÔLE SOCIAL, RITES JUDICIAIRES ET AUTORITÉ DE L'ÉTAT

Les peines prononcées par le tribunal vicentin dans la seconde moitié du XVI^{e} siècle ne sont pas nombreuses: on compte l'amende pécuniaire, les galères, l'amputation, la peine capitale. La condamnation aux galères est préférée à la peine de mort, aux ampu-

tations, aux expositions publiques, mais c'est en réalité le bannissement (perpétuel, à durée déterminée, *ad inquirendum*), lié au système coutumier de la vengeance, qui est le plus souvent infligé, dès lors que le prévenu est déclaré contumace. Cette propension à bannir s'affirme dès la loi du 15 mai 1545, approuvée d'abord par le Sénat, puis par le Grand Conseil, cette peine étant considérée comme « extraordinaire » par les juges qui peuvent agir selon l'*arbitirum*, lorsqu'il y a des circonstances atténuantes ou des doutes susceptibles d'innocenter le prévenu (Viaro, 1980).

À l'instar de ce qui se produit ailleurs en Italie, le prévenu peut se présenter avant la sentence définitive de condamnation au bannissement, obtenir l'annulation de celle-ci et se disculper, en ayant réglé au préalable une peine pécuniaire (Cavalca, 1978, 169). La prudence caractérise le bannissement, les présupposés pour sa validité étant la notification au prévenu en mains propres et, en l'absence de celui-ci, à son domicile (Cavalca, 1978, 172-173): à cette occasion, il est nécessaire de spécifier le crime attribué, répéter que le prévenu, cité à comparaître, ne s'est pas présenté dans les délais prescrits et indiquer la peine que le fugitif encourt s'il est capturé. Le dernier acte de la procédure d'expulsion est la signalisation du contumace dans un registre approprié, qui est tenu par le Consulat de Vicence, car tous doivent savoir qui a été banni, le podestat, de son côté, faisant figurer le nom du fugitif, la cause du bannissement, le montant de la somme de la condamnation et mettre à la disposition du groupe dirigeant la liste des accusés contumaces.

Instrument de lutte politique et de contrôle social, le bannissement constitue un langage implicite de la vengeance et implique les valeurs à la fois de justice réparatrice, favorable à la victime et contraignant l'offenseur à réparer le tort causé, et de justice punitive, expression du pouvoir central qui ignore les alliances et les factions nobiliaires citadines. Aussi cette peine doit être comprise comme un outil destiné à établir une trêve, afin que les groupes en litige parviennent à un accommodement. C'est seulement après cette phase de discussion et, partant, de négociation, suivie de la paix, que le Consulat reconnaît au banni le droit de réintégrer la communauté dont il a été exclu. Dans le cadre du système vindicatoire, la résolution assurée par le tribunal local, qui aspire à sauvegarder les valeurs nobiliaires traditionnelles et à maintenir les équilibres sociaux, se trouve traduite par la peine de bannissement, l'exclusion du bandit, la possibilité de tuer le fugitif qui cherche à retourner dans le territoire interdit, la négociation et la conclusion d'une paix, qui offre au condamné la garantie de revenir à Vicence et dans son territoire, dans un environnement social en principe apaisé.

Qu'il soit perpétuel ou provisoire, le bannissement traduit les exigences de la justice pénale et le rôle d'équilibre qu'il convient d'établir entre la victime et l'inculpé. La peine la plus sévère est le bannissement perpétuel de l'ensemble de l'État vénitien, ainsi que de tous les navires, qu'ils soient armés ou désarmés (« *tam parte terrae quam maris et naviliis armatis et ex armatis* »). Aussi bien à Venise qu'en Terre Ferme, le contumace qui, cité à comparaître, ne se rend pas en justice pour répondre de ses actes, est tenu pour coupable, ce qui, dans un premier temps, justifie de la part des autorités judiciaires le bannissement perpétuel et la peine capitale comme le souligne, dans la *Prattica Criminale*, le chancelier vénitien Lorenzo Priori (Priori, 2004, 57):

Quando non si potesse havere il reo nelle prigioni et, proclamato, né anco egli si presentasse, ma restasse assente e contumace, con tutto che per general consuetudine et prattica, mentre che vi siano inditii sufficienti a transmettere la citatione, si potria bandire diffinitivamente con pena della vita, attento che li assenti et contumaci si hanno per la forma de i statuti per confessi et convinti senz'altre legitime prove [...]. *Ma nel Stato di questo Serenissimo Dominio, confrontandosi pure in certo modo con dette leggi* [les lois impériales et civiles], *si osserva in prattica che restando il reo contumace, convinto però in processo del delitto per testimonii o per inditii prossimi al fatto di modo che il giudice con buona conscientia per dette prove o inditii prossimi congionti con la contumacia, la quale è una tacita confessione del delitto, possa condannare il reo alla diffinitiva, può esser punito alla detta diffinitiva, et tanto maggiormente quanto che per la forma del statuto s'havessero i rei assenti per confessi*.

C'est ce qui se produit le 13 novembre 1586 pour Sacripano Bertolini, fils de Giovan Battista, de la localité de San Vito, inculpé d'homicide prémédité et déclaré contumace. Son absence le rend coupable aux yeux de la justice et le bannissement perpétuel est infligé (BCBVi, AT, SC, *Libro dei Banditi*, 1107, f° 47v°):

Alias sub die 19 septembris [1586] *signatus in bano perpetuo de Vincentia et vincentinu districtu et per XV milliaria ultra confines de Inclita Civitatis Venetorum et Ducatu et de quattuor locis pro homicidio cum malis qualitatibus comisso in personam Pompilii filii Jacobi Brixa et ut in dicta signatura et non publicatus, stante fide etiam et nunc repositus quia fuit intimatus ad se defendendum et* ***fuit contumax****, confirmetur in dicta signatura* ***banni perpetui ad penam capitis*** [nous soulignons].

Il existe une distinction entre les bannis en contumace, qui entrent dans le cadre de l'autorité ordinaire des recteurs (exclusion de la ville, du territoire et de quinze mille au-delà des frontières), et ceux qui sont exclus de l'ensemble de l'État vénitien – en l'occurrence de Vicence, Padoue, Vérone et Trévise et de leurs territoires, ainsi que des quatre lieux Gambarare, Oriago, Lizzafusina et Bottenigo (Priori, 2004, 60) –, une mesure qui témoigne de la volonté du pouvoir central, à travers le Conseil des Dix, de punir en faisant intervenir une instance judiciaire qui n'est pas locale; entre les bannissements à durée déterminée et ceux perpétuels qui concernent également la ville de Venise et le *Dogado*.

Les décisions adoptées par le groupe dirigeant vénitien sont destinées à favoriser, à encourager et à maintenir la paix dans les villes et les territoires assujettis. La juridiction des cours locales, en l'occurrence celle du Consulat vicentin, s'avère donc, en matière de bannissement, d'une extrême importance, l'objectif étant double: il s'agit d'une part d'exiler ceux qui menacent la tranquillité de la communauté; d'autre part, de rétablir la paix là où elle a été rompue. Fondée sur la discussion concernant le sort du banni, accepté par les deux parties, une telle démarche est soutenue par le tribunal local qui exprime les intérêts du groupe dominant et la volonté de contrôler les affaires publiques, quelles qu'elles soient (administratives, politiques, judiciaires). Dans l'in-

tention de rendre effective l'autorité judiciaire du tribunal, les statuts citadins prévoient que les bannis peuvent être tués en toute impunité ou être libérés en tuant d'autres bannis, afin d'assurer le respect des trêves acceptées par le tribunal local, de réduire les tensions interfamiliales et de négocier les actes de paix. Le système vindicatoire informel, dicté par les règles de la coutume et de la négociation, et celui formel des institutions judiciaires, médiatisé et géré par les juristes rassemblés dans le collège homonyme, se trouvent unis, au nom de la paix et de l'ordre public, dans leurs efforts pour réprimer les violences (Povolo, 1997, 2004, 2007, 2015b; Faggion, 1998, 2002, 2007). De façon similaire, la pratique du bannissement s'intègre dans ces deux systèmes et est appréhendée à travers les rites judiciaires qui constituent des garanties de défense pour l'inculpé: la défense *per patrem*, le sauf-conduit et le bannissement *ad inquirendum*. La défense *per patrem* permet au père du banni de se présenter en justice à la place du fils, d'expliquer l'acte commis et de reconnaître la responsabilité de ce dernier, dans le cas d'un homicide pur, dû à la légitime défense, selon une mesure adoptée par le tribunal vénitien de la Quarantia criminal le 27 août 1533 « *et in altri tempi* », comme le décrit Lorenzo Priori (Priori, 2004, 45):

> *Il padre per il figliuolo è ammesso a difendere la causa del figliuolo, conforme a molte decisioni in simili casi seguite nell'eccellentissimo Conseglio di 40 al criminal, 1533 27 agosto et in altri tempi, ammettendosi detto padre non come procuratore, ma* ***per il proprio suo interesse*** *et* ***per delitto solamente puro*** *et* ***commesso a necessaria difesa*** [nous soulignons]*, et che havesse esso padre legitimo et special mandato dal figliuolo di poter a nome suo confessare il delitto.* [...] *Et se fosse provato dal padre che l'homicidio fosse seguito a caso o necessaria difesa, all'hora il giudice secondo la qualità delle prove può dar un bando a tempo al reo come li paresse per conscientia: ma se altrimenti fosse provato, si bandirebbe in perpetuo con pena della testa o della galera in caso di contraffatione de' confini.*

À l'instar de la défense *per patrem*, l'usage du sauf-conduit joue un rôle important dans la négociation et et offre au prévenu la possibilité de se justifier, d'alléguer une circonstance atténuante et d'éviter une peine sévère. L'attribution du sauf-conduit permet au prévenu de bénéficier de garanties qui concernent l'acte répréhensible et son caractère divisible, comme le prouve la distinction entre homicide pur et homicide prémédité (Priori, 2004, 39-40):

> *Divisibile s'intende quando il delitto principale sia congionto con altro delitto di diversa specie, et che per* ***detta qualità o specie di delitto si alterasse la pena del principale*** *et che il* ***reo fosse degno di diversa et separata punizione*** [nous soulignons]*. Come in essempio sarebbe se uno commettesse homicidio pensato: essendo la pena del pensamento più grave per l'alterazione del delitto più di quella dell'homicidio puro, questo reo può separar questo delitto, et come divisibile dimandare il salvocondotto per la qualità del puro et presentarsi per la qualità del pensamento* [...]*. Si è ben veduto et in prattica osservato che per l'homicidio commesso con schioppo*

il reo prende salvocondotto dell'homicidio et si presenta per la qualità del schioppo, rispetto che la pena dell'archibuggio, stante le leggi, è maggiore et più grave di quella dell'homicidio puro.

En revanche, le sauf-conduit n'est pas accordé si l'acte commis n'est pas divisible:

Ma se il delitto non fosse divisibile, cioè che non fosse congionto con altro maggior delitto, all'hora et in tal caso non se gli concede salvocondotto, essendo che sarebbe cosa ridicolosa di uno che fosse imputato di stronzatore di monete o di fabricarle che egli volesse salvocondotto che non havesse instromenti tali per commetter questo delitto, o fosse imputato d'homicidio et che volesse salvocondotto ch'egli non havesse arme [...].

L'évaluation est ainsi effectuée entre un acte grave (par exemple, « *homicidio doloso* », « *homicidio pensato ex proposito* », « *homicidio commesso ex insidiis* », « *homicidio proditorio* », « *homicidio per assassinio* ») et un autre commis fortuitement ou sans préméditation (« *homicidio a caso* », « *homicidio culposo* »). L'affaire de Lelio Trissino, appartenant à la branche des « Panensacco », inculpé d'homicide en 1583 et d'un second perpétré en 1581 qui est mis en lumière grâce à l'enquête, aide à dégager comment opèrent les justiciables et les acteurs de la justice citadine (Povolo, 2004, 2007; Faggion, 2002, 2007): le procès est ouvert par le Consulat qui travaille dans l'intérêt des élites locales. Le noble vicentin et deux autres complices, qui sont tous contumaces, obtiennent de la justice un sauf-conduit les autorisant à se présenter au tribunal citadin et à ne pas être soumis à d'autres chefs d'inculpation. Les interrogatoires sont conduits *de plano*, ce qui leur permet de ne pas subir d'objections du juge chargé de l'affaire. Lelio Trissino dispose également d'une « *piezaria* », une caution fournie par une tierce personne qui l'autorise dès lors à se défendre, mais les proches des victimes demandent au podestat de Vicence de ne pas accepter que l'affaire soit instruite par le Consulat, « *perché messer Lelio ha molti parenti et molti mezzi* ». C'est la raison pour laquelle le procès est ensuite remis à une magistrature de la capitale, l'Avogaria di Comun dont les objectifs ne correspondent pas à ceux des élites urbaines, préoccupées de préserver les hiérarchies sociales existantes. La même *Casa* aristocratique est concernée, aussi en 1583, par une autre affaire retentissante, impliquant cette fois Marcantonio qui lave l'honneur de son père Ciro, assassiné en 1576, en tuant son cousin Giulio Cesare. Dans cette affaire, les proches – Ippolita, la mère de Giulio Cesare, et l'oncle de ce dernier, Francesco –, écrivent une supplique à la Seigneurie de Venise, afin que l'affaire soit instruite par la Quarantia Criminal (Povolo, 2015a). Mais, défendant ses privilèges ancestraux et son tribunal, qui soutient les vengeances et la recomposition des conflits nobiliaires, l'aristocratie vicentine n'accepte pas que le dossier échappe à son autorité. En dépit de l'opposition manifestée par la ville de Vicence, le cas est délégué au podestat de la ville de Padoue et à sa cour prétorienne, selon la procédure « *servatis servandis* », qui prévoit dès lors le strict respect des procédures traditionnelles, le Consulat vicentin étant exclu de l'instruction du procès et du jugement. À l'instar de Lelio, Marcantonio

Trissino dispose d'un sauf-conduit qui, selon le caractère divisible du crime, lui permet d'être jugé uniquement pour les circonstances aggravantes de l'homicide prémédité (« *pensamento* »): celles-ci faisant défaut, le noble prévenu peut être libéré et se présenter à nouveau pour un simple homicide (homicide pur), une démarche destinée à favoriser la négociation et la paix. Marcantonio Trissino est condamné le 11 juillet 1584 à la relégation dans la ville de Bergame pour une durée de quatre ans, puis au bannissement perpétuel des territoires situés entre les fleuves Mincio et Piave.

Le bannissement *ad inquirendum* est prononcé uniquement dans le cas de délits graves –« *quando il reo non fosse convinto (come è detto) ma inditiato* » (Priori, 2004, 58) –, lorsque le prévenu est contumace et que les juges n'ont pas assez d'indices sur la culpabilité du fugitif. Dans ce cas, les recteurs ont la possibilité, et non l'obligation, en cas de capture du banni, de le soumettre à la torture pour découvrir la vérité. Le délai relatif à cette peine est de seize mois, une fois le mandat du recteur notifié, selon une loi du Sénat du 15 octobre 1504, délai prolongé ensuite à deux ans le 18 juin 1524 (Priori, 2004, 58). Disposant de vingt-quatre mois pour revenir à l'intérieur du territoire dont il se trouve exclu, sauf dans la ville de Venise qui lui reste interdite –, afin de répondre aux accusations, d'ajouter des éléments au procès susceptibles de le disculper ou d'atténuer la peine, le banni ne peut pas être attaqué en toute impunité comme c'est le cas pour les autres prévenus. S'il est appréhendé par la justice ou s'il s'est présenté au cours du délai prescrit, le procès continue, mais l'absence de sa présentation constitue un indice autorisant l'emploi de la torture. En revanche, si le temps de la condamnation s'est écoulé, le bannissement devient définitif et s'étend à l'ensemble de la République, avec l'alternative de la mort (Priori, 2004, 58):

> […] *si bandisce ad inquirendum secondo la legge 1524 18 giugno che riforma quella del 1504 15 ottobre, così nel tempo come ne i delitti, perché quella voleva che i rei havessero tempo di presentarsi di mesi sedici et comprendevano anco i casi puri, et questa dà tempo di doi anni et vuole che nei casi attroci et pensati si possi venire a questo bando chiamato ad inquirendum che non è altro che bandire questo assente di quel luogo, territorio et per quindici miglia oltre i confini*.

Le 3 décembre 1585 sont publiés les mandats concernant Francesco Polga, les frères Giovanni et Giacomo Manduli, de la localité de Thiene, et Agostino Botanino. Étant contumace, celui-ci est condamné à verser 1000 livres et au bannissement perpétuel de Vicence, Padoue, Vérone et Trévise et de leurs territoires, « *a Plavi et Mintio citra* [les fleuves Piave et Mincio] *et de quatuor locis* ***ad inquirendum*** [nous soulignons] *pro homicidio apensato* ». Quant aux trois autres prévenus, ils sont relaxés (BCBVi, AT, SC, *Libro dei Banditi*, 1107, f° 27v°). La sentence prononcée s'avère donc provisoire dans l'attente de saisir le prévenu, devenu fugitif – donc banni par les autorités judiciaires –, et de le soumettre à l'interrogatoire et à la torture: ainsi, le 27 septembre 1586, Francesco Palo de Padoue, Bartolomeo Becari, surnommé le « *Sordo* » (le Sourd) et Battista Molendinari de Malò sont astreints à une amende de 1000 livres et « *banniti de Vincentia, Padoa, Verona, Treviso et suis districtibus a Plavi et Mintio citra et de Alma Civitate Venetorum et Ducatu*

quatuor locis ***ad inquirendum*** [nous soulignons] *homicidio apensato* » (BCBVi, AT, SC, *Libro dei Banditi*, 1107, f° 45v°).

Cependant, les dispositions prises par le pouvoir central, le Conseil des Dix, contrarient la gestion des conflits locaux par le Consulat. L'intervention du gouvernement vénitien se fonde sur un processus qui brise le système réparateur privilégié par les élites et les tribunaux du *Dominio*, et les pratiques judiciaires locales: deux périodes peuvent être retenues, la première inaugurée par la loi de 1549 et la seconde par celle de 1580, qui marque un tournant décisif dans la lutte contre la criminalité, le banditisme et le vagabondage dans la République de Venise et la mise en place d'une justice punitive imposée par le Conseil des Dix qui empiète sur l'autorité ancestrale des tribunaux citadins.

Les lois promulguées mettent à jour la politique répressive menée par le pouvoir central tout comme les ambiguïtés et contradictions des dispositions prises dès la seconde moitié du XVI^e^ siècle (Povolo, 1980, 1986, 2016). En juillet 1549, le Conseil des Dix décide en effet de suspendre la possibilité, autrefois reconnue aux bannis, de pouvoir se libérer de leur peine en tuant ou en capturant d'autres bannis dans la juridiction dans laquelle ils ont été jugés. Plusieurs fois reprise – notamment le 31 octobre 1569 –, suspendue, puis reproposée avec des ajouts et modifications, la loi de 1549 fait débuter en Terre Ferme une politique de la suspension: destinée à être appliquée de façon provisoire (durant deux ans), elle est maintenue jusqu'en 1555, ensuite suspendue et réintroduite en 1580, le Conseil des Dix se chargeant désormais du bannissement pour tout l'État. Au cours de ces périodes de suspension, les tribunaux citadins, comme le Consulat de Vicence, reprennent leur autonomie à l'égard du pouvoir central, et le système fondé sur les liens entre la vengeance et les institutions judiciaires locales est à nouveau effectif.

Pourtant, déjà le 30 août 1531, le Conseil des Dix avait décrété que tous les bannis surpris

> *in loco a loro prohibito per la forma della sententia loro* [...] *possino essere impune offesi e morti* », ainsi que « *offeso e morto* », celui qui leur offre l'hospitalité, « *perché le spalle, e i favori che da altri hanno questi banditi sono le cause che li danno core e li mantegono nella disobbedientia, per la quale tanti maleficii e con tanta facilità sono da loro perpetrati* (Leggi criminali del Serenissimo Dominio Veneto, 30–31).

Une autre loi, adoptée le 18 août 1541, interdit les réunions de « *gente armata al numero quattro, e da lì in sù* », l'obligation étant de les dénoncer avec la promesse d'une récompense pour la capture ou le meurtre des individus poursuivis (*Leggi criminali*, 38-39). Les affaires d'homicide, en nombre croissant dès la seconde moitié du XVI^e^ siècle, explique la sévérité du groupe dirigeant vénitien qui cherche à éradiquer le phénomène du banditisme et à contrôler l'activité judiciaire des tribunaux de la Terre Ferme (Povolo, 1986, 2016). Les lois promulguées dès les années 1560 – notamment celle du 16 décembre 1560 (« *Della pena delli assassini et altri che commetteno delitti attroci trovati inflagranti crimine. Et del beneficio di quelli che li ammazzano o prendono vivi* », *Leggi*

criminali, 50) –, permettent de tuer n'importe quelle personne prise en flagrant délit en se fondant sur des instruments de répression tels que l'attribution d'une prime, la libération de son propre bannissement, l'impunité accordée à un banni qui tue un de ses complices: en septembre 1561, deux lois se rapportent aux bandits qui n'hésitent pas à entrer dans les territoires qui leur sont pourtant interdits; en novembre 1561, le Conseil des Dix cherche à affaiblir et à contenir la loi du 16 décembre 1560, et ne donne plus la possibilité aux bannis « *diffinitivamente et in perpetuo* » de se libérer du bannissement et d'en tuer un autre, limitant une telle mesure aux seuls bannis pour cause d'homicide (« *per homicidio puro ovvero a tempo* »). En février 1562, l'emploi et le port de certaines armes sont prohibés; en septembre 1567, la loi de 1560 est à nouveau modifiée, le mot « atroce » ayant été inséré. En décembre 1570, il est permis aux bannis et aux personnes incarcérées de pouvoir commuer leur peine avec celle de la galère, seulement s'ils ne se sont pas rendus coupables de « cas atroces ».

Quoique le nombre de magistratures pouvant imposer une prime pour la capture des bannis soit élevé, seul le Conseil des Dix, dès 1549, dispose de fonds pour payer ceux qui aspirent à obtenir une prime (*taglia*) pour appréhender ou tuer un fugitif: la récompense se fonde sur la libération d'un bandit tenu pour coupable d'un acte moins grave que le sien (Basaglia, 1985). La faculté de se « libérer du bannissement » – « *liberar bandito* » dans le cas d'un homicide pur pour des bannis à durée provisoire –, figure comme l'un des éléments les plus caractéristiques du système judiciaire qui se développe dans la République de Venise au cours du XVI^{e} siècle. Il s'agit, à l'origine, d'une mesure exceptionnelle, d'abord réservée aux officiers qui parviennent à arrêter ou à tuer un banni pour « cause atroce », ainsi qu'aux bannis qui veulent se libérer d'une telle condamnation, limitée à ceux qui sont accusés d'homicide pur.

Nombreuses et souvent contradictoires, les dispositions prises par le pouvoir central suivent les mécanismes du système vindicatoire et contribuent à suspendre la légitimité des statuts et leurs dispositions internes, adoptées dans les conseils municipaux. La loi du 20 juillet 1580 « *liberare il bandito* », due au Conseil des Dix, casse définitivement celle promulguée en 1549 et parvient à occulter les liens traditionnels existant entre la logique de la vengeance et le bannissement, celui-ci s'étendant à toute la République.

CONCLUSION

Grâce aux rites judiciaires (sauf-conduit, défense *per patrem*, bannissement *ad inquirendum*), le Consulat vicentin se distingue au XVI^{e} siècle par une pratique du contrôle social et de la défense du prévenu, une pratique qui se veut réparatrice, destinée à préserver les valeurs de la *Respublica* citadine, ainsi qu'à sauvegarder le système vindicatoire, l'honneur des familles aristocratiques et les hiérarchies sociales existantes: le prévenu est alors entendu et peut faire valoir sa défense dans l'intention d'atténuer la peine. Le pouvoir central, tout en respectant les statuts et privilèges des villes de la Terre Ferme, ne manque pas, dès la seconde moitié du XVI^{e} siècle, face à l'augmentation inexorable des vengeances (*faide*), d'intervenir dans la gestion des conflits, en imposant une politique punitive qui fait fi des alliances, des solidarités et des factions nobiliaires, dont la légiti-

mité repose sur le Consulat et le Collège des Juges. La politique de suspension de la loi de juillet 1549, supplantée par une autre émanant du Conseil des Dix en juillet 1580, de nature étatique et punitive, témoigne de la volonté du groupe dirigeant vénitien d'affaiblir l'autorité des élites urbaines du *Dominio* et d'éradiquer la violence par des mesures qui concernent l'ensemble de la République.

FAJDA IN KONZULAT V VICENZI V DRUGI POLOVICI 16. STOLETJA

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POVZETEK

*Namen prispevka je bil zbrati nasilna dejanja, storjena v italijanski provinci Vincenza v drugi polovici 16. stoletja, torej primere za katere je bilo pristojno mestno sodišče – Konzulat, ki je bil sestavljen iz dvanajstih lokalnih plemičev, od tega štirih konzulov (*consules*), ki so prihajali iz Kolegija sodnikov –* Collegio dei Giudici. *Ti so bili nosilci statutov in plemiške ideologije, kot tudi političnih in kulturnih vrednot* Respublice, *ki so sodili tako v civilnih kot kazenskih zadevah, vedno v prisotnosti župana (*podestà*), beneškega patricija in predstavnikov sodišča (*assessori*). Posvetili smo se različnim načinom sodnega ocenjevanja in presoje storilcev nasilja na podlagi pogajanj in kompenzacije, kot tudi socialnega miru, medtem ko je koncept reda in kaznovanja izvajala Beneška republika, ki je želela prekiniti z lokalnimi tradicijami reševanja sporov. Intenzivni plemiški spori, ki so bili značilni za celinska mesta Beneške republike od 16. stoletja dalje, so bili zatrti s strani urbanih sodnih oblasti, ki so iskale rešitev v običajnem pravu in lokalni zakonodaji, z namenom da bi tako ohranili notranjo družbeno hierarhijo. Na svojo pest je beneška aristokracija skušala izkoreniniti nasilje in kodekse časti preko intervencij sodišč iz prestolnice, Sveta desetih (*Consiglio dei Dieci*) ter Mestne Avogarie (*Avogaria di Comun*), z različnimi rituali, kot tudi z vse bolj strogimi zakoni, ki so jih osrednje oblasti pričele uvajati od srede 16. stoletja. Tako smo prikazali vlogo, ki jo je imelo lokalno sodstvo – osredotočeno predvsem na pomiritev in popravilo škode –, preden so bili nekateri primeri nazadnje predani beneškim sodiščem ali drugim celinskim pretorskim sodiščem (npr. v Padovi). Namen teh je bil zmanjšati logiko maščevalne paradigme in lokalnega reševanja sporov v imenu javnega reda in Republike. Tako nam analiza delovanja konzulata v Vincenzi v drugi polovici 16. stoletja omogoča, da razmislimo o kaznih, ki so bile naložene (trajni izgon, izgon za določen čas, izgon* ad inquirendum*) in razumeti, kako je bila pravica uporabljena s strani različnih akterjev (sodniki, toženci, žrtve) preko pravnih obredov, kot npr. prepustnica, obramba* per patrem *ter izgon* ad inquirendum, *ki so toženi stranki omogočali obrambo ter rešitev spora med strankami – obtožencem, žrtvijo ter vpleteno sorodstvo – v korist miru in ohranitve lokalne družbene hierarhije.*

Ključne besede: Konzulat, konzulu, fajda, običaji, statuti, oprostilno sodstvo, kazensko sodstvo, pravni obredi, izgon, izgon ad inquirendum, *obramba* per patrem, *prepustnica, mir, pogajanje*

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MODERN AGE, ANCIENT CUSTOMS – SETTLING BLOOD IN THE EASTERN ALPS BETWEEN THE LATE MIDDLE AGES AND EARLY MODERNITY

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ABSTRACT

The paper analyses blood feud as a legal custom of the system of conflict resolution in Inner Austria during the transition from the Late Middle Ages to the early modern period. Based on legal customs, common law, and early modern criminal law the analysis is applied to a case of blood (homicide) settlement in Upper Carniola in the 17th century. Two things in particular emerge: the long survival of this legal custom and the tendency of blood feud for peace. Both put Inner Austria in these matters firmly within the broader European legal context.

Keywords: blood feud, legal custom, conflict resolution, peacemaking, Carinthia, Carniola, Styria, Bled, Late Middle Ages, early Modern Period

ETÀ MODERNA, TRADIZIONI ANTICHE – LA RICONCILIAZIONE NELLE ALPI ORIENTALI TRA IL TARDO MEDIOEVO E GLI INIZI DELL'ETÀ MODERNA

SINTESI

Il saggio analizza la vendetta come un sistema giuridico per la soluzione dei conflitti nell'Austria centrale nel periodo tra il tardo Medioevo e gli inizi dell'Età Moderna. L'analisi si basa sulle tradizioni giuridiche, il diritto penale comune e quello degli inizi dell'Età Moderna e viene applicata sull'esempio della riconciliazione (omicidio) nell'area della Carniola dell'Ottocento. Vengono messi in risalto due fatti: la persistente esistenza di tale tradizione giuridica e la tendenza verso la vendetta per ottenere la riconciliazione. Entrambi collocano l'Austria centrale in un contesto giuridico europeo più ampio.

Parole chiave: vendetta, tradizione giuridica, risoluzione dei conflitti, riconciliazione, Carinzia, Carniola, Stiria, Bled, tardo Medioevo, inizi dell'Età Moderna

OVERTURE: PEACEMAKING

In the evening of Shrove Sunday 1654 a fight had broken out among some subjects of the Lordship of Bled, which had left Peter Jakopič severely beaten by the Svetina brothers. He succumbed to his wounds a few days later. It is not attested why the fight broke out. One of the brothers was arrested and imprisoned at Bled castle, while the others managed to flee abroad. The testimonies from the witnesses their father Hanže Svetina presented in court showed that it was unclear who delivered the deadly blow. Two weeks later the Svetina and Jakopič families had settled the homicide. The culprits' father made lasting peace with the victim's whole kin, which brought an end to their enmity (blood feud). As part of the peace, composition had been paid to Jakopič's widow and child (weregild), as well as the lordship. The settlement allowed the youngest of the fugitive brothers to return home immediately, while the other two had to remain in exile for a year and a day. After that they were allowed to return to their homes and continue to live there in safety (ARS, AS 721, kn. 20 (1652–1655), 10 and 25 April, 1654).

INTRODUCTION

These brief, yet meaningful lines from one of the protocols of the patrimonial and provincial court[1] in Bled, an estate belonging to the Bishopric of Brixen in Tyrol (Ribnikar, 1976, 7), attest to the existence of blood feuds among Upper Carniolan subjects in the mid-17th century. That is to say that they attest to the peace settlement as an integral part of blood feud. Like feud in general, it was a legal custom of the system of conflict resolution and as such had the tendency to achieve lasting peace. The understanding of this function of the (blood) feud is not a new one, yet historiography has only begun to take it into account following the pertinent findings of ethnology and (legal) anthropology. Their research on more or less egalitarian stateless and pre-state societies from the margins of Europe and other continents came to the result that (blood) feud as the primal legal custom has the tendency to achieve peace and thus maintain social equilibrium. Since the mid-20th century, historiography has been confirming these findings with their successful application to research on European Medieval and early modern communities of all social strata (Büchert Netterstrøm, 2007; Ergaver, 2016, 102–105).

The research has shown that the inclination for peace was just as strong among European Medieval and early modern societies and that, as John Michael Wallace-Hadrill had put it, "[f]euding in the sense of incessant private warfare is a myth; feuding in the sense of very widespread and frequent procedures to reach composition-settlements necessarily hovering on the edge of bloodshed, is not" (Wallace-Hadrill, 1959, 487). The desire to achieve peace

1 The division between the two in (at least) Carniola was not consistently implemented everywhere, leaving many patrimonial courts fused with provincial courts (Kambič, 2005, 209). Three legal authorities shared jurisdiction over the Lordship of Bled: Bled, i.e. its rentiers, the town of Radovljica and the Land Sovereign (Škrubej, 2012, 209, 211–212). Provincial courts (*Landgericht*) had jurisdiction over the unprivileged estates, i.e. burghers and peasants (Golec, 2016, 148).

Fig. 1: Bled in the 17th century (Valvasor, 2017)

existed both among legal experts and laymen of all social classes, from the aristocracy to the lowest of subjects, with codified law and legal customs complementing and supporting each other (Ergaver, 2016, 104). This was a consequence of the so-called European legal revolution, which set off in the 12th century, transferring ancient legal customs into the professional legal sphere by codification, making them part of common law (*ius commune*) (Povolo, 2015, 196–197). This process saw the customs go through certain changes, as the codification did not only legitimize what was written, but also who was to record it. First and foremost however, as William Ian Miller points out, "[i]n those instances in which the law codified well-established patterns of behavior, adherence to the rule would tell us less about respect for the law than about the law's respect for customary behavior". This was especially noticeable in practice as "[t]he will to Law was too strong to be contained to mere laws" (Miller, 1996, 225, 229; cf. Frauenstädt, 1881, 21, 169). Miller's words should serve as a reminder for all legal texts referred to throughout this paper.

Feud as a legal custom of the system of conflict resolution followed the following (ideal) stages or, rather, rituals. A sustained (gifted) injury demanded appropriate requital[2]

2 This exchange of gift and counter-gift in feud is given in the origin of the Slovene word *maščevanje* (vengeance), derived from "exchange" and "that, which stands for exchange" (Snoj, 1997, 327; cf. Lévi-Strauss, 1969, 60). In the late 16th century Hieronymus Megiser translated the German *Rechen* (Latin *vlcisci,* Italian *vendicarsi*; modern German *Rächen*) with the following early modern Slovene words: *se maszhati, se maszhováti* (modern: *se maščevati,* to avenge), *sadovoliti* (modern: *zadovoljiti,* to satisfy, to settle), *osvetuti* (archaic *osvetiti,* to avenge) and *nadomestiti* (same modern, to substitute, to exchange) (Megiser, 1592, [187]). All of these words should also be taken as (customary) legal terms.

(countergift) (cf. Miller, 1996, 182) so that harmony and peace were (re)established between the parties (e.g. kin groups in blood feud) and consequently within the community. This was in accordance with the norms and customs of gift economy (Mauss, 2002). Appropriate requital meant that the violence in feuding was generally (and ideally) limited. When the parties to the conflict did not want to or could not achieve peace among themselves, especially if violence had already erupted, i.e. enmity[3] had been declared, the community intervened to maintain social order and peace. This is mediation. At first by those who had familial or allied ties to both parties in the feud and were, when not embroiled in the conflict themselves, regarded as impartial. If they failed, the community's authorities or legal experts followed, attempting to bring about a settlement. Both mediators and arbiters had to be accepted as such by both parties to the feud. Mediation set the terms for settlement. First, all violence had to cease, i.e. a truce[4] had to be reached. During the truce the parties to the feud had the opportunity to peacefully resolve their conflict. If or when they considered this appropriate and honourable, they brought their enmity to an end and made lasting peace. Peace was additionally strengthened by forging not only friendly (allied) but also familial bonds, i.e. by marriage,[5] brotherhood, or godfatherhood. An integral part of peacemaking was also the payment of composition, either in kind or cash. Blood feud followed the same rituals. Spilled blood had to be requited with blood or composition (weregild) and brought to an end by lasting peace. The parties to a blood feud were the families ("whole kins") of both the victim and the perpetrator and thus it was not necessary for vengeance to be exacted upon the actual perpetrator. Any appropriate target would do: generally only a free adult or adolescent male member of the enemy kin. The threat reinforced the disposition of both parties towards peace. With the inclusion (codification) of (blood) feud into common law, legal professionals (notaries, lawyers, judges) received an important role in settling conflicts, especially in towns and cities, yet could not[6] force the parties to make lasting peace[7]. In cases of homicide, if the perpetrator was a foreign lord or his subject, the role of the victim's family could also be taken over by their lord, as the head of his feudal *familia* (de' Passageri, 1546, f.

3 That enmity (also) stands for feud is most succinctly given in Early Medieval Lombard law, the *Edictum Rothari* of 634: *faida hoc est inimicitia* (MGH, LL 4/I, 45., 20). The same is true for German *Feindschaft* (Frauenstädt, 1881, 167). Consequently, the early modern Slovene word *sovrashtvu* (Megiser, 1592, [71]) (modern: *sovraštvo*, *sovražnost*) is also to be taken as a (customary) legal term (cf. Golec, 2016, 169).

4 Latin also *treuga*, *fides*, German *Treue*, the early modern Slovene translation for both being *vera*, *sveshzhina* (modern: *vera*, *zvestoba*) (Megiser, 1592, [255]; cf. Ergaver, 2016, 111). Thus they should also be taken as (customary) legal terms, even if not necessarily for truce (cf. note 6).

5 This was also used to settle disputes by Upper Carniolan and Lower Styrian subjects, at least until the early 18th century (Kos, 2015, 161).

6 However, this was not necessarily true already by the late Middle Ages. The Antwerp town statute of 1437, for instance, stipulated that peace should only be made in court, from the initial stages to the kiss of peace (Frauenstädt, 1881, 105–108). Nonetheless, even if this should be foremost taken as a normative prescription, it is very telling in how closely the statute follows the rituals of customary settlement.

7 Hieronymus Megiser translated the German phrase *Fried machen* (Latin *pacificare*) as *myriti* (modern: *miriti*) and *Vertragen* (Latin *componere*, Italian *pacificare*) as *správiti* (same in modern Slovene) (Megiser, 1592, [79, 277]). They might have been used for truce as well (peace v lasting peace) (cf. de' Passageri, 1546, f. 158r–159r). It is clear that both words are also to be taken as (customary) legal terms.

147r–159v; Gluckmann, 1955, 1–26; Miller, 1996, 179–299; Mommertz, 2001, 222–247; Darovec, 2016, 14–32; Ergaver, 2016, 106–125; Oman, 2016, 76–91).

The Bled case followed these same rituals. The existence of blood feud and the authorities' (lordship's) "tolerance"[8] for it in the mid-17th century should not come as a surprise. Even though the early modern State was steadily pushing its way into conflict resolution, in practice the ancient legal customs competed with state law and its implementation well into the early modern period. This is especially noticeable with blood feud (cf. Frauenstädt, 1881, 93, 126, 168). Feud in general and blood feud in particular were gradually pushed into "subsidiarity" (cf. Reinle, 2003, 281) by the State throughout the Middle Ages and the early modern period, until it did away with both during this period. The State established itself as the only authority to requite injury, the sole avenger or, rather, punisher. A systematic substitution of the customs of settlement (peace) with the law of punishment (inquisitorial procedure, torture) had begun in the 16th century, yet due to the slow and gradual implementation was not completed before the end of the *ancien régime* (Povolo, 2015, 196–199, 211, 221–227, 230–233). Thus, the "subsidiarity" of (blood) feud must be taken with reserve until well into the early modern period. It was the primary (primal) legal custom, to which the judicial path had been "subsidiary" or, rather, secondary for centuries (Frauenstädt, 1881, 125–134, 168; Althoff, 1997, 60, 87–88, 98). In practice, this perception persisted until the end of legal plurality. Consequently, in the long transitional period, as the Bled case also shows, the sources attest to the co-existence of ancient legal customs and early modern criminal law, with the latter not necessarily dictating conflict resolution.

In the case of blood feud this was early on understood also by German historiography. If not before, then with Paul Frauenstädt's seminal work *Blutrache und Totschlagssühne im Deutschen Mittelalter*, which put special emphasis on blood (homicide) settlement[9] in the "German" part of the Holy Roman Empire in Medieval and early modern times (Frauenstädt, 1881). As William Ian Miller showed (Miller, 1996), another important German work on blood feud is Andreas Heusler's *Das Strafrecht der Isländersagas*, which pointed out the inseparability of (blood) feud and peace (Heusler, 1911). In contrast to feud (*Fehde*), over which (not only) German historiography has spilled seas of ink, especially regarding its legality and legitimacy, whether for the nobility or the subjects, there seems to have been no greater dissent regarding this with blood feud. The fundamental (if quite redundant) question seems to have been, if blood feud and *Fehde*, especially the so-called *Ritterfehde*, had a common origin or not. Regardless of that, even by reading the sources at face value, which was typical of both legal positivists and Otto Brunner (Zmora, 1997, 7), blood feud was acknowledged (a certain) legitimacy, which pertained to all estates. It

8 This „tolerance" was acknowledgement of the custom's legitimacy (legality), and is not to be confused with the Foucaultian tolerance for illegality (cf. Foucault, 2004, 93–101).

9 The term blood settlement seems more fitting as it corresponds to customary terminology. The Serbian (Montenegrin) expression *umir krvi*, for instance, means appeasing, settling blood (Ergaver, 2016, 109). On the other hand, the German term *Totschlagssühne*, homicide settlement, seems to have been coined by historians (cf. Frauenstädt, 1881, 141). There is no known early modern Slovene expression for blood settlement, only peacemaking in general (cf. note 6).

was also acknowledged that blood feud did not lose its legitimacy right after early modern criminal law had begun to be issued (Reinle, 2003, 22; Büchert Netterstrøm, 2007, 20–28, 44–46; Þorláksson, 2007, 78, 92–94).

Slovene historiography on the other hand tackled blood feud on its "home turf" largely in passing. Although the custom is also attested in Slovene folk poetry (Vilfan, 1943, 25–26; Štrekelj, 1980, 93–106, 191–199, 208–209, 213–215), it was partially regarded as coming into disuse early by the "Slovenes"[10] or, rather, their (Slavic) ancestors. The renowned philologist Franc Miklošič in his comprehensive study on Slavic blood feud (*Die Blutrache bei den Slaven*)[11] thus established the thesis that the (Slavic) ancestors of the Slovenes stopped using the custom because very early they had came under the influence of Germans already influenced by Roman law (Miklosich, 1888, 162–163). What is interesting is not the easy refutability of his thesis, but that Miklošič established it despite being familiar with Frauenstädt's work. This perspective was later disproven by the legal historian Sergij Vilfan, with a case of blood (homicide) settlement among Slavs ("Slovenes") in the village of Landar in Friuli at the start of the 15th century (Vilfan, 1996, 457–458). Vilfan in general not only pointed out to the use of blood feud by the "Slovenes" in Late Medieval and early modern periods, but also to the custom's integration into Medieval codified, i.e. common law (Vilfan, 1961, 262–264; Vilfan, 1996, 459–463). In the time between Miklošič and Vilfan another legal historian, Metod Dolenc, sort of "synthesized" both positions. On the one hand, Dolenc saw the end of blood feud already in the 13th century; on the other, he listed clear cases of the custom's survival in 17th and, in part, even in 18th-century Carniola (Dolenc, 1935, 168, 175, 409–410, 417).

BLOOD FEUD IN THE COMMON LAW OF THE LATE MEDIEVAL EASTERN ALPS

The duchies of Carinthia, Carniola and Styria were, like much of Inner Austria[12] geographically and culturally (also) part of the (eastern) Alpine and Prealpine regions. All three also had in common the basic linguistic division into Germanophone and Slo-

10 The term "Slovenes" should be taken with reserve, as there was no distinct Slovene (nor German etc.) ethnic or national community prior to the 18th or, rather, 19th century. Until then, identification was mostly bound to locale, region, and province (Kosi, Stergar, 2016), as well as to religion. For instance, Primož Trubar's and Jurij Dalmatin's "Slovenes" on one hand encompassed a (much) broader population – not in any "irredentist" sense – than the Slovene linguistic territory, and on the other specifically only Protestants who could understand their translations (Makarovič, 2008, 53–57).

11 I would like to thank Darko Darovec for notifying me as to its existence. The work seems to have been forgotten by Slovene (legal) historiography, as neither Metod Dolenc nor Sergij Vilfan cited it.

12 Inner Austria was an entity of Habsburg hereditary lands (1564–1619/1749) made up of the Duchies of Carinthia, Carniola and Styria, the Princely County of Gorizia and Gradisca, the Free City of Triest, the Margraviate of Istria and a few other smaller territories. Its capital until 1619, when the Princely (*Landesfürst*, Land Sovereign) court moved to Vienna, was the Styrian capital Graz, which remained the seat of the Inner Austrian Government until 1746. The latter was the Princely governing body second only to the Princely Privy Council in Inner Austria. The Government had the authority over those at the lower Land/Provincial level, including the courts (Spreitzhofer et al., 1988, 64–66).

vene-speaking populations. For the given time period the legal sources were generally in German even in the lands (Carniola) and regions (Southern Carinthia, Lower Styria) with a predominantly Slovene-speaking population. This, however, does not mean, that German was the only language used in court or the only language of law. In 16th-century Carniola, knowledge of Slovene was demanded even from the highest officials of both the Land Estates and the Land Sovereign (Škrubej, 2012, 204–205). In court sources Slovene begins to appear in the same century, mostly in patrimonial court sources (Škrubej, 2012, 205; Golec, 2016, 148–149). The rest have been recorded in German, even if the court process had been completely or largely in Slovene. The same goes for the case at hand, the peace settlement from the Upper Carniolan Lordship of Bled, which was recorded in German.

Still, and not only for the sake of chronology, it is perhaps not unfitting to begin the chapter in the relative neighbourhood of Inner Austria, rather far from Bled. In 1293 a Land/Provincial (i.e. State) Peace (*Landfriede*) for Bavaria was issued, which contains an important stipulation: it stipulated sanctions for the homicide of those who were under immunity (peace) in passage to or from the duke's court. Should anyone have killed, mortally wounded, or maimed anyone under this immunity and then fled the country, he would have had to face either of two options: those acting in malice (*mit mutwillen*), i.e. criminally, would be banished[13] for life and their wife and children expropriated. The sanction was much lighter should the killing have taken place in mortal enmity (*todvintschaft*), i.e. a blood feud, or otherwise, yet barring malice. Still, this only applied should the perpetrator have proved ignorance that the victim was under immunity. Should this have been successfully proven, the perpetrator would only have had to remain in exile for a year, while his lord was forbidden to burn (devastate) his property or expropriate his wife and children.[14] If the perpetrator was caught before he managed to flee to safety, he would have faced trial. The stipulation was renewed in the *Landfriede* of 1300 (MGH, Const. 3, 633. §§1, 4, 6, 33, 614–615, 619; MGH, Const. 4,2, 1168., 1216–1225; cf. Reinle, 2003, 80).

The stipulation contained in both *Landfrieden* shows not only the existence of blood feud, but also its legitimacy in the eyes of even the highest authorities. As with any other form of violence it was of course forbidden to be exacted upon those under immunity (Brown, 2011, 224–225). Still, the perpetrator's ignorance of the victim being under such immunity was considered an attenuating circumstance.

At roughly the same time a similar legal text was drafted or, rather, renewed in Carinthia. In 1308 the town privileges, the "old rights" of the duchy's capital St. Veit an der Glan were ratified by the town's lord, the Carinthian Land Sovereign. He had jurisdiction in homicide cases and when perpetrators were caught, they would face trial before the Sovereign or his representative. Those who managed to flee, however, had to pay the town lord a fine of 30 marks, the town judge (*Stadtrichter*), who had jurisdiction

13 The early modern Slovene term for banishment is *bandishaine* and to be banished *vishan* (Golec, 2016, 159).

14 The perpetrator's lord had the right to the perpetrator's property, whether he had it devastated or pawned (Coulin, 1915, 368–369), while the victim's family had the right to the perpetrator's life (Bloch, 1962, 128). The lord's or the court's participation in composition (cf. MGH Const. 2, Friderici II. 196a., 260) most likely stemmed from his role as an arbiter or, rather, chief arbiter in the feud (cf. Ergaver, 2016, 118).

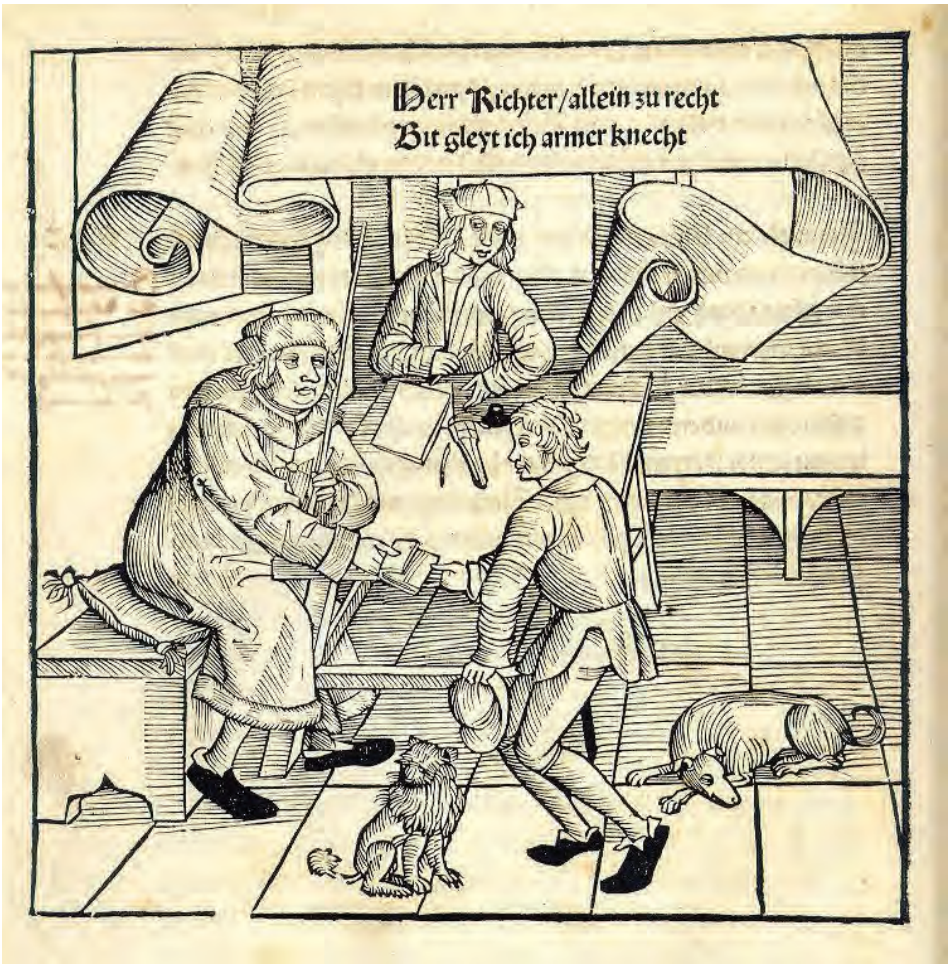

Fig. 2: Safe conduct (CCB, 1507, f. 75v)

in other criminal cases, a pound, and the toll master 6 marks. Still, this only meant that composition had been paid to the town authorities. The perpetrator still had to make peace with the victim's kin as best as possible, as the town privileges stipulate that perpetrators "should beware of their enemies" (*huet sich vor seinen veinden*).[15] As will be seen further

15 *Ez hat auch der landesherre von bůzze nicht mer rechtes dan den totslach; ob er geschicht, wirt derselbe begriffen, der dingt mit dem herren, als er stat an im vinde; chumt er aber hin, so geb dem herren dreyssich march phenningen, dem richter ein phunt, dem zolner sehs march und huet sich vor seinen veinden* (Schwind, Dopsch, 1895, 162).

on, this could also mean that peace with the victim's family had already been made or at least agreed upon first (i.e. truce). In the early modern period this seems to have become the rule.

A successful escape following the homicide meant that the perpetrator had managed to flee into asylum, especially a church or a castle (*Burgfrieden*) or abroad. Asylum was given for the period of thrice two weeks (i.e. three court days), during which peace with the victim's family had to be made. The term could generally only be renewed once, sometimes more often. Had blood still not been settled by then, the perpetrator still had the opportunity to flee to another asylum and was also provided a safe escort (conduct; *Geleit*) for part of the way. When asylum was sought at a castle, its lord or their official had to help the perpetrator make peace (mediation). This was still valid in the early modern period. Various lesser immunities (*Freiung*) did not offer protection in a blood feud (Frauenstädt, 1881, 41, 51–84).

In Carinthia at the start of the 14th century blood feud still retained its legitimacy in the eyes of the Land Sovereign much like in Bavaria. Not only that, it clearly shows that the judicial route was considered by the population as "subsidiary" in homicide cases. Not involving the courts (in the beginning) by flight,[16] especially fleeing from the victim's kin (Zacharias, 1962, 173) and (first) seeking peace in accordance with the old (legal) customs, had surely been the preferred way, as both a court trial and facing ones enemies entailed much more risk (Miller, 1996, 274–275, 288).

That the example from St. Veit was no local peculiarity, is further shown by the three decades younger stipulation from the Land/Provincial Law (*Landrecht*) for Carinthia. It was issued on 14 September 1338 in Graz together with an identical one for Carniola. For cases of flight following homicide, explicitly including subjects, the law stipulates that perpetrators owed the higher court 30 marks and the lower 60 pennies, but otherwise had to beware of their enemies (*hůt sich vor sinen veinden und vor dem geschray*). Still, even if they were apprehended, they could still redeem themselves of the death sentence and their wives and children were not to be expropriated.[17]

Already Sergij Vilfan concluded that both *Landrechte* condoned blood feud, maybe even hinting at the legal custom of devastation (*grundstöer*) (Vilfan, 1996, 459–463).[18] The best proof for this is the aforementioned Bavarian stipulation from 1293, prohibiting the perpetrators' lord from burning property and expropriating wives and children, which Vilfan however never cited. There is also no indication that either *Landrecht* condoned the devastation of the perpetrator's property by the victim's kin (cf. Vilfan, 1996, 460). Nonetheless, both the Carinthian and the Carniolan *Landrecht* attest not only to the exi-

16 In Albania, when there were no witnesses to the homicide, flight was stipulated by custom, so that the community was notified of the culprit's identity (Ergraver, 2016, 108).

17 *Tůt aber ainer einen totslag und chumt er davon, der ist dem obristen gericht vervallen dreizzig mark und dem niedern gericht sechtzig phenning und hůt sich vor sinen veinden und vor dem geschray. Wirt er aber begriffen, so ist hals wider hals oder er lose sich, wie er stat an dem lantsherren vindet, und sol des hausvrowe und siner chind nicht entgelten an dem gůt* (Schwind, Dopsch, 1895, 175–176).

18 For more on devastation (commonly *Wüstung*) as a legal custom originally connected to blood feud see: Coulin, 1915; Bühler, 1970.

stence of blood feud well into the 14th century, but also of its legitimacy in the eyes of the Princely authorities.

This is also attested in the mining law for the Upper Carniolan mines, i.e. miners, near Jesenice from 1381. Should a mining foreman (*pergmaister*) kill someone, he had to pay the Land Sovereign and the other foremen 12 pounds, and then his life and property were safe from them, but not from his enemies (*dan vor seinen veinden huet er sych*).[19] Peace with the "authorities" did not entail peace with his victim's kin.

Styria was no different. *Weistümer*[20] of the Admont Benedictine monastery for its office of Obdach near Judenburg from 1391 attest to that. They stipulate adherence to the accusatory principle in homicide cases (cf. Frauenstädt, 1881, 38), as the judge was forbidden from taking the perpetrator captive if the victim's kin did not call upon him to do that (*wo aber ainer ain leiblos macht, so sol der richter nicht nach im greifen, er wert dann von sein freunden darumb berueft*). The culprit still had to pay a fine to the Obdach provost (*Probst*) (Bischoff, Schönbach, 1881, 270, 277), i.e. composition to the lordship.

Lordships in Styria continued to condone blood feud in the following century, as can be seen from the urbarial register of the parish of Sankt Dionysen near Bruck an der Mur from 1431. The parish belonged to the Benedictine nunnery of Göss (Bischoff, Schönbach, 1881, 315, 318). While Article 10 of the register completely prohibits declarations of enmity or feud (*ab dem gut sagt in gericht oder anderswo hin*)[21] both among the parish's and the abbey's subjects as well as to those of other lords (Bischoff, Schönbach, 1881, 318), the next article regulates homicide in much the same way as the aforementioned laws and privileges. The fled perpetrator had to pay two blood pennies[22] and half a pound to the judge to ensure safety from curial repercussions, but this did not entail safety from the victim's kin (*ist er von im besichert, aber von des erslagen freunten nicht*).[23] As in

19 [*S*]*chlegt ein maister der ist vnss vnd den andern maistern veruolln zwelff pfundt marckh den fur all sach vnd als pald er die geit so sol fur pass vmb die sach mit seinem guot noch mit seinen leib niemant nichts zu schaffen haben, dan vor seinen veinden huet er sych* (Lačen-Benedičič et al., 2001, 10, 18).

20 *Weistümer* (singular *Weistum*, also *Taiding* etc.) are statutes of common law, found both in urban and rural areas throughout the Empire. They were codified legal customs, recorded in cooperation (examination) between the lordship and the (customary) legal experts among its subjects. *Weistümer* were recorded either on the lordship's demand or per request of its subjects, whether burghers or villagers (Dolenc, 1935, 118–119; cf. Obermair, 2015, 108–111). *Weistümer* for Carniola were collected for publication in the collection *Österreichische Weistümer*, but never published (I would like to thank Borut Holcman for this information).

21 At least in the 15th century this was not yet self-evident, as another *Weistum* from Carinthia attests. It was composed for the neighbourhood of Wieting, a village near Althofen next to Friesach. The village belonged to the provosty of the Benedictine monastery Sankt Peter in Salzburg. The neighbourhood's order stipulates that the provost had to punish every subject who would attack someone without the prior declaration of enmity or feud (*onentsagt*) and an attempt to settle the matter in court *(ôn ze red setzen)* (Bischoff, Schönbach, 1881, 508, 515).

22 The blood penny was at first the judge's (lord's) share of weregild, evolving by the early modern period into a fee for the kin to inspect the victim (Vilfan, 1961, 247).

23 *Wan ainer erslagen wirdet auf dem gůt, den sol man nicht aufheben ân des richter willen. wirdet der rechte geschol begriffen und im zugesůcht mit dem rechten, so antwurtet man in als vor geschribet stet. wurd er aber nicht begriffen, so geb er dem richter ain halb phunt phening und zwen plütphening, so ist er von im besichert, aber von des erslagen freunten nicht* (Bischoff, Schönbach, 1881, 318).

the Empire in general (Frauenstädt, 1881, 15, 37–38), the culprit had to make peace with them as well as possible, or otherwise face vengeance. This shows that the ancient legal custom in the 14th and 15th centuries was also condoned by monastic lordships.

Furthermore, as both the Bled case and the Carniolan *Landrecht* attest, even if the here given Carinthian and Styrian *Weistümer* are from the predominantly or solely German-speaking regions of the respective duchies, the attitude towards the custom of blood feud was no different in their predominantly or solely Slovene-speaking ones.

EARLY MODERN PERIOD: BETWEEN CUSTOM AND CRIMINAL LAW

It is the *Weistümer* that also offer proof for the gradual implementation of early modern criminal law. An excellent case for the survival of customary conflict resolution comes from the second half of the 16th century from Kleinsölk in northern Styria. Kleinsölk was a so-called "free valley" (*Freithal*) in an area largely supposed to be allodial property of the Styrian Land Estates (*eigen vom Land*) (Bischoff, Schönbach, 1881, 7). One *Weisung* stipulates peacemaking in enmity or feud (*feintschaft*), which would arise between neighbours either with (justifiable) cause or without. As the old customs (*alter herkomen*) stipulated, the "bailiff" (*ambtman*), together with four trustees (*verorndten*) from the community (i.e. subjects), first had to try their best to settle the conflict by peace (*güetlich zu vergleichen*). Should both or one party to the conflict resist this, the matter could be taken to court, but the "bailiff" had to be compensated with a pound of pennies. This is a clear case of the "subsidiarity" of the court path; after paying off the "bailiff", both or one party had to summon the subjects' court within three times fourteen days (i.e. three court days) and present the matter there. The "bailiff" and the lordship (the Land Estates) also had to be paid 30 guldens before the court convened. Both parties were then allowed to employ the lawyers "they could find or afford".[24]

Even though the *Weistum* does not explicitly refer to blood feud, there can be little doubt that it was settled in a similar if not the same manner. Both the Landar case from 15th-century Friuli and especially the Bled case from 17th-century Carniola speak in favour of this. Last but not least, the sources show little difference between the terms enmity (*vîntschaft*) and mortal (*tôtveintschaft*, *inimicitia mortalis*) or capital enmity (*hauptveintschaft*, *inimicitia capitalis*),[25] i.e. between feud and blood feud (Frauenstädt, 1881, 10; Zacharias, 1962, 167).

24 *Es ist auch von alter herkomen, so etwo ein nachber gegen dem andern in feintschaft mit oder ohne ursach erwaxen that, sollen die 4 verorndten neben des ambtmans, da es sich anderst thuen lest, vleis anwenden, die parteien güetlich zu vergleichen. da es aber bei inen beden, ainem oder dem andern, nit stat oder bewegung funde, ist inen alsdann die merer obrigkeit zuersuechen unverwört, doch das er sich mit ainem phunt phening vorher bei dem ambtman vergüete und hinein raiche. volgents inen 3 vierzehen tagen soll er handl vorfüeren und das gericht mit urborsleiten im tall besazt werden; aber von stundt an, so die beisizer zusamen komen, dreissig gulden dem ambtman vorher oder der obrigkeit erlegen. er oder die mögen procuratoren oder advocaten, wi si sich zum besten behelfen künen, ainhaimsche oder frembde erbiten, ires gefallens und gelegenhait* (Bischoff, Schönbach, 1881, 12).

25 Neither the distinction nor the terminology was of course reserved to the Empire alone. For instance, French sources also record *inimitié, haine mortelle* and *ennemi capitale* (Carroll, 2006, 8).

The Kleinsölk and the Bled cases respectively attest that the legal custom of conflict resolution survived largely unchanged through the centuries. Subsequently, the end of mentions of blood feud in Carinthian and Styrian *Weistümer* in the 16th and 17th centuries should not be taken as the end of the custom itself, nor as the end of its "tolerance" by the authorities. Proof for this are the *Weistümer* from Austria below the Enns (Lower Austria), some of which show no change in stipulations regarding homicide (settlement) between the 15th and 17th centuries (cf. Winter, 1896, 798, 804, 847), the implementation of early modern criminal law by provincial courts (Winter, 1896, 276) notwithstanding. The impossibility of its strict implementation dictated the further existence of legal custom throughout the Empire at least as late as the late 17th century.

At that, early modern criminal law at first also followed legal custom (cf. Miller, 1996, 225, 229), modifying it for its own purpose. Criminal Law of the Bishopric of Bamberg, *Constitutio Criminalis Bambergensis* from 1507,[26] thus allows blood feud in case of the perpetrator's flight, but the victim's kin first had to demand that the judge rule outlawry for murder (!) (*mordtacht*). This meant that the judicial route had to be taken first. Culprits were summoned before the court on three consecutive court days (three times fourteen days) and if they did not show up, outlawry or banishment (*Acht*) would be ruled. The judge then "took" the perpetrator's "body and property from peace" and put them into "unpeace", declaring him dishonourable and rightless, "free as a bird in the sky, a beast in the woods and a fish in the waves", to whom neither peace nor safety could be granted.[27] All his property went to his lord, all his rights were turned to "unrights", none who attacked him would commit a crime (CCB 1507, §§231–241, f. 64v–66v).[28] Banishment was not necessarily unlimited, although it ought not expire before the victim's kin had demanded it. After a year had passed, the culprit could have been pardoned and in cases of homicide receive safe conduct, the wishes of the victim's kin notwithstanding – killing him now would have been a crime. Outlawry could also be suspended for three months, so that the perpetrator could prove that he had justifiable cause, which he had to swear in the first four weeks following the homicide (CCB 1507, §§244, 246–247, 270–271, f. 67v–68r, 76r). The novelty of *Bambergensis* is in that it only allows for blood feud following outlawry. The aforementioned Late Medieval common law knows no such restriction. If

26 CCB 1507, http://www.uni-mannheim.de/mateo/desbillons/bambi.html (March 2017).

27 The victim's kin often attempted to deceive the court by not having the body buried before outlawry had been ruled (CCB 1507, §249, 68r), i.e. on the fourth court day or eight weeks after the homicide. This stemmed from the ancient custom that demanded that the victim's body remained unburied for as long as it remained unavenged, reminding the kin of its obligation. With codification, for instance in the *Sachsenspiegel*, the custom was transformed into a stipulation demanding that the corpse had to be present in court upon each summons of the fled perpetrator. Should he not appear, the judge was not to allow burial before outlawry was ruled. With time burial begun to be allowed on the first court day (Frauenstädt, 1881, 11).

28 *N. als du mit vrteyln vnd recht zu der mordtacht erteylt worden bist, also nym ich dein leyb vnd gute auß dem fride, vnd thu sie in den vnfride, vnd kůnde dich erloß vnd rechtloß, vnd kůnde dich den voᵉgln frey in den lůfften, vnd den thiern in dem walde, vnd den vischen in dem wage, vnd sollt auff keiner straffen noch in keiner muntat die Keyser oder Koᵉnig gefreyet haben, niendert friden noch gleyt haben. Und kůnde alle dein lehen, die du hast, jrn herren ledig vnd loß, vnd von allem rechten, in alles vnrecht Und ist auch allermeniglich erlaubt vber dich, das niemant dir freueln kan noch solle, der dich angreyfft* (CCB 1507, §241, f. 66v)

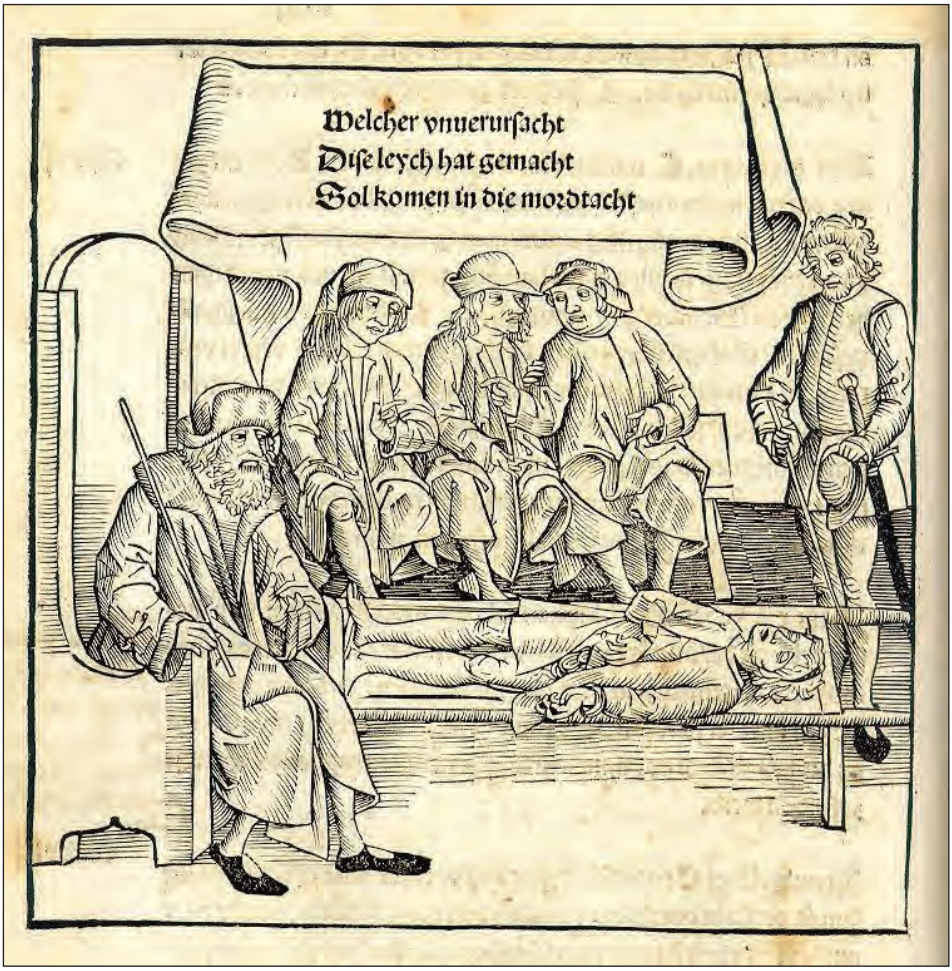

Fig. 3: Mordacht (CCB 1507, f. 64v)

the escaped perpetrator made peace (paid composition i.e. fines) with the authorities, he was not considered an outlaw. He remained within the law, and thus could receive asylum and assistance. Subsequently, the victim's kin[29] could opt for the ("subsidiary") judicial route precisely in hope for an outlawry ruling, which eliminated these advantages, i.e.

29 At least in some parts of Switzerland, and as late as the 16th century, only the women of the victim's kin could initiate judicial proceedings, so that the family could still make use of the blood feud should the judge reject outlawing the culprit. This was in use because if the lawsuit was initiated by a male relative, then a blood feud was no longer an option (Frauenstädt, 1881, 22).

rights (Frauenstädt, 1881, 22, 100–101). The exclusive restriction of blood feud to only after outlawry had been ruled came with early modern criminal law. Nonetheless, its reception of the legal custom is further proof of its resilience.

This is true of Emperor Charles V's criminal law, *Constitutio Criminalis Carolina* from 1532, as it is largely based on the *Bambergensis*, although it is rather taciturn regarding outlawry (CCC 1609, §155–156, 71). The *Carolina* had subsidiary status in Inner Austria in regard to Land/Provincial statutes, i.e. the Provincial Court Procedure (*Landgerichtsordnung*) or Criminal Procedure (*Malefizordnung*) (Kambič, 2005, 205–207). This document, together with the *Bambergensis* and the *Carolina*, introduced the inquisitory process into conflict resolution, which gradually eliminated the accusatory procedure and, with it, the (blood) feud (Frauenstädt, 1881, 172–173; Povolo, 2015).

In Habsburg hereditary lands the process had begun at the end of the 15th century with Emperor Maximilian I's laws for Tyrol, the *Landrecht* of 1496, and the *Malefizrecht* of 1499.[30] These were part of his general attempts to criminalize feuding, starting with the so-called Perpetual Imperial Peace of 1495 (Reinle, 2003, 14). In cases of homicide both Tyrolean laws demanded that the perpetrator stand trial even if he had already made peace with the victim's kin. Also, the authorities were not obligated to provide perpetrators with safe conduct except when homicide was committed in self-defence. In cases of the culprit's flight and triple contumacy, the *Malefizrecht* stipulated that both his and his victim's kin should be notified of his outlawry once it was ruled (MRT 1506, f. 3v–4r, 11v), i.e. blood could only be requited with blood upon outlawry. Both laws were the basis for the future development of criminal law in Inner Austria (Steppan, 2005). Stipulations regarding outlawry were, for instance, mirrored in the Criminal Privileges (*Malefizfreiheiten*) of the Carniolan capital Ljubljana in 1514 (LMF 1514, f. 1r, 4v–5r).

Not only its capital, Carniola itself, i.e. its Land Estates, had its Provincial Court Procedure made after a "neighbouring" example (Kambič, 2005, 208), the Provincial Court Procedure for Austria below the Enns from 1514.[31] It stipulated that the perpetrator had to be tried regardless of the settlement reached with the victim's kin. Still, if the settlement had not been reached, the judge was also forbidden to issue safe conduct to the culprit. First, the culprit had to settle (*vertragen*) with the victim's kin and make peace (*versůnt*) with his own lord by paying damages (composition) to him or his officials. The Land Sovereign was the only one allowed to pardon the perpetrator, as every killer lost his grace, save for killing in self-defence, when the provincial judge (*Landrichter*) was also allowed to grant pardon (LGÖ 1514, fol. 5v).

The Carniolan Provincial Court Procedure of 1535[32] however explicitly stipulates that only the Land Sovereign was to pardon homicide, provided the victim's kin agreed to that,[33] and not provincial or even patrimonial courts, as was obviously at least fairly common if

30 MRT 1506, http://daten.digitale-sammlungen.de/~db/bsb00001925/images/ (March 2017).

31 LGÖ 1514, http://daten.digitale-sammlungen.de/~db/0003/bsb00039796/images/ (March 2017).

32 LGK 1535, http://digi.ub.uni-heidelberg.de/diglit/ferdinand1535 (March 2017).

33 The provision had been in use at least since the 13th century and was most likely connected to the „division" of the perpetrator between his lord and his victim's kin (Bloch, 1962, 128–129). As the perpetrator „belongs" to the latter, it is they who can approve the pardon.

not the rule in practice. Still, at least a year had to pass before pardon could be granted and at least six months for homicides committed in self-defence if the perpetrator did not settle (*zůuertragen*) with the victim's kin. Self-defence could also be pardoned by the authorities in whose jurisdiction it took place. The Procedure further stipulated, that when settling blood in cases of self-defence the victim's kin could not demand more (weregild) from the perpetrator than his assets could meet, as was supposedly often the case. Therefore the authorities and courts had to approve of the settlement first (LGK 1535, 15).

These were common concerns with settling blood elsewhere (Frauenstädt, 1881, 141). The purpose of these stipulations was to avoid blood feuds that would continue or erupt otherwise. The custom had remained a reality in practice, novelties such as limiting it only after outlawry had been ruled or in cases of self-defence notwithstanding, as they remained only normative prescriptions for a while to come (Frauenstädt, 1881, 123–126). As the Bled and Pleterje (given below) cases attest, at least some Carniolan provincial and patrimonial courts still followed the old legal custom in homicide cases at least as late as the 17th century.

Contrary to the Carniolan, the Styrian Provincial Court and Criminal Procedure of 1574, and in criminal matters also the Carinthian Provincial Court Procedure of 1577, were based primarily on the *Carolina* (Kambič, 2005, 209). This of course did not mean that the implementation of early modern criminal law in both duchies was any faster than in Carniola. After all, the slow implementation seems to have been the norm throughout the Empire (Frauenstädt, 1881; Zacharias, 1962, 172–175). For instance, a year following the settlement among the subjects in Bled a homicide in a feud (*Fehde*) in the Styrian town of Ptuj was also settled by paying composition (weregild) to the victim's kin and the town authorities (fine), which had also helped the settlement along in accordance with legal custom (Oman, 2016, 93–95). Composition was not always paid in cash. In 1632 a subject of the Pleterje Charterhouse settled the enmity that broke out due to "involuntary manslaughter" (the victim put a borrowed firearm into fire and died in the resulting explosion) with payment in kind (cereals) (Dolenc, 1935, 409–410). As late as 1724 the Carniolan authorities issued grievances over the trifling sums paid as composition to the victims' kin (AS 1, šk. 251, Patent of the Carniolan *Landeshauptman* regarding the eradication of sins and vices, 4 March 1724, Ljubljana). It remains doubtful if they really were trifling to the parties involved, and not simply demeaned as such by the authorities who were striving for people to obey the law. Already the *Bambergensis* scolded judges who were only after fines instead of working towards "general peace and the common good" (CCB 1507, §272, f. 77r).

THE CASE OF BLED: SETTLING BLOOD IN THE MID-17TH CENTURY

Comparing the settlement of Peter Jakopič's homicide presented at the beginning of the paper with the analyzed texts of common and early modern criminal law shows that the settlement is a clear case of the survival of the blood feud as a legal custom of the system of conflict resolution of 17th-century Upper Carniola. A more detailed analysis further strengthens the thesis.

Fig. 4: Upper Carniolans in 17th-century attire (Valvasor, 2017)

A few days after he was severely beaten by the four Svetina (*Suettina*) brothers in the evening on Shrove Sunday (13 February) 1654, Peter Jakopič (*Petter Jacopetsch*) died. The reason for the fight has not been recorded; it could well have been an argument originating in or amplified by the general carnival merriment and rowdiness, which had the tendency to rapidly lead to violence (Muir, 2005, 93–105, 112–115).

What went on that night was given by testimony of the six witnesses whom the brothers' father Hanže (*Hannsche*) Svetina presented to the Bled patrimonial and provincial court on 10 April. This was a *per patrem* defence in the informative process (Povolo, 2015, 217–218). Hanže claimed that his son Matevž (*Matheusch*), who was in the interim incarcerated at Bled castle, did not even hit, let alone kill Peter Jakopič. The first to testify was Jurij Ferčaj (*Juryÿ Fertscheÿ*), who said that he saw the fight and that all four brothers had taken part in it. They were also the ones who had attacked the deceased, but Ferčaj could not say who of them hit Jakopič and who did not. The second witness, Hanže Golob, testified much the same, claiming that it had been too dark to see who hit the victim. The third witness, Gregor Andrejec (*Andreÿez*) corroborated, but also claimed that

he had seen Matevž Svetina holding a club.[34] Bastl (Sebastijan) Konič (*Wastl Khonetsch*) was the fourth to testify, even if he was too late to the scene to have witnessed the fight. Nonetheless, he advised Blaž (*Wläsch*) Svetina to return home and prevented him from breaking into the victim's house – this would have made matters much worse[35] for him. The most interesting is the testimony of Simon Mertelj (*Mertell*), even though he also had not been present at the time of the fight. It is not the most interesting testimony because he had advised the brothers to return home, nor because he had seen Matevž Svetina holding a log in his hands, since he could not say if he had struck Jakopič with it or not. The essential point of his testimony rather lay in the conversation between the three brothers who had fled, which Mertelj claimed he had overheard when he had escorted them abroad – both to safety and in the intent to follow the customary path of settlement (cf. Frauenstädt, 1881, 81) – namely that Matevž was not the one who should have been arrested. The final witness was Primož Černe (*Primos Tscherne*), who also arrived to the scene only after the fight was already over and saw Jakopič beaten to the ground. As it had been very dark, Černe could not say if Matevž Svetina was holding anything in his hands when he was standing five or six paces from the victim (AS 721, kn. 20 (1652–1655), 10 April, 1654).

Doubt had been cast regarding the perpetrator's identity, which surely accelerated the settlement. It was also common for courts to rule on the principle that it is better that a culprit goes free than that an innocent is accused and punished (AS 721, kn. 18 (1636–1640), 25 February and 30 March, 1637).

Thus it should not come as a surprise that already on 25 April, only two weeks after the witness' testimonies, a peace settlement was reached between the families – Lent, which had begun shortly after the homicide, might have accelerated it as well. Hanže Svetina made peace with the widow, brothers, and the rest of the kin (*gesambter freindschafft*) of the killed Peter Jakopič on behalf of his sons Matevž, Blaž, Hanže Jr, and Matija (*Mathia*) as their relative (*vetter*), so that he could be given safe conduct (*sicheres glaidt*) (AS 721, kn. 20 (1652–1655), 25 April, 1654). Svetina needed it as it protected the accused from arrest when they appeared in court, especially guaranteeing protection from aggravating circumstances in advance to those suspected of homicide (Povolo, 2015, 217). Furthermore, it was in general only granted to those who had already been given the chance to make peace with their opponents or the court (Reinle, 2003, 89). Peace between the two families was made by the following points or, rather, stages of the ritual of peacemaking.

First. The widow, brothers and the whole kin of the late Peter Jakopič had agreed that all four Svetina brothers were to be given "true and full peace" (*wirklichen vnd volmechtigen friden*), i.e. lasting peace, and safe conduct. They pledged that they would not chase away the brothers upon their return home or remain in any kind of enmity

34 Upper Carniolans seem to have been known for their long and heavy clubs (see Fig. 4), mostly made of hawthorn wood. The famous Carniolan polymath Johann Weikhard/Janez Vajkard Valvasor in the 17th century stressed that a single blow by one could, and not rarely did, kill a man (Valvasor, 2017, 113–114).

35 Forced entry into someone's home (*Heimsuchung*) was a breach of the immunity (peace) of one's home and thus strictly forbidden even in enmity or (blood) feud (Bischoff, Schönbach, 1881, 306; Reinle, 2003, 81).

(*feindtschafft*) with them, pledging instead to live with them in good neighbourliness (*guete nachperschafft*), as is becoming. To that, Hanže Svetina pledged for himself and his family that they would give Jakopič's kin no reason or cause for anger or aggravation (*zorn oder widerwillen*) and forever remain in peace and good neighbourliness with them (AS 721, kn. 20 (1652–1655), 25 April, 1654).

Right at the start of peacemaking there was the essential reciprocal renouncement of enmity or vengeance (*Urfehde*)[36] and the restoration or establishment of good neighbourliness. The explicitness of including the respective entire kinsfolk of both perpetrator and victim is essential, as the spilled blood involved them both. This is settling blood before the feud escalates. Unlike some other cases from 17th-century Bled, the given settlement does not mention establishing "love, honour and friendship" (*lieb ehr vnd freindtschafft*) (AS 721, kn. 17 (1632–1636), 13 June and 15 September, 1635) between the two families. However, this does not mean that the same words were left unsaid at the oral peace settlement (cf. Vollrath, 1992, 295–296); quite the contrary, it is to be expected that the oral settlement included all these phrases (in Slovene)[37] and without a doubt also a public gesture of peace. Most likely this was not a kiss of peace anymore, as the gesture had been in decline since the 15th century, being replaced by an embrace by both Protestants and Catholics in the following two centuries (Koslofsky, 2005, 25, 33; Carroll, 2016, 128–129). It is unknown which gesture was used in Upper Carniola in the mid-17th century. If not a kiss or an embrace, then at least a handshake as one of the fundamental legal gestures (Schmitt, 2000, 109), which also followed the kiss of peace (Frauenstädt, 1881, 109; Carroll, 2016, 129). The peace between the two families was, apart from being confirmed or ruled in court, without a doubt made in public, most likely in front of a church and perhaps on a holiday (i.e. church fair) as attested (*auf ofnen khirchtag in gegenwurt viller perschonen*) in another case of blood settlement in Bled from 1637 (AS 721, kn. 18 (1636–1640), 27 April 1637).

Secondly, the three brothers who had fled abroad following the homicide agreed to the provision of the peace that the youngest, Hanže Jr, could return home as soon as possible, so that he could help his father with work. Blaž and Matija agreed to remain abroad (in exile) for a year and a day, after which they could return home and continue to live there in safety (AS 721, kn. 20 (1652–1655), 25 April, 1654).

The exile of the two fled brothers, obviously including the supposed culprit, had a reinforcing effect on the peace settlement, as the absence of the culprit had a general

36 For two examples of *Urfehde* given by culprits to court in early modern Slovene see: Golec, 2016, 159–165.

37 Along the aforementioned (cf. notes 2–4, 6), Megiser gives the following pertinent early modern Slovene translations: *sovrashnik* (*Feind*, *hostis*; modern: *sovražnik*) for enemy, *perjasèn*, *prijasen* (*Freundschafft*, *amicitia*; *prijateljstvo*) for friendship, *myr* (*Fried*, *pax*; *mir*) for peace, *lubesan* (*Liebe*, *amor*; *ljubezen*) for love, *soßeszhina* (*Nachbawrschafft*, *vicinitas*; *sosedstvo*) for neighbourliness, *poboj*, *vbijanje* (*Todtschlag*, *caedes*; *uboj*) for homicide and *zhast*, *slava*, *dyka* (*Ehr*, *honor*; čast) for honour (Megiser, 1592, [54, 71, 79, 146, 165, 252]). Friendship and love were sometimes regarded as synonyms and both are attested as (customary) legal terms (cf. Golec, 2016, 169). The rest of the words given here should also be taken as such.

soothing[38] effect (Miller, 1996, 282; Povolo, 2015, 215). The same term is stipulated in similar cases in the aforementioned Bavarian *Landrecht* from the late 13th century and in the stipulations regarding the declaration of outlawry in Inner Austrian early modern criminal law. Outlawry was however not the case here.[39] It is clear that in the Bled case the exile was part of the ancient legal custom and not its modification by early modern criminal law.

Third. Hanže Svetina pledged for his sons that he would give Jakopič's widow 10 crowns for the support of her underage child as soon as possible, including a plot worth 30 crowns plus interest (AS 721, kn. 20 (1652–1655), 25 April, 1654). This is composition, weregild. It was not exactly trifling, as altogether 40 crowns[40] in the 17th century amounted to the price of a farm (*Hufe*) or the yearly salary of a mid-level town official (Kotnik, 1997, 48; Hernja Masten, 2005, 226). Weregild for a subject in Styria at the time was about the same (Oman, 2016, 89). It was common both to pay support for the victim's underage children and, at least among subjects, that weregild was at least in part paid in kind (Frauenstädt, 1881, 138–139; Dolenc, 1935, 410), in this case in arable land.

Fourth. Hanže Svetina had to pay the Lordship of Bled the legal expenses it had with the case, namely 35 crowns and 2 gold ducats, within two weeks' time (AS 721, kn. 20 (1652–1655), 25 April, 1654). The first sum is composition paid to the lordship, originally the judge's (lord's) part of the weregild, while the two ducats most likely stood as surety for the settlement (Dolenc, 1935, 410). Fines for breaking settlements in Bled in the first half of the 17th century were between 6 and 10 gold ducats (AS 721, kn. 17 (1632–1636), 13 June and 15 September, 1635; AS 721, kn. 20 (1652–1655), 17 May, 1652).

The surety for peace was thus given by the patrimonial and land court (lordship) at which it was made. Contrary to the complaints in the *Bambergensis*, this was not (only) about money, as the control over peacemaking legitimised the courts as institutions which upheld the social order, thus working towards "general peace and the common good". While there is no record of masses paid for the victim's soul, perhaps roughly at the level of the weregild and the composition to the court (cf. Oman, 2016, 89), i.e. ca. 30 crowns, it is highly unlikely that one of the integral acts[41] of peacemaking (Frauenstädt, 1881, 144–145, 153; Bloch, 1962, 129) would be left out in practice as well.

Nonetheless, settling blood in mid-17th century Bled shows clear similarities with the blood feud as the legal custom of the system of conflict resolution in earlier times and

38 For the same reason blood settlements in the north of the Empire demanded that former enemies avoid each other as much as possible for a year and a day (Frauenstädt, 1881, 128–134).

39 Regarding exile, there is yet another option, which again does not pertain to the case at hand, but is worth mentioning. When the perpetrator was too poor to pay weregild, it could be substituted by exile or the extension thereof. In 17th-century Saxony, for instance, from three to four years (Carpzov, 1670, 198).

40 This amounts to 46 guldens and 40 kreutzers in Carniolan currency. A ducat was worth 5 guldens, a crown one gulden and 10 kreutzers (Ribnikar, 1976, 29).

41 The existence of peace shrines, crosses, stones, and chapels (*Marter*, *Sühnekreuz*, *Sühnestein*, *Mordstein*), which commonly marked homicide sites in the German-speaking areas of the Empire (Frauenstädt, 1881, 154–156), is unknown to me for Slovene-speaking ones. Considering the extent of their occurence (cf. Sühnekreuze & Mordsteine, http://www.suehnekreuz.de/ (March, 2017)) they are to be expected, yet this remains the work of a thorough analysis of Slovene wayside shrines.

Fig. 5: Payment of weregild depicted in the Heidelberger Sachsenspiegel, early 14th century (Heidelberger historische Bestände, http://digi.ub.uni-heidelberg.de/diglit/cpg164/0035)

elsewhere in Europe, as given at the beginning of the paper. Injury and damage had to be requited, whether in blood, kind, or cash in order that peace could honourably be made and harmony ("good neighbourliness") restored to the community.

CONCLUSION: MODERN AGE, ANCIENT CUSTOMS

Blood feud, being a primary (primal) and universal legal custom, was, as expected, used by both the Germanic (German) and the Slavic (Slovene) speaking populations of the discussed Eastern Alpine regions in the Medieval and early modern periods. As the sources referred to throughout the paper attest, "ethnicity" was no dividing line, nor was the existence and condonation of the custom of blood feud in the Lordship of Bled determined by its jurisdictional fragmentation or its ecclesiastic lord. Even if the latter might seem plausible, given the places of origin of some of the *Weistümer* mentioned herein, this can be refuted by various cases from throughout the Empire. Both the custom of enmity settlement (conflict resolution) given in the *Weistum* from the Styrian Sölk and the case of customary and common legal practice from the Upper Carniolan Lordship of Bled show parallels with the rituals of blood and enmity settlement elsewhere in the Medieval and early modern Empire, as well as Europe as a whole.

The given Bled case went through the expected stages or, rather, rituals of (blood) feud as a legal custom of the system of conflict resolution, in which both the lordship (i.e.

its court) and the families involved placed the greatest emphasis on settlement. This is in accordance with the tendency of feud towards peace. The origins of the fight remain unknown, yet the break in social relations between the Svetina and Jakopič families was the death of Peter Jakopič due to blows from the four Svetina brothers. Both to protect themselves from the requital (vengeance) of Peter's kin and with the intent to settle (resolve) the conflict in accordance with custom, three of the brothers fled abroad (the fourth was apprehended and incarcerated by the lordship). With the culprits "far from sight", passions could cool down and the possibility for peace grew. The fact that the main perpetrator among the brothers remained unknown also helped with that. The time of Lent might have as well. If any formal truce was made remains unknown, but it seems that the feud might have been suspended following the brothers' flight. In their absence, three and a half months after the homicide, the families made lasting peace before the (joined) patrimonial and provincial court in Bled. By that point mediation from either or both the court and the community (neighbours, possibly the parish priest) is to be expected, even if it was not recorded. Perhaps some of the witnesses Hanže Svetina presented in court acted as mediators as well. The peace settlement contained the expected words and rituals. The court protocol recorded the renouncement of enmity (vengeance), the re-establishment of good neighbourliness, composition payments to both the victim's kin (weregild) and the lordship (court), as well as limited exile for two of the fled brothers, including the one responsible for Peter Jakopič's death. The gesture of peace (whether kiss, embrace, or handshake) and the payment of masses for the victim's soul are without a doubt only missing from the protocol. With the peace concluded, the blood feud begun with the homicide was brought to an end, the balance in the community restored. The case attests that as late as the mid-17th century the ancient legal customs were not only in use by the subjects, but also accepted in more or less the same way as centuries before (including the lordships and their courts), i.e. as a legitimate system of conflict resolution. Also, there is actually nothing in the given case that points to the implementation of the novelties of early modern criminal law.

NOVI VEK, STARI OBIČAJI – POMIRITEV KRVI V VZHODNIH ALPAH MED POZNIM SREDNJIM IN ZGODNJIM NOVIM VEKOM

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POVZETEK

Analiza primera pomiritve krvi (uboja) na Gorenjskem sredi 17. stoletja pokaže, da je potekala v skladu z maščevanjem (krvnim) kot starodavnim pravnim običajem sistema reševanja sporov. Kljub tedaj že dobro stoletje potekajoči implementaciji novoveške (državne) kazenske zakonodaje, so se tako podložniki kot gospoščine ter patrimonialna sodišča še naprej držali (tudi) običaja. S tem so sledili tudi njegovi kodifikaciji v obče pravo, ki je prav tako razvidna iz uporabljenih koroških in štajerskih pravnih napotil iz poznega srednjega in zgodnjega novega veka. Le-ta kažejo jasne vzporednice z običajem in občim pravom v srednjeveškem in zgodnjenovoveškem Svetem rimskem cesarstvu in Evropi nasploh.

Težnja pravnega običaja maščevanja k miru in obnovi družbenega ravnotežja je podana skozi analizo blejskega primera. Po eni strani se kaže v hitrosti pomiritve, h kateri je pripomogel beg večine storilcev (in arest tistega, ki mu beg ni uspel). Kot kažejo občepravna besedila, je beg pomenil jasno izraženo željo po reševanju spora v skladu z običajem maščevanja. Obenem je odsotnost storilcev olajšala sklenitev miru med družinama žrtve in storilcev. Trajni mir je bil pred blejskim (združenim) patrimonialnim in deželskim sodiščem sklenjen v skladu z običajem: kompozicijo (krvnino), vzajemnim odrekom sovražnosti (maščevanju) in sklenitvijo dobrega sosedstva. Pravni običaj (krvnega) maščevanja je spor od zadane krivice (uboja) skozi obredje pomiritve popeljal k trajnemu miru in v skupnosti obnovil ravnotežje, tj. »dobro sosedstvo«.

Ključne besede: krvno maščevanje, pravni običaj, reševanje sporov, pomiritev, Koroška, Kranjska, Štajerska, Bled, pozni srednji vek, zgodnji novi vek

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»FIRST MY BROTHER, THEN A BLOOD-TAKER, THEN MY BROTHER FOREVER« THE EFFICIENCY OF THE TRADITIONAL PEACE-MAKING CUSTOM IN EARLY MODERN AGE MONTENEGRO AND THE ROLE OF THE VENETIAN AUTHORITIES IN THE PEACE-MAKING PROCESS

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ABSTRACT

The paper discusses the tradition of vendetta and the peace-making process that were a part of a customary legal tradition of rural kinship communities in Montenegro and Albania. The custom was preserved throughout the centuries as both Venetian and Ottoman administration acknowledged the existing legal customs. However, in some cases the customary peace-making custom proved itself to be more efficient than the diplomatic intervention in the dispute resolution. The Venetian authorities on several occasions ordered the rural kinship communities in the coastal area to make customary peace with their neighbours in hope of preventing vendetta and feuds from developing immense proportions.

Keywords: peace-making, blood feuding, Montenegro, Albania, Venetian Republic, Modern age period

»PRIMA MIO FRATELLO, POI CARNEFICE, POI MIO FRATELLO PER SEMPRE« L'EFFICACIA DEL TRADIZIONALE PROCESSO DI RICONCILIAZIONE IN MONTENEGRO ALL'INIZIO DELL'ETÀ MODERNA E IL RUOLO DELLE AUTORITÀ VENEZIANE NEL PROCESSO DI RICONCILIAZIONE

SINTESI

L'articolo tratta la tradizione della vendetta di sangue e della riconciliazione che fecero parte delle tradizioni consuetudinarie e legali delle comunità rurali imparentate nel Montenegro e nell'Albania. Le consuetudini si sono conservate nel corso dei secoli, siccome sia l'amministrazione veneziana sia quella ottomana riconobbero le tradizioni giuridiche preesistenti. La riconciliazione in alcuni casi di soluzione dei conflitti si

dimostrò più efficace dell'intervento diplomatico. Per evitare vendette di sangue, come pure che le dispute non raggiungessero dimensioni spropositate, le autorità veneziane in varie occasioni ordinarono alle comunità rurali imparentate lungo la fascia costiera di riconciliarsi con i loro vicini usando metodi tradizionali.

Parole chiave: pacificazione, Montenegro, Albania, Repubblica di Venezia, Età Moderna

THE RESEARCH OF VENDETTA IN SOUTH-EASTERN EUROPE

The original custom of blood revenge remained in practice in some parts of the Balkan Peninsula until the 20th century. The supposed peculiarity of the blood-revenge (Lat. *vindicta*; Ita. *vendetta*, Serb. *krvna osveta*, Alb. *gjakmarr*ja) triggered the interest and the research of the legal customary tradition in the Montenegrin and the Albanian Highlands (*Crnogorska Brda* and *Mälesia e Madhe*) from the 18th century onwards.[1]

In the 19th century, an extensive research of the legal traditions was carried out in the territory between Herzegovina, Montenegro and Northern Albania by the renowned legal-historian and philosopher, Valtazar Bogišić (Bogišić, 1999).[2] In the Northern Albania, the

1 Venetian abbot Alberto Fortis mentioned the custom of vendetta among the Morlachs in Dalmatia in his work *Viaggio in Dalmazia* (first published in Venice, 1774) and stressed the similarity of the Morlach and the Albanian (Arbanas) customary tradition, including some customs of the pacification (Fortis, 1984, 39–42). In the 19th century the general interest for the customary legal traditions increased as a trend in the European scientific research (Imamović, 2008, 125), that was accompanied by the interest of oral traditions in the form of tales and oral poetry (Kos, 1994, 167–169). The research of the oral traditions was carried out by linguists and scholars, such as Vuk Stefanović Karadžić (Karadžić, 1814; 1818; 1846; 1865; 1875; comp. Jurančić, 1959, 137–138; Skakić, 1998, 46–47). The importance of the oral tradition was of interest to the bishop of Zagreb, Matija Vrhovec, Stefan Verković, the Miladinov brothers of Struga, Russian Slavist, Viktor Ivanovič Gligorovič, Kuzman Šapkarev, Marko Cepenkov, Ilarion Ruvarac, and other enthusiasts (Jurančić, 1959, 137; Sazdov et al., 1988, 10–12; Sazdov, 1997, 243). Some valuable research on Slavic oral epics was carried out by Millman Parry and his student, Albert B. Lord (Lord, 1981). Early ethnographers, anthropologists and researchers such as Pavel Apolonovič Rovinskiĭ (Rovinskiĭ, 1994), Johan G. Kohl (Kohl, 2005), Gerhard Geseman (Geseman, 2003), Fran Miklošič (Miklošič, 1888), Božidar Petranović (Petranović, 1868) and Milorad Medaković (Medaković, 1860), also took notice of the legal customs, yet not all with the same perspective.

2 Bogišić's work was a commissioned project in the time of the rule of the prince (*knjaz*) Nikola I. Petrović of Montenegro and supported by the Russian Tsar. His research of the legal traditions was carried out through an extensive survey. Therefore, his work is also referred to as the *Bogišić's Survey (Bogišićeva anketa*)

first researchers and collectors of the legal traditions were priests. Sthjefen K. Gjeçovi collected legal-oral material known as the Code of Lekë Dukagjini, *(orig. »Kanun i Lekë Dukagjinit«,* in the references KLD),[3] whereas Frano Illia collected the legal material that was traditionally referred to as the Canon of Skenderbeg (in the references SK; orig. *Kanuni i Skenderbeut*)[4] (Trnavci, 2008, 16; Elsie, 2015, 9; Pupovci, 2011, 32).

The 20th century research of the traditional way of life in Albania, Kosova and Montenegro is marked with local research of legal historians such as Ilija Jelić (Jelić, 1924), Surja Pupovci (Pupovci, 2011), Milutin Djuričić (Djuričić, 1975; Đuričić, 1979) Milovan Šćepanović (Šćepanović, 2003), Marino Zurl (Zurl, 1979), Genc Trnavci (Trnavci, 2008); and foreign anthropological researches of Mary Edith Durham (Durham, 1909), Margaret Hasluck (Hasluck, 1954), Christopher Boehm (Boehm, 1987), Fatos Tarifa (Tarifa, 2008), Diane Gëllçi (Gëllçi, 2014) and Robert Elsie (Elsie, 2015).

THE LEGAL CUSTOMS IN THE BALKAN PENINSULA

The custom of blood revenge was deeply imbedded into the traditional way of life of the Montenegrin and the Albanian tribal kinship communities. The first preserved written mentioning of the custom of vendetta on Balkan Peninsula is from the 6th or 7th century Byzantine report on the customs of the Slavic population, who were kind and hospitable and even took revenge for the murder of their guests (Jelić, 1926, 17–18).[5] Throughout the early middle ages, the customary legal traditions were preserved under the local rulers, but the tradition was flexible and it changed and modified over the centuries to suit the given socio-political circumstances. The Albanian oral tradition even recognizes Lekë III. Dukagjini and Georg Kastriot Skenderbeg, 15th century local aristocratic leaders, as experts in the legal customs and rites (Pupovci, 2011, 7, 9, 15, 23, 30–36). Similar principals of rule seem to have been applicable in the Medieval Zeta, where the local

within the academic discourse. Based on the survey, Bogišić wrote and issued new property legislation for the Principality of Montenegro in 1888 (orig. *Opšti imovinski zakonik* (OIZ)). As the survey tackled all the legal spheres, it was difficult to analyse. The Bogišić's Survey remained in the manuscript for almost a century until it was properly organized by a Serbian legal historian, Tomica Nikčević, who in 1984 published the Survey under the title that was planned by Bogišić himself: *Pravni običaji u Crnoj Gori, Hercegovini i Albaniji (Legal customs in Montenegro, Herzegovina and Albania)* (Nikčević, 1984; 1999).

3 The collection was translated in numerous world languages, recently also into the Montenegrin language (Camaj, 2011, 230).

4 The collection was first published in Italian language in Brescia in Italy in 1993. In 2004, it was translated into Slovenian language and incorporated as an appendix into a monograph of Martin Berishaj, titled *Skrita moč bese. Ženske v imaginariju albanskega tradicionalizma. (The hidden power of besa. Women in the imaginary of the Albanian traditionalsm*) (SK, 105–309).

5 This custom remained in practice as a rite of hospitality. The guest was offered *»besa of the guest«* and was treated as a God in the house, and was offered protection, safe conduct, food and shelter, regardless of his origin or »criminal past«. The killing of a guest was perceived as a severe shame for the host and violation of the host's honour and hospitability (KLD, §§ 602–652; SK point (hereafter p.) 652–658; Rovinskiĭ, 1994, 247). Customarily, the host had to kill any violator of the rites of hospitality, including his own family members, as the Montenegrin proverb states: »An honest man would kill even his own father for a guest« (orig. »*Pošten bi čovjek i oca ubijo radi gosta*«) (Bogišić, 1999, 330–332).

aristocracy, such as the Balšići and the Crnojevići, respected the local legal customs of the kinship communities and recognized the role of the clan chieftains and their assemblies (Andrijašević & Rastoder, 2006, 33–38; comp. Dolenc, 1925, 59; Šufflay, 1991, 44). Generally speaking, the tribal leaders and chieftains were traditionally the guardians of the legal order and the legal traditions. Their duty was to effectively resolve disputes within their communities (Stein, 1984. 19; comp. Evans-Pritchard, 1993, 179–188). Indeed, the medieval Code of Tsar Stefan Dušan (Dušan's Code, Serb. *Dušanov zakonik*, DZ), issued in 1349 and edited in 1354, attempted to regulate and unify the legislation within the Empire of the Serbs, Albanians and Greeks, yet, the customary tradition remained active, especially in the remote areas such as the Montenegrin and the Albanian Highlands. The Dušan's Code implies that the rural kinship communities had to solve the disputes autonomously (Dolenc, 1925, 62), unless it was a case of greater injustice, which was within the absolute juridical jurisprudence of the Tsars court, which included the murders and the blood-revenge (Dolenc, 1925, 61; DZ, article (hereafter art.) 103; comp. Petranović, 1868, 14). The medieval coastal towns of Kotor (Cataro),[6] Budva (Budua),[7] Bar (Antivari) and Ulcinj (Dulcigno) were given the privilege to codify their own legal customs in written and developed or were granted statutes in the time of Serbian rule. The statutes of Bar and Ulcinj have not been preserved.

THE REPUBLIC OF VENICE AND THE CUSTOMARY LEGAL TRADITION IN SOUTHERN ADRIATIC

According to the statute of Kotor, the count was bound to respect the existing legal traditions of the town and its district that was composed of the areas around the Bay of Kotor (Ćirković, 2009a, 42–43; Milošević, 2009, 56–57). Therefore, the authorities in Kotor were well acquainted with the legal customs of the kinship communities in the district, which included the custom of vendetta as well as the custom of reconciliation.

When the Republic of Venice established its administration in the Bay of Kotor[8] (1421–1797), the Venetian governors soon became acquainted with the local legal customs. The Venetian administration was familiar with similar traditions of dispute resolution from the Venetian Terraferma, where in the 15th century the duality in the legal tradition also existed. In Veneto, in the area of Vicenza and Verona, the nobility in the cities solved their disputes according to the statutory law, whereas the inhabitants of the

6 The Statute of Kotor was formed throughout the centuries with several editions and corrections. Its oldest statutory legal regulation dates in 1301. In 1616, the Statute of Kotor was printed in Italian language and divided into two parts. First part consists of statutory laws that were passed during the period of the autonomy of Kotor (1384–1420); the second part holds the statutory laws that were passed in the first period of the Venetian administration in Kotor (1421–1444) (Milošević & Ćirković, 2009, 11–13).

7 During the reign of the Nemanjići dynasty, the town of Budva was given a statute that bares no criminal legislation. Criminal justice was in the direct jurisprudence of the Serbian rulers (St B III).

8 Unlike the Slavic historiography (Andrijašević & Rastoder, 2006. 47; Šufflay, 1991, 13), some foreign historiography stresses that the nobility of Kotor petitioned for the protectorate of the Republic of Venice (O'Connell, 2009, 30–31). The trade between the Kotor and Venice, however, has been recorded from the 12th century onwards (Bogojević-Glušičević, 2002, 8).

rural areas outside the city resolved their disputes according to the existing legal customs, but with the help and the presence of the town notary (Faggion, 2013, 186–193).

Besides the Bay of Kotor, the area of Paštrovići, between Budva and Bar, was of strategic importance for the Republic of Venice. To gain the support of the local kinship communities, the Venetian administration granted the Paštrovići the privileges that the kinship communities supposedly enjoyed during the rule of the Nemanjići dynasty (Šekularac, 1999, 9; Mijušković, 1959, 474–475, 507). The privileges, confirmed by the Venetian Senate in 1424, granted Paštrovići the right to further exercise their legal customs,[9] which included dispute resolution and reconciliation before the local judicial assembly (*Bankada*), composed of the representatives of the communities form the Paštrovići area (Mijušković, 1959, 482–483; O'Connel, 2009, 31).

The medieval legal tradition fluctuated between the oral and written form. However, people were becoming well aware of the importance and the higher level of credibility of the written legal documents (Lonza, 2013, 1217). Some of the preserved medieval notarial registers of Kotor (IAK SN) testify that the kinship communities from the district of Kotor and its hinterland used the notarial office of Kotor to verify the peace treaties after they had reconciled according to their local customs.

PEACE TREATIES OF KOTOR

In the beginning of 1431, the representatives of the villages of Luštica and communities of Grbalj[10] came before the authorities in Kotor to verify their peace treaty. The parties stated that they forgave one another and exchanged a kiss of peace (Lat. *osculo pacis*) before the court. The parties agreed upon a fine of 200 ducats[11] for violation of the peace treaty (IAK SN V, 5-6, date (datum, hereafter dat.) 9. 1. 1431).

In 1437, the representatives of the Njeguši clan of Zeta and the representatives of the village Orahovac from the district of Kotor came to the town of Kotor to verify the peace treaty. The parties exchanged a kiss of peace before the court and declared mutual pardon for wounds and killings. The parties agreed to form marriage alliances. In case of the violation of peace, the parties agreed upon a fine of 100 perper[12] (IAK SN VI, 286–287, dat. 22. 12. 1437; Kovijanić, 1963, 100).

The following year, on March 31st, 1438, the notarial registers produced a document titled *Pax inter Regianos, Morignanos, Rexianos et Poliçanos*. The representatives of the clan Riđani from the hinterland and the villages of Morinje, Risan and Poljice, from

9 Paštrovići remained under the Venetian protection until the collapse of the Republic of Venice in 1797. The privileges of the Paštrovići were abolished by the French administration in 1807 (Šekularac, 1999, 8).

10 At the time, both areas were within the territorial frames of the district of Kotor (Ćirković, 2009b, 39–41).

11 Venetian ducato (zecchino) was a gold piece coin minted from the 12th century onwards with mass of 3.55 grams (Chown, 1994, 33–35; Darovec, 2004, 66).

12 Serbian perper or perpera was a fictive fiscal unit that was composed of 12 silver coins (dinar) with an approximate mass of 1.5 grams. The currency exchange rate between the perper(a) and ducato was 2 to 1. Medieval Serbian coins were used in Montenegro as late as in the 18th and 19th century (Ćirković, 2009c; Srednjovjekovni novac, 2016).

the Bay of Kotor, had made customary peace amongst themselves on January 7th, 1438. The compensation and the rates were determined by custom and the parties were to form fraternities and godfatherhoods. The representatives of Riđani and Poljice promised to solve the pending dispute regarding the borders of their pastures and promised to keep an open passage through their properties. On the last day of March, the representatives of all four communities verified their agreement of permanent peace (*pacem perpetuam*) by giving an oath upon the sacred Gospel and the Cross before the court in Kotor. The fine for violation of the treaty was 500 Venetian denari.[13] The parties requested the authorities of Kotor to issue them written proofs of the contract, which were translated from Latin to Slavic (IAK SN VI, 450–451, dat. 31. 3. 1438; Kovijanić, 1974, 185).

In March of 1439, the Petrojević brothers from Lastva and the representatives of Veće Brdo, Bijela and Lastva came to Kotor to verify the peace treaty that has been made customarily in front of the assembly of 24 »good men«. The members of the assembly were mutually selected by the parties to determine the compensation in their blood feud (IAK SN VI, 683–684, dat. 25. 3. 1439).

Although the Paštrovići enjoyed the judicial autonomy, their judicial body, the Bankada, had no permanent notarial office. Instead, the documents were written by priests and monks of the local monasteries (Šekularac, 1999, 8–14; Sindik et al., 1959, V).

In 1440, the representatives of two Paštrovići clans agreed to make peace according to the custom before the Venetian authorities in Kotor on April 2nd, 1440. The Venetian authorities, however, were not the judges or the arbiters in this case, but merely the witnesses. Each party selected 12 arbiters that jointly determined the amount of the composition for a person that has been killed (IAK SN VI, 935–936, dat. 2. 4. 1440).The peace treaty was confirmed on May 25th, 1440. The parties were to form godfatherhoods and were both financially liable in case of the violation of the treaty (IAK SN VI, 979–981, dat. 25. 5. 1440).

In none of the cases, the Venetian authorities were the judges in the disputes and did not deliberate on the amount of the compositions. The latter case shows that the town of Kotor merely offered its premises where the parties decided to make peace according to the custom.

RURAL KINSHIP COMMUNITIES, THEIR INTERNAL AND JUDICIAL ORGANIZATION

In kinship communities, the clan (Serb. *bratstvo*; Alb. *fis*) was the unit that was primarily, but not necessarily entirely, formed on the basis of male blood-line lineage (Tarifa, 2008, 50–53). The smallest economic and political unit in the village[14] was the house, led by the head of the household, who controlled and led all the aspects of life within the

13 The Venetian denaro, also known as grosso, estimated at 1/24 of ducato, was a silver coin with an approximate mass of 2.18 grams. It contained 95% of pure silver, which is 2.07 grams per coin (Darovec, 2004, 66; Monete di Venezia, 2016).

14 The clans usually inhabited a territory of one village, with several family houses, and communal land – pastures and fields and forests (Jelić, 1926, 60; KLD, § 19 (footnote 2); KLD § 26).

family, in order to assure its prosperity. He was liable for the behaviour of the members of the household towards other members of the clan and/or village and had the right to punish the members of the household (Dolenc, 1925, 114–115; KLD paragraphs (hereafter §§) 18, 22–21, 26–27; KLD, Book 4; Hasluck, 1954, 25–50). The role of the head of the household is comparable to the role of the *Paterfamilias* in the Roman Antiquity (Stein, 1984, 27).

The heads of the households in the village were the members of the village assembly (KLD, paragraph (hereafter §) 72). Each clan also had its own clan chieftain. They were from the leading household in the clan and the chieftain role was hereditary. The Albanian term *pleqnise* and its slavicized form *plećnija* were the terms for the village and tribal assembly. The assemblies included all the current heads of the households in the clan or village, as well as the former and still living heads of the households. The latter, due to their age, passed their active chieftain role to the younger generation and kept the role of advisors in a council at the assemblies[15] (KLD, §§ 1146–1148; Bogišić, 1999, 241–242; Jelić, 1926, 60–61; Hasluck, 1954, 10, 130–131).

The judicial role of the clan chieftains is mentioned in the Dušan's code (Dolenc, 1925, 62). The clan or the village assembly gathered regularly to discuss all general questions regarding their community, as well as the disputes among the members of the community. All adult male members of the community were also present at the assembly, where each individual could expose a certain conflict or a dispute one had with another member of the community or lament about an injustice done to them by members of another community. Members who suffered injustice did not need to wait for a regular village assembly meeting, but could lament directly to one of the chieftains,[16] who called upon other chieftains to form an assembly to resolve the dispute as soon as possible (KLD §§ 1108, 1119–1120; 1176–1178; Bogišić, 1999, 294–295). The chieftains also called the accused to attend the assembly to be questioned about his actions (Bogišić, 1999, 295–296).[17]

If the wrongdoer was from another clan, the injured party lamented to the local chieftains who notified the chieftains of the other clan and demanded composition for their clan member. The chieftains of both clans agreed upon a date and place[18] of the assembly meeting, where the trial was to be held and the chieftains would deliberate on the sum of the composition (Bogišić, 1999, 294). Theoretically. Practically, however, in disputes between clans and tribes there was always a pending competition for honour and power. A deliberate injury between the clans tipped the scales of balance of power in favour of one of the parties. The other tried to restore the balance by returning the injury and thus entering the state of the feud.[19]

15 Similar is also recorded in other tribal societies (Radcliffe-Brown, 1994, 241–242).

16 Indeed, in cases of smaller disputes between the members of one village, the disputants could select one or two chieftains and let them resolve the dispute by arbitration and no assembly was needed (Bogišić, 1999, 349).

17 About the accusatory trial rites among the Montenegrin and Albanian tribes see: Bogišić. 1999, 194–316; KLD, §§ 1017–1105; Djuričić, 1975, 11–136; Jelić, 1926, 71–79; Dragičević, 1938, 278–288.

18 The joint assemblies of the chieftains of different clans or tribes were held on the borderline areas between both communities (Bogišić, 1999, 295).

19 About the theoretical and practical frames of feuding and dispute resolution see Boehm, 1987, 50–219;

The damage caused by the livestock of one clan in the pastures or fields another clan was a case that called for compensation, but the course of the dispute resolution or evolution depended upon the numerical and economic power of both clans (KLD, art. »Svinja u šteti«, §§ 163, 748–755; comp. Bogišić, 1999, 279–280, 365–367).

The dispute could have turned into a feud with mutual exchanges of raids and armed combats between the parties with multiple physical injuries and casualties on both sides. Yet, the violence within the feud was regulated by custom; especially violence against women, children and elderlies was prohibited, as was a deliberate poisoning of the water sources of common use (KLD, §§ 163, 748–755; Bogišić, 1999, 348–349; Boehm, 1987, 52; Hasluck, 1954, 202–209). Similarly, feuds arose also on the account of the land-ownership (Bogišić, 1999, 359–360).

Generally, all communities were inclined towards internal and external harmonious equilibrium. Therefore, the role of the chieftains was to resolve the disputes as soon as they arose, in order to prevent them from acquiring bigger proportions and thus preventing vendetta. However, that was not always possible nor were the attempts always successful.

THE RURAL KINSHIP COMMUNITIES BETWEEN THE VENETIAN AND THE OTTOMAN ADMINISTRATIVE AREA

After the Ottoman-Venetian war (1499–1503) that marked the end of the expansion of the Republic of Venice in the Mediterranean, the borders between both political entities were settled in Dalmatia (Orlando, 2014, 183–184). The Bay of Kotor and the coastal stripe between Budva and Bar, (the area of Paštrovići), belonged to the Republic of Venice, whereas the hinterland of Montenegro, including the area of Grbalj, a district between the Bay of Kotor and Budva, belonged to the Ottoman Empire. Although the land of Montenegro underwent some administrative division during the Ottoman rule, it remained autonomous in many regards. Furthermore, the population had the right to exercise their existing legal customs.[20] When the territorial division took place in the

Miller, 1996, 180–219; Byock, 2007; Þorláksson, 2007; Bogišić, 1999, 279–295; 345–384. A detailed overview of the research on violence, feud and vendetta has been provided in Povolo, 2015b, 198–214.

20 At the end of the 15th century, the Ottoman administration established the Timar system in Montenegro. The Ottoman tax register of 1497 mentions three Timars of Montenegro. Soon thereafter, the inability of the Montenegrin population to meet the tax payments of Timar system called for the administrative reform that turned Montenegrin lands into direct property of the Sultan (the Has) and transformed the Timar system into the Filuri system, which was more common for the stock-breading areas. The former lands of Crnojevići were reorganized into districts (nahis) in the beginning of the 16th century. The districts are also mentioned in the description of the Sanjak of Scutari, written by a nobleman, Marino Bolizza of Kotor in 1614, where he mentions *la Huna* (Katunska), *Gliubottin* (Ljubotinje), *Pliesiuzi* (Plješivci), *Cerniza* (Crmnica), in *Glirize* (Lješkopolje) (Ljubić, 1880, 167–171). The division into districts is still a part of Montenegrin tradition. The four districts Katunska, Riješka, Crmniška and Lješanska nahia, are traditionally referred to as »the Old Montenegro« (*Stara Crna Gora*) (Andrijašević & Rastoder, 2006, 82–83; Jelić, 1926, VII; Bogišić, 1999, 227; comp. Kovijanić, 1963; 1974). The district (Zuppa) of Grbalj had a privileged status due to its salt fields. The inhabitants of Montenegro were granted the autonomy in their internal organization as well as the privileges to resolve their disputes according to the existing legal customs. The mobilization of the

former Zeta, the members of Montenegrin clans were also present at the negotiation. Some of the Montenegrin clans lamented about the borderline between Njeguši and Grbalj (Stanojević, 1959, 14–15).

CASES OF LONG-LASTING FEUDS

In longer lasting disputes or feuds between the clans and tribes that came about due to dispute over land, the attempts for truce and to ultimately make peace came about as soon as severe physical injury or casualty took place, if not sooner (Bogišić,1999, 360).

Among the Albanian tribes, the mediation for peace usually took place after several vengeful exchanges and armed combat with severe physical injuries and casualties on both sides. The parties decided to make peace due to material damage and physical injuries they suffered and caused. Since the economy among the tribes was primarily extensive stockbreeding, the clans and tribes depended upon the peaceful equilibrium between all the tribes, as feuding hindered the ability to lead the herds onto the pastures (Bogišić, 1999, 359).[21] Since the chieftains of clans also got involved in feuding, they themselves could not directly propose truce to the chieftains of another clan. The chieftains of the clan that was more eager to make peace presented their case to the chieftains of the third clan and asked them for their intervention and mediation between the feuding clans (Jelić, 1926, 115; Bogišić, 1999, 359–362, 366, 369).

However, in analogy to the latter and as it is evident in the following two cases, the chieftains also lamented to the third party that ultimately represented an authority to the other party. Practically, the clan chieftains from the Ottoman area would lament to the Venetian authorities and vice versa. The issue was, however, that the third party was not necessarily entirely acquainted with the proportions of the feud and tried to resolve the dispute within their own judicial jurisprudence.

During the 16th and the 17th century, the clan of Njeguši from the immediate hinterland of Kotor in the area of the Katunska nahia, and the inhabitants of the Špiljarji village in the Bay of Kotor, were involved into a land-ownership dispute.

In 1543, the inhabitants of Grbalj already lamented to the Ottoman commissary about Špiljarji, a village kinship community from the Bay of Kotor, who had taken a plot of Loznica and some other lands. The Ottoman commissioner intervened in the dispute about Loznica, yet it seems that the dispute was not effectively resolved. In September of 1602, the count of the Njeguši clan came to Kotor with his escort and lamented to the Venetian governor regarding the land-dispute with Špiljarji over the plots Selišta and Praćišta. The Venetian governor took action and tried to prevent further disputes by force, protecting

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Montenegrins to fight for the Ottomans was to be conducted only under direct Sultan's orders, disregarding any potential demands for mobilization of the neighbouring Sanjakbejs (Andrijašević & Rastoder, 2006, 74–77).

21 The truce among the Albanian clans and barjaks was traditionally referred to as the »*besa of the herd and the shepherd*« (KLD §§ 874–885; SK, 155), which Margaret Hasluck translated to English as the »pledge of safety of man and beas*t«,* and interpreted the institute as a right of safe travel and a primary form of passports (Hasluck, 1954, 155).

the inhabitants of Špiljarji village in the process. The Njeguši were refusing to leave the plots. The land dispute continued throughout the following decade with mutual raiding of the lands and crops, during which armed combats between the Njeguši and Špiljarji took place and resulted in casualties.

The governors of Kotor intervened on behalf of Špiljarji and notified the Venetian Bailo in Constantinople. He used his diplomatic strings at the Sublime Port, and the latter, from 1603 onwards, issued several decrees (Firman) to the governor (Sanjakbeg) of Scutari and to the Montenegrin supreme judge (kadia) in Podgorica. The latter two were to prevent further disturbances of the Njeguši clan on the Špiljarji land. The feud was being resolved merely as the question of the land-ownership (Stanojević, 1959, 18, 34–35, 43–45).

It all seems that the Njeguši refused to respect Sultan's decrees in order to raise awareness about the other dimensions of the feud that concerned the physical injuries and casualties that they expected composition for. The dispute resolution through diplomatic intervention disregarded this fact and the previous casualties seem to have been the reason for further attacks of Njeguši on the Venetian land.

Finally, in 1620, the Venetian governor of Kotor started the negotiation between the Njeguši and Špiljarji. On July 13th, 1620, the peace treaty was signed in the presence of chieftains of Maine, Brajići, Zalazi and the supreme judge of Montenegro who attended the meeting with the members of his escort from Lješkopolje (Stanojević, 1959, 49–50). The Njeguši finally renounced their claims of Loznica and Selište. Praćita, however, were acknowledged as a shared pasture between the Njeguši in Špiljarji. Njeguši renounced all claims for the compositions of wounds and casualties that their clan members have suffered or, better said, their claims were compensated for with the raiding damage they have caused to Špiljarji and other inhabitants of the Bay of Kotor.

At about the same time, Paštrovići also had a long lasting land dispute with the Montenegrin clans. The dispute between Paštrovići and Maine, a kinship community from district of Crmnica (Crmniška nahia), began in the years of 1577 and 1578 when Maine sold a piece of land to Paštrovići, who were issued an ownership certificate by the Montenegrin supreme judge. A year later, the dispute over the legally sold plot began. For several years Paštrovići were taking their land-ownership dispute to the Montenegrin supreme judges in Podgorica and Scutari who (at least in 1579 and 1590) both issued additional certificates of ownership to the Paštrovići. The feud got further complicated due to the question of property borderline between Maine, Paštrovići and Brajići. The disputes lasted for some decades, with the appeals to the Sublime Porte, which on several occasions ruled in favour of the Paštrovići. However, the feud was not the land dispute alone, but it had acquired the proportions of blood feud.

Only after the mediation of the general governor for Dalmatia and Albania, on September 21st and September 25th, 1642, two truce treaties were signed between Paštrovići and their neighbours, Maine and Brajići. To revise the borderline, a commission was assembled of the representatives of the feuding parties and the representatives of the Venetian authorities and the representatives of the Ottoman administration from Žabljak and Scutari. The final peace treaty regarding the land dispute was signed on February 15th in Budva, in the Monastery of St. Mary, Mother of God (*Sveta Bogorodica*).

The plot of dispute was divided between the village Brajići and the clan Bečići (of Paštrovići), yet the Paštrovići were bound to pay yearly taxes for their land in the Ottoman administrative area, including all their overdue taxes in order to be able to enjoy the plot. The arbitrary settlement annulled all the previous judgements of the Ottoman authorities that were generally in favour of Paštrovići. The parties took an oath to respect the newly set borderline between their communities. To guarantee the peace treaty, the Bečići of Paštrovići had to form 13 godfatherhoods of Saint John with Maine and Brajići.

Other pending issues were resolved at the arbitration on February 24th, 1643 in Bjelaštica, at the borderline between Budva and Montenegro (Crmnica district), where the judges and the assembly of Paštrovići, the Montenegrin counts and other inhabitants of Montenegro, were present. The arbiters were mutual friends of both parties. The arbiters were the chieftains of Montenegrin clans and Pastrovići chieftains, along with some members of the nobility of Kotor and the Ottoman authorities from Žabljak.

The settlement resolved the question of the casualties, wounds and other debts that arose between the parties. The killing of a wife of the captain Nikola Ivanov of Ljubotinj was the liability of the Paštrovići, who had to pay 600 perper and form 4 fraternities and 24 godfatherhoods with the victim's family. The Montenegrins were liable for the killing of Stiepo Lučin from Paštrovići and bound to pay 900 perper and form 4 fraternities and 24 godfaterhoods. The Montenegrins were to pay additional 150 perper for the wounds of Vukac Davidović of Paštrovići. The wound of Maško Ivan Andrijin was settled with the wound of the Turk Ramandan Kusovac. Although none of the latter two received composition, the two men had to form two fraternities and two godfatherhoods. Andrija Zanović of Paštrovići and Dragoja Mirčetov of Ljubotinj also solved their discords at the arbitration assembly, which deliberated that they were to form one fraternity and two godfatherhoods.

The members of the commission and the arbitration assembly were entitled to a third of the sum of the compositions, which were to be paid in three equal sums. First rates were to be paid at the upcoming Easter; the remaining was to be paid in two half-annual rates. After the deliberation, the parties kissed and swore that they would form fraternities and godfatherhoods among them and respect the peace forever (Stanojević, 1959, 60–62).

These two long-lasting disputes called for »diplomatic intervention«. Yet, the diplomatic intervention itself, without respecting the legal customs of reconciliation, was inadequate. The custom of reconciliation and peace making proved to have been rather efficient. Furthermore, the customs of reconciliation were acknowledged and respected by the Venetian as well as by the Ottoman administration. However, the clans and the tribes were well able to resolve their disputes on their own before the disputes turned into feuds and blood feuds. Random encounters of members of different tribes were often grounds for competition and exchange of harsh words and insults that led to brawls. Brawls led to physical injuries, which in some cases lead to casualties. To avoid vendetta, the mediation took place and the parties met at the assembly that deliberated on the sum of composition and other contractual bonds (spiritual family ties) that further fortified the peace.

DISPUTE RESOLUTION BEFORE VENDETTA

In June of 1585, the joint assembly of Paštrovići and Maine met at the vineyard at Babin Vir. The assembly deliberated on the composition for the lethal wounds suffered by the son of Stijepac Raučević from Maine who had been beaten by Paštrovići in front of the gates of Budva. The composition sum was deliberated at 600 perper and the parties were to form 40 godfatherhoods (Sindik et al., 1959, 7–8, document (hereafter d.) 8).

The Albanian legal customs show strict distinction between killings that occurred by accident (in a brawl or a fight), vengeance killings and killing »for benefit« (SK, 265, p. 2736). Only the latter was regarded as murder (Serb. *ubistvo*; Alb. *gjakësi*) and the perpetrator (Serb. *krivac, rukostavnik*) was a murderer (Serb. *ubica*), although a blood-taker (Serb. *krvnik,* Alb. *gjakësór*) could have been anyone who had spilled a blood of another person (Bogišić, 1999, 345–384; Hysa, 1995, 132). Ideally, only deliberate killings for benefit should have been avenged for by vendetta.[22] Any other case called for a claim for composition from the victim's kin, before the vendetta even came into question. Therefore, it was crucial to prevent one death or lethal wounds[23] from turning into vendetta with multiple casualties on both sides.

In 1693, there was an armed combat between the inhabitants of Grbalj district and the Paštrovići. The Venetian governor of Budva intervened and ordered the Paštrovići to make peace with the inhabitants of Grbalj according to their common legal traditions. Paštrovići were not eager to make peace, yet they obliged, and thus proposed truce to the families of the killed inhabitants of Grbalj, who were prone to making peace. The reconciliation took place in May of 1693 in San Stefan before the joint assembly of the chieftains of Grbalj and Paštrovići (Sindik et al., 1959, 81, d. 125.). The reconciliation was within the interest of the Venetian administration as the Grbalj district represented the shortest land route between Budva and Kotor, although Grbalj was a part of the Ottoman administrative area. Similarly, the Venetian governor of Kotor on July 8th, 1741 ordered the judges of Castellastuo, to reinstall peace among the clans of Paštrovići (Bojović et

22 I am consciously and deliberately discussing only the cases of blood-revenge for severe physical injuries or lethal wounds and killings, which occurred in a brawl or a combat. However, the brawls themselves started on the account of defending one's honour or the honour of the community, as it is evident also from the numerous cases of blood-revenge in the history. Defending and re-establishing the honour that has been damaged with a public insult, by a revenge-killing, was common, as it has been proven by many historical and anthropological studies (Gluckman, 1955; Evans-Pritchard, 1993; Peristiany, 1965; Boehm, 1987; Miller, 1996; Carroll, 2003; Carroll, 2006; Carroll, 2007; Carroll, 2003; Büchert Netterstrøm & Poulsen, 2007; Davies, 2013; Povolo, 2010; Povolo, 2015a; Povolo 2015b). An attack on honour was an injury one could rarely find sufficient compensation or composition for.

23 The Montenegrin proverb says, »*One dead head brings fear to a hundred living*.« Originally, »*Jedna mrtva glava straši sto živih*« (Radov, 1997, 139). Customarily, the deadly wounded person told the members of his family the circumstances in which he was wounded, making sure they understood if it was a case of an accident, and thus preventing the vendetta. Blood-revenge for death by accident was deemed as dishonourable deed in Montenegrin as well as in the Albanian tradition (Bogišić, 1999, 350; KLD, §932; SK, 257–258, p. 2727–2731). The Code of Lekë Dukagjin even states, »Undeliberate killing is not persecuted by a rifle.« (KLD § 932) more about undeliberate killing in the Code of Skenderbeg (SK, 278–279, p. 2980–3002).

al., 1990, 37–38, d. 12). In 1766, the Venetian governor of Budva ordered Paštrovići to describe the circumstances that had led to the dispute with the inhabitants with Ulcinj, where four Paštrovići were injured, and ordered the Paštrovići not to take revenge (Sindik et al., 1959, 191, d. 256).

The prevention of vendetta was in the highest interest of both parties, as well as their neighbouring communities and authorities, who highly benefited from peaceful relationships. In order to make peace according to the custom, first, the customary mediation needed to take place (comp. Darovec, 2016, 31; Oman, 2016, 87–90).

THE CUSTOMARY MEDIATION FOR TRUCE

In order to prevent vendetta after the »blood was spilled«, the clan of the blood-taker had to show some remorse, fear, and humility in front the clan of the killed. As the custom of vendetta made every family member of the blood-taker's clan liable for the damage caused and all clan members were the potential targets of revenge, they themselves could not ask for mercy and truce.[24] The mediators (Serb. *posrednici*, Alb. *ndermjetës*), the clan or tribal chieftains, were to intervene according to their customary duties. In the case of single case of lethal wounds and accidental death, mediators were to go directly to the house of the victim and humbly ask the head of the victim's household for truce (Bogišić, 1999, 361–362; KLD, §§ 845, 851, 965). The head of the victim's household is referred to as »*the master of blood*« (Alb. *hoti i gjakut*) in the Albanian tradition. The reconciliation is a public ritual with symbolic gestures, phrases and objects (Darovec, 2014, 481–499). The mediators used special phrases to plea for truce. In Montenegrin tradition however, the word truce itself was never mentioned. Instead, the mediators asked for what was to be the result of the reconciliation. The mediators asked for the union of the blood-taker's and the victim's household in the godfatherhood of Saint John the Baptist.[25] The head of the victim's household was thus referred to as the godfather (Serb. *kum*) (Bogišić, 1999, 365).

In Montenegrin tradition, the head of the victim's household had some time to decide, whether to accept the offer for truce or not.[26] Therefore, the mediators would repeat the homage and the plea for truce periodically until they were accepted into the victim's house for negotiation (Jelić, 1926, 95, 98; Bogišić, 1999, 366).

The chieftains were in some cases accompanied by a group of women, who were traditionally referred to as *»the carriers of peace«* (Serb. *mironosice*), as they were

24 There was a custom of voluntary seclusion for at least 24 hours after the killing that was implemented by the clan of the blood-taker as they were all potential targets of vendetta. By seclusion, the liable party expressed its fear from vendetta and humility before the victim's clan. If this custom was not conducted accordingly, it signified an insult to the clan of the victim (Bogišić, 1999, 355–356; KLD, §§ 870–873; Hasluck, 1954, 224–226).

25 The pleas in the area of Montenegro were recorded as »*Primi kume za Svetoga Jovana*«, similar phrases were supposedly used in Albania. The variation from Herzegovina is recorded as: »*Primi kume, kumimo te bogom i tvom svetim Jovanom*« (Bogišić, 1999, 365).

26 The head of the victim's household *(the master of blood)* had to get the consent for truce from other members of the victim's clan as they were also entitled to take revenge (SK, 281, p. 3017–3027).

carrying with them babies in the cradles. The babies represented a symbolic gift of the blood-taker's clan and the offer for future union of both clans. The babies symbolically represented the number of godfatherhoods, future alliances, which could be made between the communities, on the other hand, the babies represented the numerical power of the clan of the blood-taker, and that the clan would be able to survive further vendetta (Bogišić, 1999, 363, 365, 376; Jelić, 1926, 99–100).

In the Albanian tradition, however, the preserved customs state that it was honourable to grant the truce (Alb. *besë*) therefore, the plea for truce after a killing was to be immediately granted. However, it lasted only 24 hours (KLD §§ 854–855). During this short period of truce, the blood-taker had to show his remorse and humility in front of the victim's clan and attend the funeral of the victim alone, without any escort.[27] This custom enabled the clan of the victim to evaluate the blood-taker's character and decide whether to grant the blood-taker and his clan the second, 30-day truce, during which further negotiation would be taking place (Jelić, 1926, 97; Karan, 1985, 31).

THE CONTRACT OF TRUCE

The truce (Serb. primirje; Alb. besa) was a contract between the house of the victim and the house and clan of the blood-taker.

After the mediators and the head of the victim's household agreed for truce and determined its time span, they shook hands and swore[28] that the blood-taker's clan is safe from vendetta (KLD, § 854). Handshake was a gesture that was traditionally used in contractual agreements, such as vassal or notarial investitures in the middle ages (Le Goff, 1985, 387–388; Darovec, 2014, 473–500; Darovec, 2016, 24; Brunner, 1992, 89–90). However, in Albanian as well as in Montenegrin tradition, the agreement with a handshake alone was not valid unless a warrantor (Alb. dorëzan Serb. dorzon, jemac) was appointed (Đuričić, 1979, 14; SK, 282, p. 3039).

The warrantor was chosen by the mediators and was most likely present among them while they were mediating for truce. The warrantor was a person that enjoyed great respect in the community and had to be on good terms with both the household of the blood-taker as well as the victim's household. Moreover, the warrantor's household must not have been in a blood-feud at a given moment. The warrantor was to supervise the head of the victim's household during the time of truce. The warrantor entered into the contractual agreement willingly and free of charge, but putting his good name and reputation at stake (Đuričić, 1979 33, 35; KLD § 687; Darovec, 2016, 22).

Milutin Đuričić in the 20th century recorded the phrases that were used to include personal warranty (Alb. *dorëzania;* Serb. *dorzonija, jemstvo;* Ita. *fideiussione*; Lat. *sponsio*)

27 The blood-taker was in no danger as he was protected by the truce and the customs of hospitality. He was treated as a guest and had an honorary seat at the table (Jelić, 1926, 97). The custom is vividly interpreted by Ismail Kadaré in his 1978 novel, *Prilli i Thyer,* which was translated into English in 1989 as *Broken April* and translated in Slovene in 2006 as *Zlomljeni april* (Kadaré, 2006, 14–15).

28 In analogy to other contractual agreements comp. Bogišić, 1999, 176.

into a contractual agreement. I attempt to loosely translate the phrases from Serbian to English bellow.

The head of the victim's household asked the selected person: »*Would you like to be my warrantor in this matter?*« And the selected person asked: »*Are you aware of what a warrantor is? He can forgive his own blood but not the blood of another. Do not hold me by the neck. If you kill him, I am dishonoured and I will have to kill you. Therefore, think well and honestly say - should I enter into this matter as your warrantor?*« The head of the victim's household said: »*You can enter without a worry. I will not dishonour you in this matter; I will stick to my word for a thousand years I will keep my promise as long as I and my children are alive*.« After this, the warrantor asked the mediators and the head of the victim's household to repeat their statements and to confirm their agreement. After they repeated their statements, the warrantor publicly declared: »*I am the warrantor, address me in this matter. Have no worries, if he breaks his promise, he betrays me.*« (Đuričić, 1979, 24. 33–36). The verbal promises of all the parties in the contract for truce were invalid, unless all parties took an oath upon a sacral object. Those could be the Gospel or the Crucifix and, in Albanian Highlands, the rock, as the oldest sacral object (KLD, §§ 533, 535).

To sum up, *besë*, the Albanian term for truce, is in fact a word with many contextual meanings.[29] The Slavic equivalent for *besë* is *vjera* or *vera* (Karan, 1985, 34; Miklošič, 1888, 139, 141), which generally translates as *faith*, yet it also has several contextual meanings[30] and it is equivalent to Latin term and institution of *fides (fede)* (Karadžić, 1818, 73; comp. Škrubej, 2002, 149–156). *Besë*, as well as *vjera* and *fides*, in their most general uses signified a pledge of honesty, a promise of safety, mutual trust and loyalty between the parties (Petkov, 2003, 9–78; comp. Du Cange, 1710, Tom. 3, 1303). The latter was formed by an oath (Serb. *zakletva*; Alb. *béja*, Lat. *jus jurandum*) (Comp. Hysa, 1995, 40; Stevanović et al. 1962, 521–522; Du Cange, 1710, Tom 2., 478) of both parties, through the mediators and by the oath of the warrantor, which represents legal obligation of all the entities involved (Đuričić, 1979, 30; Darovec, 2016, 23–24).

On January 28th, 1740, the Paštrovići declared in front of the governor of Budva that they had made truce with Maine (*datta la fede di bon vivere e di non molestare li Maini per le vertenze e pretese di sangue che tra loro corono)* which was valid until October 26th, 1740. The parties determined the fine for potential violators of truce *(mancator di fede).* The statement of Paštrovići was ratified from the part of Maine that joined the

29 Besë is »*a word of honour*« among Albanians (Berishaj, 1989, 58). Etymologically the noun *besë* derives from Indo-European roots for nouns that signify pledge, truce and trust, roots for adjectives faithful and trustworthy and roots for verbs to persuade and to force (Orel, 1998, 59); *Besë* is also the pledge of safety and protection (Alb. *ndorja*) and safe conduct (Alb. *shpurë i sigurti*) (Đuričić, 1979, 7–8).

30 By analysing the vocabulary of former Montenegrin count bishop (vladika) Petar II. Petrović Njegoš, the term *vjera* has been used in several contextual variations. *Vjèra* was a belief that something is accurate and true or that something will happen as promised. *Vjèra* was also a guaranty and trust in something or someone. *Vjèra* is also defined as a given word of honour and a promise to someone that one will not be harmed. *Vjèra* was used as term for oath taking. *Vjèra* also meant trust into one's word of honour, the trust that one will not be betrayed. Njegoš also used phrases »uhvatiti vjeru od mira« and »dati vjeru« which meant to form a peace treaty or to grant truce or safety to someone (Stevanović et al., 1983, 84–85).

Paštrovići at a meeting in front of the governor of Budva on February 6th 1740, where they took an oath that they will resolve their dispute according to the custom (Sindik et al., 1959, 146–147, d. 203).

The violation of truce (*besa, vjera* or *fides*) was a serious crime, which was not taken lightly.[31] The violator of truce was to be killed by the warrantor of truce. (Đuričić, 1979, 29, 42–43). However, in the Albanian Highlands the entire clan of the violator of truce was subdued to severe fines and punishments.[32]

During the period of truce, further negotiation took place. From the negotiation onwards, according to the Montenegrin tradition, the head of the victim's household was referred to as *umirnik*, which would loosely translate as the »peace-giver«. Both parties selected equal number of arbiters. The number varied from 6, 12 or 24 arbiters, depending on the case.[33] The most common number of the arbiters for reconciliation of severe physical wounds or a killing was 24, although the number could be fewer if the parties agreed so.[34] The mediators also discussed other demands of the victim's kin that should have been granted in order for the parties to reach permanent peace (Bogišić, 1999, 364, 366–367; Djuričić, 1975, 21–25; KLD, § 854).

THE ARBITRATION AND PERMANENT PEACE

On the appointed day, the parties met at the appointed location in front of the arbitration assembly. The arbiters questioned both parties to determine the level of liability of the parties. In some cases, the victim himself had a fair amount of liability for the damage done. Each party knew exactly how much damage each party caused and suffered. The arbiters deliberated on the sum of compositions for wounds and casualties and upon the sum of the composition for the material damage. Due to high sums of the composition,[35]

31 Milorad Medaković wrote about the violation of truce (Serb. vera): *»To break the truce or to harm someone during truce is the first and the biggest sin on Earth one can never be redeemed from.« »Pogaziti vjeru i učiniti kome što na vjeru, držalo se za prvi i naiveći grieh na zemlji, od koeg se grešnik nigda izvaditi ne može*« (Medaković, 1860, 107).

32 The composition that needed to be paid for a person that was killed during truce was 22 purses or 11000 grosh (a purse, (turcism Alb. qesë, Serb. ćesa) was a monetary unit of 500 grosh). The community of the violator destroyed 3 houses of the violator's closest relatives, destroyed all their fields and seized all their livestock (KLD, §§ 881–882; KLD, Dodatak, 211–213). In addition, the clan of the violator were to pay a fine for violation of truce, which was 100 rams and 1 ox (SK, 155, p. 692–693; KLD §884; Karan, 1985, 44–47). If transformed into money, the fine was 10400 grosh (for customary prices of cattle and livestock see: KLD § 484). A grosh is most likely the Ottoman gurush, a sliver piece coin with a mass of 25.65 grams (Pamuk, 2000).

33 The exact same numbers of arbiters, depending on the severity of the case, are mentioned in the Dušan's Code (DZ, art. 151).

34 Some of the arbiters were the same chieftains that had mediated for truce, as the legal tradition refers to the chieftains as the mediators and arbiters (Serb. *posrednici i plećnari*; Alb. *ndermjetës dhe pleqnarët*) (Djuričić, 1975, 21); which may be the reason why some anthropologists tended to equate the mediation and arbitration (Stein, 1984, 5).

35 The compositions in the 19th century were recorded as follows: in Katunska, Riješka, Crmniška and Lješanska district the composition for death varied from 132 ducats, 4 pieces of 20 (*cvancike*) and one para. Other areas reported 133 zecchini and 2 grossi. Bjelopavlići, Piperi, Bratonožići, Kuči and Rovce, the tribes

the sums were divided into rates, and deadlines for payments were determined. Furthermore, the number and types of new alliances were determined. Those were usually the fraternities or godfatherhoods. However, as evident from Kotor notarial registers, marriages between the parties were also recorded. The arbiters also deliberated about the details of the execution. Usually, the clan of the blood-taker was to prepare a feast for the victim's clan and the blood-taker was to perform the act of the public humility or humiliation in front of the peace-giver (Bogišić,1999, 362, 367–368, 369, 371, 373; Jelić, 1926, 115–116).

The parties swore to respect the peace by taking an oath. According to the Bogišić's Survey, the symbolic act of permanent reconciliation was the kiss of peace (Serb. *poljubac, cjelov mira*; Lat. *osculo pacis*),[36] that first took place in front of the arbitration assembly (Bogišić, 1999, 371–372) and was later repeated on several occasions. The kiss was repeated in front of the officials, such as the notaries of Kotor. The symbolic gesture of kiss was preserved in all the areas of Montenegro throughout the centuries.

The peace treaty between two clans of Paštrovići from 1632 states that the deliberation was accepted by both parties and they kissed in front of the assembly and took an oath to form god-fatherhoods and keep the perpetual peace *([…]* ***i pred nama se izljubiše i kumstvo obečaše i u vječnom miru ostaše*** *[…]*) (Jelić, 1926, 134).

In 1716, in Paštrovići two families made peace after a killing. The liable party was to pay the composition, form 6 fraternities and 6 godfatherhoods and prepare a feast for 76 people. The peace-giver declared after the execution that he was justly compensated for

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of Morača and Vasojevići the composition varied between 200 and 300 talier. The composition for severe physical wounds was deemed approximately half of the composition for death, which is 66 zecchin. Composition for smaller wounds was between 20 and 50 talier (Bogišić, 1999, 367–368; Jelić, 1926, 89, 92). Based on the 1740 monetary reform of the Republic of Venice, the ducato / zecchino represented 22 lire of 240 gross with 2.18 grams of total mass and 2.07 grams of silver. One para was a Turkish silver piece coin with a mass of 0.55 grams (Darovec, 2004, 68–69; Pamuk, 2000).The composition in Herzegovina varied between 100 and 300 talier or more, if the victim had small children. If the clan of the victim was numerous and strong, the composition was up to 600 talier. The composition for wounds was determined in the same way as in the Montenegro (Bogišić, 1999, 367–368). The tallero was a silver-piece coin with the mass of 28 grams (Coinage, 2016). In Albanian Highlands the composition for the killed man or a boy was six purses which is 3000 grosh (KLD § 881; KLD, 170); in practice, the compensation could vary between 9 and 12 purses (Jelić, 1926, 93). The composition for a killed woman was three purses or 1500 grosh. If a pregnant woman was killed, the assembly could inspect the gender of the unborn child. The composition was enlarged by three purses for an unborn girl and six purses for an unborn boy. The composition for each bloody wound was three purses (1500 grosh) (KLD §§ 935–937; SK, 266; Bogišić, 1999, 367). Among the tribes of Mirditë, the composition for wound depended upon the part of the body that was injured. Injury above the belt was estimated at least 3 purses (1500 grosh), below the belt, however, not more than a purse and a half, 750 grosh. If the injury resulted in permanent handicap, the composition was 2000 grosh. The bloodtaker was to pay the »medical« expenses that usually varied between 200 and 300 grosh (Hasluck, 1954, 241; Jelić, 1926, 93). Grosh was a Turkish silver piece coin, *gurush*, with a mass of 25.65 grams (Pamuk, 2000).

36 The kiss of peace represented a confirmation and a warranty of the peace treaty and new friendship (Lat. *amicitia*) between the parties (Darovec, 2014, 492; comp. Darovec, 2016, 30–32). In the middle ages, the kiss represented one of the investiture objects or gestures (Le Goff, 1985, 457). According to Gregorio López's analysis of the Spanish legal codes in *Siete Partidas (1555*), the kiss represented the symbol of true love that transformed the hearts of former adversaries. The change of emotional state was transformed into formal legal obligation (Petkov, 2003, 33–34; 40–41, 48).

the death of his father and that there is nothing but brotherly love left between him and the other party (Bojović et al.,1990, 29, d. 7).

On January 12th 1829, in Brčeli tribe, the arbiters deliberated in the feud between Lorovići an Aleksići. The killing and the blood revenge were compensated one for the other and the composition for a wound and the material damage was determined. The Aleksići were to prepare a feast for 50 members of Lorovići and Luka Perov with his 10 friends. The parties kissed in front of the assembly that was a sign of perpetual peace. (***i celive učinismo****, […] i* ***u vječni mir ostavismo****, koi se podpisujemo*) (Novaković, 1879, 206).

The custom of vendetta and reconciliation was kept alive even after the dissolution of the Venetian Republic in 1797. Thereafter, the unification of the Old Montenegro, the Montenegrin Highlands as well as the Montenegrin coastal areas (*Crnogorsko Primorje*) that was previously a Venetian administrative area, took place (Andrijašević & Rastoder, 2006, 155; Raspopović, 2009, 15).

The Montenegrin count bishops and princes of Petrovići dynasty worked towards the abolition of the custom of vendetta with new criminal legislation. Since the rule of the count bishop Petar I. Petrović, there was an attempt to form a permanent judicial body in Montenegro, which was accomplished by his successor Petar II. Petrović Njegoš (Andrijašević & Rastoder, 2006, 132–134, 161–163, 165; Margulis, 2013, 31; Marinović, 2007, 624).

The judgements and deliberations of the Supreme Court (Vrhovni sud, Senat) that was formed on October 2nd 1831, were much like the deliberations of the tribal assemblies (Andrijašević & Rastoder, 2006, 163). Especially in the first few decades in regards to determining compensations for wounds, killings and in some cases in the formation of new alliances between the parties (Jelić, 1926, 125–132, d. VI, VIII, XI, XV, XVI XVII).

Although the criminal legislation further developed in the time of prince Danilo I and prince Nikola I Petrović (Bogišić, 1999, 294–295, 321; Šćepanović, 2003, 25; Marinović, 2007, 28–32, 157–167 171, 181, 195–196), the custom of vendetta remained alive as have the customs of the pacification. Precisely in the reign of prince Nikola I, one of the most detailed descriptions of the execution of the deliberation was recorded by Pavel Apolonovič Rovinskiĭ in 1890 in Grbalj.

THE EXECUTION OF THE DELIBERATION

In spring of 1890, an assembly of 24 mutually selected arbiters gathered in a village Višnjevo. The deliberation stated that Jovo Bojković, the son of the blood-taker, should pay the compensation (*mito*) to the kinship of the Zec family 30 zecchin and the composition of 133 zecchin, 2 grossi and one half para for the killed Jovo Zec (Sn.). Jovo Bojković was to prepare a feast for Jovo Zec (Jr.) and 300 of his clan members. The parties were to form 12 godfatherhoods and 12 great and 12 small fraternities. According to the ancient custom, the son of the blood-taker was to hand over the killer's weapon, by all the formalities of humiliation.

On the day of the execution, August 27th, 1890, around seven in the morning, the women with cradles came in front of the house of Jovo Zec. The twelve male godfathers of the Bojkovići clan began to loudly greet: »*God speed! Good morning in the godfather's*

house! […] In the name of God and Saint John, good morning to the godfather!« The godfathers were accepted to the house and were given wine and brandy and they gave two silver pistols (*ledenice*) to Jovo Zec. The women with babies in the cradles entered the house, carrying a silver-piece coin under the head of each baby. Then, the formation of brotherhoods took place by the lead of Jovo Zec, who picked a baby from a cradle ad kissed it on the head (Rovinskiĭ, 1994, 257–259).[37]

THE PUBLIC PARDON

The ritual of humiliation of the son of the blood-taker in front of the son of the victim[38] is described by Rovinskiĭ as follows:

> *The son of the blood-taker, in only single undergarment, barefoot and uncovered, crawled on all four, with a long riffle strapped around his neck […] Two arbiters, also uncovered, were supporting the riffle from both ends. Seeing this, Zec ran towards Bojković, to shorten this horrifically humiliating scene. By attempting to lift Bojković from the ground, Bojković kissed Zec on the feet, the chest and the shoulder. By removing the rifle from the Bojković's neck, Zec said: »First my brother, then my blood-taker, then my brother forever. Is this the rifle that took the life of my father?« and without waiting for a reply, he handed the rifle back to Bojkovićć and expressed a full pardon and they both kissed and embraced each other as brothers* (Rovinskiĭ, 1994, 259; comp. Boehm, 1987, 136; Darovec, 2016, 24).

After the act of public reconciliation, other rites followed. The clan of the bloodtaker prepared a feast (Serb. *krvna trpeza, krvni sto, hljeb krvne osvete, krvni leb / hljeb / kruh,* Alb. »*büke i gjakut*«) for the clan of the peace-giver. Before the meal itself, the composition was paid, either in money or in goods, usually valuable objects such as riffles, pistols or knives.[39]

After the meal, the fraternity between the main actors of parties was formed with a

37 The custom was similarly described by Božidar Petranović (Petranović, 1868, 18–19).

38 The homage that expressed humility and humiliation of the blood-taker before the peace-giver, was mentioned by A. Fortis (Fortis, 1984, 42). According to the Bogišič's survey, in Herzegovina, the blood-taker approached the peace-giver from 50-meter distance on his knees or crawling on all fours, with the support of two members of his clan. In Albania, the blood-taker approached on his knees with his hands tied behind his back, asking the peace-giver to free his hands and accept him as a godfather. The common tradition suggested the blood-taker to make 2/3 of the distance and the peace giver the remaining 1/3. The blood-taker was to say: »*Accept, me godfather, as your godfather by God and Saint John,*« as the people who were present repeated the blood-taker's words. When the blood-taker and the peace-giver were in front of each-other, the blood-taker kissed the peace-giver on the chest, while the peace-giver kissed the blood-taker on the head. After they kissed each other on their cheeks, the peace-giver said: »*I forgive him to you, blood-taker, by God and Saint John*« (Bogišić, 1999, 371–372).

39 The value of individual objects was evaluated by the chieftains who usually deemed the objects as higher value as they actually were. There was also a custom that the peace giver returned the composition, and donated the compensation as a gift to his new godfather (Bogišić, 1999, 372–373). The custom of returning the composition as a gift (Mauss, 1996, 29–30).

ritual. The peace-giver and the blood-taker pierced their little fingers with a pin and each dropped a couple of drops of blood into a glass of water, wine or brandy and they drank from each-other's cups (Jelić, 1926, 108–110; KLD, §§ 988-990).[40]

In the Albanian Highlands, however, the concluding act of the reconciliation was the carving of the cross at the entrance door of the former blood-taker's house (Jelić, 1926, 110; KLD § 983–987). »*All houses are marked with many crosses*«, wrote Mary E. Durham by describing the houses in the Vraka village in the High Albania (Durham, 1909, 17), which indicates that the custom of carving of the cross might have been quite frequent. The cross in the Christian tradition represents the absolution of sins (Schmitt, 2000, 357).

CONCLUSION

The documents suggest that tribes and clans in Modern Age Montenegro enjoyed substantial judicial autonomy. The judicial autonomy of the clans in the Ottoman administrative area, the Old Montenegro, was granted by the Sultan's decree in the beginning of the 16th century, the judicial autonomy of the kinship communities in the Bay of Kotor was declared in the Statute of Kotor. It was respected by the Serbian rulers and later by the Venetian administration that did not impose its statutory laws onto kinship communities. This is especially evident in regards to the Paštrovići, who were confirmed their existing privileges of judicial autonomy. The 15th century peace treaties of the notarial register of Kotor testify, that the kinship communities were well able to resolve their disputes on their own through implementation of their legal customs of pacification, without any interference of the Venetian authorities. The kinship communities did however take advantage of the notarial office of Kotor where they sporadically put their peace-treaties in written. After the division of the Montenegrin territory between the Venetian and Ottoman administration, some land disputes arose among the clans from both sides of the border that developed greater proportions and called for diplomatic intervention of the Venetian and the Ottoman authorities. Latter was unfortunately not as effective as the customary dispute resolution. The dispute resolution called for mediation of the third party that resulted in truce. Truce was a contract between the parties and the warrantors, who swore that the parties would meet before the arbitration assembly. During the arbitration, all points of the dispute were thoroughly revised. The composition for the damage was determined by the arbiters, along the number of new alliances between the parties. The parties made permanent peace by symbolic gestures of kiss and oath. Yet, the final stage of the reconciliation was the execution that took place on a later date. The composition in full or in rates was payed and the parties executed some other rites of pacification. Due to the efficiency of the peace-making custom, the Venetian authorities on some occasions

40 M. E. Durham discusses the modification of the ritual, as a form of alliance between families, not necessarily linked to the pacification. The parties could put their drops of blood on a block of sugar and ingest it. Marriages between the family members of people who were in fraternity were forbidden by custom (Durham, 1909, 24).

ordered the Paštrovići to make peace with the neighbouring communities or urged them not to take blood-revenge against the inhabitants of the Ottoman administrative area. The pressure for peace was a strategy that existed within the legal customs of the kinship communities.

»NAJPREJ MOJ BRAT, NATO KRVNIK, NATO MOJ BRAT ZA VEDNO« UČINKOVITOST TRADICIONALNEGA POSTOPKA POMIRITVE V ČRNI GORI V ZGODNJEM NOVEM VEKU IN VLOGA BENEŠKIH OBLASTI PRI POSTOPKU POMIRITVE

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POVZETEK

Članek obravnava običaj krvnega maščevanja in običaje pomiritve na območju Črne gore v novem veku. Običaji so se ohranili skozi stoletja, njihovo zbiranje pa je potekalo od 19. stoletja dalje. Pravne običaje rodovnih skupnosti so priznavali srednjeveški vladarji. V novem veku so bili beneški in osmanski oblastniki seznanjeni z običajem maščevanja in z običaji pomiritve. Slednji so se izkazali kot učinkoviti pri reševanju dolgotrajnih sporov med klani iz različnih administrativnih ozemelj. Kljub vsemu, so bile skupnosti na eni in drugi strani meje sposobne samostojno reševati spore, brez vpletanja oblastnikov, ki so sicer občasno pritisnili na bratstva v sporu, da bi se pomirila. Pomiritev je sestavljena iz treh faz, iz mediacije, arbitraže in izvršbe razsodbe. V mediaciji sta podani prisega in garancija o premirju. Arbitraža se je odvijala pred zborom razsodnikov, kjer sta si stranki oprostili s simbolnimi gestami. V izvršbi so bile simbolne geste ponovljene, še posebej pri obredu javne sprave, kjer sta sprta postala »brata za vedno«. Članek z analizo ohranjenih mirovnih pogodb in historiografske literature ponazarja, da kljub administrativni razdeljenosti ozemlja Črne gore v novem veku med dve véliki politični entiteti, niti osmanska niti beneška oblast nista bistveno posegali v sodno avtonomijo bratstev na območju Črne gore, temveč sta spoštovali obstoječe pravne običaje.

Ključne besede: pomiritev, Črna gora, Albanija, Beneška Republika, novi vek

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UREDNIŠTVO

ISTRUZIONI PER GLI AUTORI

1. La rivista ACTA HISTRIAE pubblica **articoli scientifici originali e rassegne** relativi alla sfera degli studi umanistici, in particolare la storiografia. L'area geografica di base coperta dalla pubblicazione include l'Istria e la parte mediterranea della Slovenia, nonché tutti gli altri temi che si ricollegano al Mediterraneo in base a studi interdisciplinari e comparativi. Tutti gli articoli vengono recensiti. La recensione è completamente anonima.

2. La Redazione accetta articoli in lingua slovena, italiana, croata e inglese. Gli autori devono garantire l'ineccepibilità linguistica dei testi.

3. Gli articoli devono essere di lunghezza non superiore alle 36.000 caratteri senza spazi. Possono venir recapitati all'indirizzo di posta elettronica ActaHistriae@gmail.com oppure su supporto elettronico (CD) per posta ordinaria all'indirizzo della Redazione.
L'autore garantirà l'originalità dell'articolo e si impegnerà a non pubblicarlo altrove.

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5. I contributi devono essere corredati da un **riassunto** e da una **sintesi**. Quest'ultima sarà più breve (max. 100 parole) del riassunto (cca 200 parole).
Nella *sintesi* si descriveranno brevemente i metodi e i risultati delle ricerche e anche i motivi che le hanno determinate. La sintesi non conterrà commenti e segnalazioni.
Il *riassunto* riporterà in maniera sintetica i metodi delle ricerche, i motivi che le hanno determinate assieme all'analisi, cioè all'interpretazione, dei risultati raggiunti. Si eviterà di riportare conclusioni omesse nel testo del contributo.

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7. L'eventuale **materiale iconografico** (originale) va preparato in formato elettronico (jpeg. / tiff) e consegnato in file separati alla definizione di 300 dpi a grandezza desiderata, purché non ecceda i 12x15 cm. Prima della pubblicazione, l'autore provvederà a fornire alla Redazione tutte le autorizzazioni richieste per la riproduzione del materiale iconografico ed archivistico (in virtù della Legge sui diritti d'autore). Tutte le immagini, tabelle e grafici dovranno essere accompagnati da didascalie e numerati in successione.

8. Le **note a piè di pagina** sono destinate essenzialmente a fini esplicativi e di contenuto. I **riferimenti bibliografici** richiamano un'altra pubblicazione (articolo). La nota bibliografica, riportata nel testo, deve contenere i seguenti dati: *cognome dell'autore*, *anno di pubblicazione* e, se citiamo un determinato brano del testo, anche le *pagine*. Ad es.:
(Isotton, 2006, 25) oppure (Isoton, 2006).

I riferimenti bibliografici completi delle fonti vanno quindi inseriti nel capitolo Fonti e bibliografia (saranno prima indicate le fonti e poi la bibliografia). L'autore indicherà esclusivamente i lavori e le edizioni citati nell'articolo.
I dati completi sulle pubblicazioni nel capitolo Fonti e bibliografia verranno riportati in questa maniera:
Isotton, R. (2006): Crimen in itinere. Profili della disciplina del tentativo dal diritto comune alle codificazioni moderne. Napoli, Jovene.
Se si citano *più lavori dello stesso autore* pubblicati nello stesso anno accanto al cognome va aggiunta una lettera in ordine alfabetico progressivo per distinguere i vari lavori. Ad es.:
(Isotton, 2006a) e (Isotton, 2006b).
Il riferimento bibliografico può essere parte della nota a pié di pagina e va riportato nello stesso modo come sopra.
Singole opere o vari riferimenti bibliografici in una stessa nota vanno divisi dal punto e virgola. Per es.:
(Isotton, 2006; Massetto, 2005).

9. Le **fonti d'archivio** vengono citate nel testo, *tra parentesi*. Si indicherà: sigla dell'archivio - numero (oppure) sigla del fondo, numero della busta, numero del documento (non il suo titolo). Ad es.:
(ASMI-SLV, 273, 7r).
Nel caso in cui un documento non fosse contraddistinto da un numero, ma solo da un titolo, la fonte d'archivio verrà citata *a piè di pagina*. In questo caso si indicherà: sigla dell'archivio - numero (oppure) sigla del fondo, numero della busta, titolo del documento. Ad es.:
ACS-CPC, 3285, Milanovich Natale. Richiesta della Prefettura di Trieste spedita al Ministero degli Interni del 15 giugno 1940.
Le sigle utilizzate verranno svolte per intero, in ordine alfabetico, nella sezione "Fonti" a fine testo. Ad es.:
ASMI-SLV – Archivio di Stato di Milano (ASMI), f. Senato Lombardo-Veneto (SLV).

10. Nel citare **fonti di giornale** nel testo andranno indicati il nome del giornale, la data di edizione e le pagine:
(Il Corriere della Sera, 18. 5. 2009, 26)
Nel caso in cui è noto anche il titolo dell'articolo, l'intera indicazione bibliografica verrà indicata *a piè di pagina*:

Il Corriere della Sera, 18. 5. 2009: Da Mestre all'Archivio segreto del Vaticano, 26.
Nell'elenco Fonti e bibliografia scriviamo il nome del giornale. Il luogo di edizione, l'editore ed il periodo di pubblicazione.
Il Corriere della Sera. Milano, RCS Editoriale Quotidiani, 1876–.

11. Il capitolo **Fonti e bibliografia** è obbligatorio. I dati bibliografici vanno riportati come segue:
- Descrizione di un'opera compiuta:
autore/i (anno di edizione): Titolo. Luogo di edizione, casa editrice. Per es.:
Cozzi, G., Knapton, M., Scarabello, G. (1995): La Repubblica di Venezia nell'età moderna – dal 1517 alla fine della Repubblica. Torino, Utet.
Se *gli autori sono più di due*, la citazione è corretta anche nel modo seguente:
(Cozzi et al., 1995).
Se indichiamo una parte della pubblicazione, alla citazione vanno aggiunte le pagine di riferimento.
- Descrizione di un articolo che compare in un volume miscellaneo:
autore/i del contributo (anno di edizione): Titolo. In: autore/curatore del libro: titolo del libro. Luogo di edizione, casa editrice, pagine (da-a). Per es.:
Clemente, P. (2001): Il punto sul folklore. In: Clemente, P., Mugnaini, F. (eds.): Oltre il folklore. Roma, Carocci, 187–219.
- Descrizione di un articolo in una **pubblicazione periodica – rivista**:
autore/i (anno di edizione): Titolo del contributo. Titolo del periodico, annata, nro. del periodico. Luogo di edizione, pagine (da-a). Per es.:
Miletti, M. N. (2007): La follia nel processo. Alienisti e procedura penale nell'Italia postunitaria. Acta Histriae, 15, 1. Capodistria, 321–342.
- Descrizione di una fonte orale:
informatore (anno della testimonianza): nome e cognome dell'informatore, anno di nascita, ruolo, posizione o stato sociale. Tipo di testimonianza. Forma e luogo di trascrizione della fonte. Per es.:
Predonzan, G. (1998): Giuseppe Predonzan, a. 1923, contadino di Parenzo. Testimonianza orale. Appunti dattiloscritti dell'intervista presso l'archivio personale dell'autore.
- Descrizione di una fonte tratta da pagina internet:
Se è possibile registriamo la fonte internet come un articolo e aggiungiamo l'indirizzo della pagina web e tra parentesi la data dell'ultimo accesso:
Young, M. A. (2008): The victims movement: a confluence of forces. In: NOVA (National Organization for Victim Assistance). (15. 9. 2008). Http://www. trynova.org/victiminfo/readings/VictimsMovement.pdf
Se l'autore non è noto, si indichi il webmaster, anno della pubblicazione, titolo ed eventuale sottotitolo del testo, indirizzo web e tra parentesi la data dell'ultimo accesso. Se l'anno di edizione non è noto si indichi tra parentesi l'anno di accesso a tale indirizzo:
UP CRS (2009): Università del Litorale, Centro di ricerche scientifiche di Capodistria. Convegni. Http://www.zrs-kp.si/SL/kongres.htm (2. 2. 2009).

La bibliografia va compilata in ordine alfabetico secondo i cognomi degli autori ed anno di edizione, nel caso in cui ci siano più citazioni riferibili allo stesso autore.

12. Il significato delle **abbreviazioni** va spiegato, tra parentesi, appena queste si presentano nel testo. L'elenco delle abbreviazioni sarà riportato alla fine dell'articolo.

13. Per quanto riguarda le **recensioni**, nel titolo del contributo l'autore deve riportare i dati bibliografici come al punto 10, vale a dire autore, titolo, luogo di edizione, casa editrice, anno di edizione nonché il numero complessivo delle pagine dell'opera recensita.

14. Gli autori ricevono le **prime bozze** di stampa per la revisione. Le bozze corrette vanno quindi rispedite entro una settimana alla Redazione. In questa fase i testi corretti non possono essere più ampliati. La revisione delle bozze è svolta dalla Redazione.

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LA REDAZIONE

INSTRUCTIONS TO AUTHORS

1. The journal ACTA HISTRIAE publishes **original** and **review** scientific articles from the sphere of humanities, historiography in particular. The basic geographic areas covered by this publication are Istria and Mediterranean Slovenia, as well as other topics related to the Mediterranean on the basis of interdisciplinary and comparative studies. All articles are reviewed. The review process is entirely anonymous.

2. The articles submitted can be written in the Slovene, Italian, Croatian or English language. The authors should ensure that their contributions meet acceptable standards of language.

3. The articles should be no longer than 36,000 characters (without spaces). They can be submitted via e-mail (ActaHistriae@gmail.com) or regular mail, with the electronic data carrier (CD) sent to the address of the editorial board. Submission of the article implies that it reports original unpublished work and that it will not be published elsewhere.

4. The front page should include the title and subtitle of the article, the author's name and surname, academic titles, affiliation (institutional name and address) or home address, including post code, and e-mail address.

5. The article should contain the **summary** and the **abstract,** with the former (max. 100 words) being longer than the latter (c. 200 words).
The *abstract* contains a brief description of the aim of the article, methods of work and results. It should contain no comments and recommendations.
The *summary* contains the description of the aim of the article and methods of work and a brief analysis or interpretation of results. It can contain only the information that appears in the text as well.

6. Beneath the abstract, the author should supply appropriate **(5–7) keywords**, as well as the **English (or Slovene) and italian translation** of the abstract, summary, keywords, and captions to figures and tables.

7. If possible, the author should also supply (original) **illustrative matter** submitted as separate files (in jpeg or tiff format) and saved at a minimum resolution of 300 dpi per size preferred, with the maximum possible publication size being 12x15 cm. Prior to publication, the author should obtain all necessary authorizations (as stipulated by the Copyright and Related Rights Act) for the publication of the illustrative and archival matter and submit them to the editorial board. All figures, tables and diagrams should be captioned and numbered.

8. **Footnotes** providing additional explanation to the text should be written at *the foot of the page*. **Bibliographic notes** – i.e. references to other articles or publications – sho-

uld contain the following data: *author, year of publication* and – when citing an extract from another text – *page.* Bibliographic notes appear in the text. E.g.: (Friedman, 1993, 153) or (Friedman, 1993).
The entire list of sources cited and referred to should be published in the section *Sources and Bibliography* (starting with sources and ending with bibliography).

The author should list only the works and editions cited or referred to in their article.
In the section on *bibliography*, citations or references should be listed as follows:
Friedman, L. (1993): Crime and Punishment in American History. New York, Basic Books.
If you are listing *several works published by the same author in the same year*, they should be differentiated by adding a lower case letter after the year for each item.
E.g.:
(Friedman, 1993a) and (Friedman, 1993b).
If the bibliographic note appears in the footnote, it should be written in the same way.
If listed in the same bibliografic note, individual works should be separated by a semicolon. E.g.:
(Friedman, 1993; Frost, 1997).

9. When **citing archival records** *within the parenthesis* in the text, the archive acronym should be listed first, followed by the record group acronym (or signature), number of the folder, and number of the document. E.g.:
(ASMI-SLV, 273, 7r).
If the number of the document could not be specified, the record should be cited *in the footnote*, listing the archive acronym and the record group acronym (or signature), number of the folder, and document title. E.g.:
TNA-HS 4, 31, Note on Interview between Colonel Fišera and Captain Wilkinson on December 16th 1939.
The abbreviations should be explained in the section on sources in the end of the article, with the archival records arranged in an alphabetical order. E.g.:
TNA-HS 4 – The National Archives, London-Kew (TNA), fond Special Operations Executive, series Eastern Europe (HS 4).

10. If referring to **newspaper sources** in the text, you should cite the name of the newspaper, date of publication and page:
(The New York Times, 16. 5. 2009, 3)
If the title of the article is also known, the whole reference should be stated *in the footnote*:
The New York Times, 16. 5. 2009: Two Studies tie Disaster Risk to Urban Growth, 3.
In the list of sources and bibliography the name of the newspaper. Place, publisher, years of publication.
The New York Times. New York, H.J. Raymond & Co., 1857–.

11. The list of **sources and bibliography** is a mandatory part of the article**.** Bibliographical data should be cited as follows:

- Description of a non-serial publication – a book:

Author (year of publication): Title. Place, Publisher. E.g.:

Barth, F., Gingrich, A., Parkins, R., Silverman, S. (2005): One Discipline, Four Ways. Chicago, University of Chicago Press.

If there are *more than two authors*, you can also use et al.:

(Barth et al., 2005).

If citing an excerpt from a non-serial publication, you should also add the number of page from which the citation is taken after the year.

- Description of an article published in a **non-serial publication** – e.g. an article from a collection of papers:

Author (year of publication): Title of article. In: Author of publication: Title of publication. Place, Publisher, pages from-to. E.g.:

Rocke, M. (1998): Gender and Sexual Culture in Renaissance Italy. In: Brown, I. C., Davis, R. C. (eds.): Gender and Society in Renaissance Italy. New York, Longman, 150–170.

- Description of an article from a **serial publication:**

Author (year of publication): Title of article. Title of serial publication, yearbook, number. Place, pages from-to. E.g.:

Faroqhi, S. (1986): The Venetian Presence in the Ottoman Empire (1600–1630). The Journal of European Economic History, 15, 2. Rome, 345–384.

- Description of an oral source:

Informant (year of transmission): Name and surname of informant, year of birth, role, function or position. Manner of transmission. Form and place of data storage. E.g.:

Baf, A. (1998): Alojzij Baf, born 1930, priest in Vižinada. Oral testimony. Audio recording held by the author.

- Description of an internet source:

If possible, the internet source should be cited in the same manner as an article. What you should add is the website address and date of last access (with the latter placed within the parenthesis):

Young, M. A. (2008): The victims movement: a confluence of forces. In: NOVA (National Organization for Victim Assistance). Http://www.trynova.org/ victiminfo/readings/VictimsMovement.pdf (15. 9. 2008).

If the author is unknown, you should cite the organization that set up the website, year of publication, title and subtitle of text, website address and date of last access (with the latter placed within the parenthesis). If the year of publication is unknown, you should cite the year in which you accessed the website (within the parenthesis):

UP SRC (2009): University of Primorska, Science and Research Centre of Koper. Scientific meetings. Http://www.zrs-kp.si/konferenca/retorika_dev/index. html (2. 2. 2009).

If there are more citations by the same author(s), you should list them in the alphabetical order of the authors' surnames and year of publication.

12. The **abbreviations** should *be explained* when they first appear in the *text. You can also add a list of their explanations at the end of the article.*

13. The title of a **review article** should contain the following data: author of the publication reviewed, title of publication, address, place, publisher, year of publication and number of pages (or the appropriate description given in Item 10).

14. The authors are sent the **first page proofs**. They should be returned to the editorial board within a week. It is not allowed to lengthen the text during proof-reading. Second proof-reading is done by the editorial board.

15. For additional information regarding article publication contact the editorial board.

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