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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 (*hůͤt 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 *Tůͤt aber ainer einen totslag und chumt er davon, der ist dem obristen gericht vervallen dreizzig mark und dem niedern gericht sechtzig phenning und hůͤt 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 hausvrowͤ und siner chind nicht entgelten an dem gůͤt* (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 kuͤnde dich erloß vnd rechtloß, vnd kuͤnde dich den voͤgln frey in den luͤfften, vnd den thiern in dem walde, vnd den vischen in dem wage, vnd sollt auff keiner straffen noch in keiner muntat die Keyser oder Koͤnig gefreyet haben, niendert friden noch gleyt haben. Und kuͤnde 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)

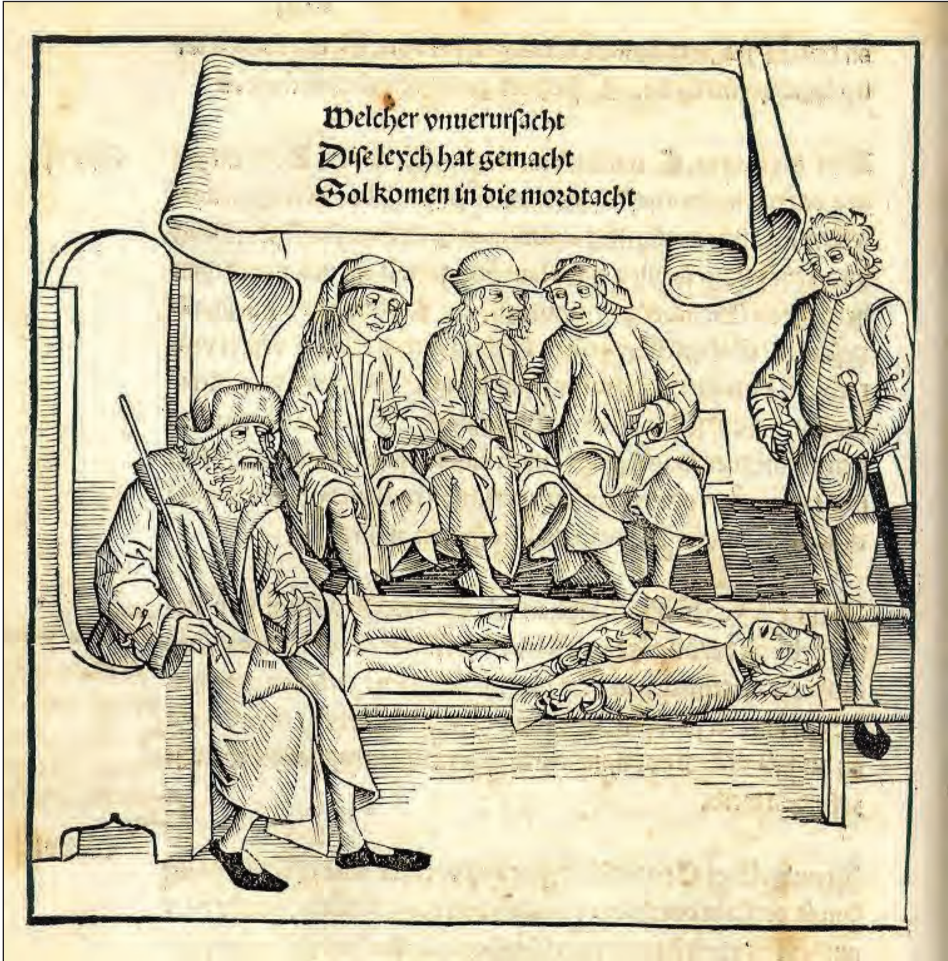

Fig. 3: Mordacht (CCB 1507, f. 64v)

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 (*versuͤnt*) 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 (*Jurÿ 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

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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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