

*TURPITER INTERFECTUS.*  
THE SEIGNEURS OF MOMIANO AND PIETRAPELOSA IN  
THE CUSTOMARY SYSTEM OF CONFLICT RESOLUTION IN  
THIRTEENTH-CENTURY ISTRIA

*Darko DAROVEC*

Ca' Foscari University of Venice, Department of Humanities, Dorsoduro 3484/d, 30123, Venice, Italy  
e-mail: darko.darovec@unive.it

**ABSTRACT**

*The documents concerning the feud between the Patriarch of Aquileia and the Counts of Gorizia (1267–1277) are evidence of how written laws show that the ritual forms and gestures of the customary system of conflict resolution were not only maintained but were regularly inserted into the ritual formulas of written law. Above all they document how the customary system of conflict resolution, in its ideal image and through rituals, reflected social values based on the mediation of the community, reciprocity and the propensity to achieve a lasting peace. This is a general structural aspect of conflict, while the local or particular aspect is shown concretely through the struggle for resources, in the interweaving of single circumstances, where those who succeed in forming the greatest number of loyalties, differing and often contrasting alliances, are the ones who prevail. In our case this was clearly better accomplished by the Counts of Gorizia than by the Patriarchs of Aquileia.*

*Key words: feud, vendetta, homage, truce, peace, Patriarchs of Aquileia, Counts of Gorizia, Momiano, Pietrapelosa, Istria*

*TURPITER INTERFECTUS.*  
I SIGNORI DI MOMIANO E DI PIETRAPELOSA NEL SISTEMA  
CONSUE TUDINARIO DI RISOLUZIONE DEI CONFLITTI  
DEL DUECENTO ISTRIANO

**SINTESI**

*I documenti relativi alla faida tra il patriarca di Aquileia e il conte di Gorizia (1267–1277), testimoniano che concetti espressi dalle leggi scritte mostrano come le forme e i gesti rituali del sistema consuetudinario di risoluzione dei conflitti non si fossero soltanto mantenuti ma fossero stati prontamente inseriti nelle formule rituali del diritto scritto. E non solo, ma soprattutto il sistema consuetudinario di risoluzione dei conflitti che, nella*

*sua immagine ideale e attraverso il rito, riflette i valori sociali basati sulla mediazione della comunità, sulla reciprocità e sulla tendenza verso una pace duratura. Questo è un aspetto strutturale generale del conflitto mentre l'aspetto locale o particolare si manifesta in concreto attraverso la lotta per le risorse, nell'intreccio di singole circostanze, dove prevalgono coloro che riescono a stabilire il maggior numero di alleanze leali, differenziate e spesso contrastanti, il che nel nostro caso evidentemente meglio riusciva ai conti di Gorizia che ai patriarchi di Aquileia.*

*Parole chiave: faida, omaggio, tregua, vendetta, pace, patriarchi di Aquileia, conti di Gorizia, Momiano, Pietrapelosa, Istria*

## THE VENDETTA<sup>1</sup>

“After Carseman and Henry of Pietrapelosa horribly murdered (*turpiter interfectus*) Biaquino of Momiano, Seigneur Count [of Gorizia], the people of Koper and Seigneur Conone, the victim's brother, attacked and destroyed the Castle of Pietrapelosa. And the authors of the misdeed were beheaded.”<sup>2</sup>

Freely translated, this is how the paragraph of the attachment to the peace treaty between the Patriarch of Aquileia, Raimondo della Torre, and Count Albert I of Gorizia and Istria, dated 19<sup>th</sup> August 1274, read. This treaty is recorded in nine densely written pages in the Istrian Diplomatic Codex of Pietro Kandler (CDI, II, 361, 596–604), which describes with precision the turbulent events of the second half of the 13<sup>th</sup> century in Istria.

Lasting peace (*pax et concordia perpetua*) was declared on 9<sup>th</sup> June 1277, following the feud over Koper that broke out in July 1267 between Count Albert I of Gorizia and the Patriarch of Aquileia, Gregory da Montelongo. The people of Koper, who had opposed the Patriarchs of Aquileia since the outset of their temporal power in Istria (1208), felt that the time had come to gain their independence from Aquileia and assert their dominion over other Istrian cities and towns. In fact, Koper had already formed an alliance with Piran, while Izola, Muggia, Umag, Novigrad, Buje, and Motovun seemed to support its intentions (De Franceschi, 1939, 89).

The blood feud of the Seigneurs of Momiano against the Seigneurs of Pietrapelosa represents only one aspect of this decades-long saga. But it clearly also represents the high point of the rise of these two families, who took their name from their places of residence, Momiano and the Castle of Pietrapelosa, where above all in the last half of the

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.

2 *Item quando Dominus Biaquinus de Mimiliano fuit per Carsemannum et Henricum de Petrapilosa sic turpiter interfectus, tam Dominus Comes, quam Justinopolitani, et etiam Dominus Chono Frater occisi expugnaverunt Castrum de Petrapilosa, et illud comuniter destruxerunt. Illos autem malignos qui tam nefandam rem fecerunt decollati fuerunt.* (CDI, II, 361, 602).

13<sup>th</sup> century they were responsible for social-political conditions in the Istrian peninsula, as well as in Friuli, the Karst and in certain zones of nearby Carniola.<sup>3</sup>

#### THE EXPANSION OF KOPER IN THE 13<sup>TH</sup> CENTURY

Thirteenth-century Istria was characterized by a multitude of conflicts. It was the site of merciless battles between the Patriarchs of Aquileia, supported by their vassals, the most important of whom were the Counts of Gorizia, and the most influential Istrian seigneurs such as the Seigneurs of Momiano and of Pazin, the Castropola and the Pietrapelosa, as well as the developing urban centres – which boasted the first collections of written laws (statutes) – and Venice, which thanks to its commercial monopoly had taken control of the Istrian towns loyal to her. The King of Bohemia, Ottokar II, held an important role also thanks to this feud, but by the end of the century the influence of the Habsburg politics of seaward penetration was making itself felt, especially in this, the northernmost part of the Mediterranean.

Their favourable maritime position and the trade opportunities found in the towns of Istria had attracted a continual flow of money and consequently created economic and political independence. Thanks to various land grants in favour of the Istrian bishops, the cities with bishop's sees such as Trieste, Koper, Novigrad, Poreč, Pula and Pićan had spread inwards, taking possession of the peninsula hinterlands so important for food provision and defense.



*Fig. 1: The Battle of Benevento between Guelfs and Ghibellines, 1266, miniature in the Nuova Cronica of Giovanni Villani (Wikimedia Commons. File: Villani Benevento.jpg)*

3 There are published studies on both the Seigneurs of Momiano and those of Pietrapelosa: on the former, I refer to the article by De Franceschi (1939) and Štih (2013); for the latter, see Darovec (2007).

In northern Italy the various forms of autonomous town government gave proof of their capacity for military mobilization, especially in the Battle of Legnano of 1176, when the town militia defeated the feudal army of Friderik Barbarossa, who was consequently forced to allow and confirm the autonomous government of the towns. From that moment town autonomy grew, organizing itself around the figure of two or more consuls (called Podestà), initially taken from the ranks of the most influential local inhabitants and later, after the spread of the practice of favouritism, from that of non-local legal and administrative officials. In the 13<sup>th</sup> century, the Podestà elected by the local population was prevalently Venetian, while the Patriarchs of Aquileia did their best to have Istrian and Friulian nobles loyal to them elected to this office. In this century the right to freely elect the Podestà constituted the foundation of town self-government (De Vergottini, 1925, II).

In the years of the last lay feudal Istrian seigneurs, those of the Spanheims and the Andechs-Meranias, Istrian towns freely elected their rulers. Moreover, the towns had the power to stipulate trade agreements even “over a great distance”, as for example Piran did with Ragusa in 1188 and with Split in 1192, and Poreč, with Ragusa in 1194. They also could autonomously resolve conflicts, as happened in the case of the peace treaties between Labin and Rab and between Piran, which was threatened by the troops of Koper, and Rovinj (1210).

It was the Patriarchs of Aquileia, to whom Istria was granted as a feud by the emperor in 1208,<sup>4</sup> who limited most of the decision-making rights of the towns. Indeed, the Patriarch Volfero started to appoint his own representatives to the towns and larger villages. For a certain time, the “*potestas marchionis*” resided in Koper, with its seat in the Palazzo dei Pretori; while in Pula there was the “*comes regaliae*”. Later the administrators, named by the Patriarchs of Aquileia, were called main stewards (*generalis gastaldus*), judges (*richtarius*) and margraves – marquis (*marchio*).

Though power over all of Istria was exercised by a marquis, the possessions of the counts of Gorizia in central Istria and those of the counts of Duino on the Quarnero were excluded from the jurisdiction of the Patriarchs of Aquileia. However, in 1220 the Patriarch of Aquileia Bertoldo Andechs obtained from the emperor the right to enact measures regarding trade, exercise judiciary power, concede grace, mint coin, as well as to forbid the towns to elect the ruler – Podestà (especially if he was a Venetian citizen) without the Patriarch’s prior assent.

Since in the marquise of Istria the politics of the Patriarchs aimed at constituting a totally new central power, the realization of this design inevitably led to the rebellion of the towns on the west coast and to conflict with Venice. Thanks to the support of Koper, in 1230 Venice succeeded in creating a pan-Istrian law, called *Universitas Istriae*, with a Venetian at the head. This league dissolved one year later, also because of Koper’s attempt to impose itself over other towns. In 1232 the Patriarchs occupied Pula, while in 1238 they managed to have Koper on their side. In Pula the Patriarchs gave broad powers to the Sergi family, naming Nassinguerra de’ Sergi ruler and administrator of the posses-

4 As the ecclesiastic and secular authority at the time of this fact, the Patriarch of Aquileia represented a unique example in the organization of power. For fuller details, see Scarton (2013).

sions of the Patriarch in the town's surroundings. This policy led Pula to a conflict with Venice in 1242. In the peace treaty the town promised to accept a Venetian citizen as ruler and to rebuild the town walls only after obtained Venice's permission.

The situation in Istria grew particularly tense in the second half of the 13<sup>th</sup> century, when Gregorio da Montelongo (1251–1269) became Patriarch of Aquileia. Though it had been weakened in the provinces, the Patriarch's authority was still able to influence politics in the towns, especially considering that this Patriarch was a nephew of Pope Gregory IX and at the same time also the head of the Guelph party in northern Italy. His contemporary and acquaintance, Salimbene, described him as *Homo magni cordis et doctus ad bellum* (De Vergottini, 1925, 8). That he was expert in the arts of war was shown in his military campaigns, as we shall see below. However, in those years the main protectors (lawyers) and vassals (ministerial) of the Patriarchs of Aquileia were the counts of Gorizia, who were generally loyal to the Ghibelline party and the imperial crown.

Initially the Patriarch upheld Koper's role against Trieste and the southernmost coastal towns and the towns of the hinterland. In 1254, he granted Koper jurisdiction over Buje, Oprtalj, Buzet and Dvigrad. In the same year Koper, at war with Trieste, conquered the lands of Trieste between Osp and Rachitovich, thereby consolidating its influence over Piran and Muggia.

#### THE PATRIARCH, THE COUNT, THE VASSALS AND THE CITY OF VENICE

At that time, using the same strategies used for a military campaign, alliances that went beyond the offices they held were often made between individuals. This was especially true of many small feudatories, or vassals, who supplied troops necessary to their Seigneurs. But these alliances were clearly often overlapping. Self-interest led to



Fig. 2: Aquileia. Gregory of Montelongo (1251–1269). Coin with eagle. *Monete e Medaglie di Zecche Italiane*. Bernardi 22. AG. g. 0.99 R. BB. (<http://www.icollector.com/Aquileia-Gregorio-di-Montelongo-1251-1269-Denaro-con-aquila>)

relatively important shifts from one side to another, with the consequent loss of loyalty to the Seigneurs.

This was indeed the case of the two Istrian families, vassals of Aquileia, who are the object of our study, i.e., the da Momiano and the da Pietrapelosa families.

The Seigneurs of Momiano were in origin a branch of the Seigneurs of Duino, who were among the most powerful vassals of Aquileia. Voscalco, founder of the Seigneur of Momiano, was mentioned for the first time as *Wosalcus de Mimilano* in two documents of 1234, along with his two sons, Cono and Biaquino. They were important vassals and ministeriales of Aquileia, in origin faithful to the politics of that town, which produced important benefits for them. Indeed, the two brothers held the office of Podestà in several Istrian towns: Cono in Piran (1259, 1272) and in Buie (1272); and Biaquino in Novigrad (between the years 1259 and 1261), Poreč, (1261) and Motovun (1263). However, in those very years the two brothers of the Momiano house were already in contact with the Count of Gorizia. This is demonstrated not only by the mention of their names in a series of acts in which the Count of Gorizia is also named, but also by family ties that had linked the Seigneurs of Momiano for fully two generations with the Seigneurs of Rifembergo, in the hinterland of Gorizia, one of the most important ministeriales families of the Counts of Gorizi. In fact, in 1249, Biaquino da Momiano took as wife Geltrude, daughter of Ulrico I of Rifembergo (Štih, 2013, 171–172).



Fig. 3: Coat of arms of the County of Gorizia. Hans Ingeram. *Codex d. ehem. Bibliothek Cotta*, 1459 (Wikimedia Commons. File:XIingeram Codex 091b-Görz.jpg)

The Seigneurs of Pietrapelosa were also vassals of Aquileia, but documents of the time show that they were supporters of Gorizia at well. During the 13<sup>th</sup> century the family had control of the Quieto and consequently control over the defense of the peninsula. Its possessions spread to the north and the south of the upper course of the Quieto and included Grožnjan and Motovun. In the first two decades of the 14<sup>th</sup> century, Vicardus II of Pietrapelosa was the lord of Raspruch. The family had widened its sphere of influence over Pazin with the marriage of Elisabeth, daughter of Vicardus I of Pietrapelosa (Marsich, 1869, 12), to Henry of Pazin. Vicardus II later became the guardian of Henry II of Pazin (Bianchi, 1847, 337) and governor of the possessions which under the Habsburgs constituted the essential nucleus of the principality of Pazin.

The name of the feudatory of Pietrapelosa (Vulingius de Petra Pilosa) is mentioned for the first time as a vassal of Aquileia in a document dated in Aquileia, 18<sup>th</sup> December 1210 (Kos, 1928, 166), in which he is numbered among those that the Patriarch Volchero (or Wolfger) wanted to accept the pact between the Patriarchy and the inhabitants of Piran against the Istrian rebels – in this case Koper, whose territorial claims led to its isolation and long decline.

The historical sources mention Vicardus of Pietrapelosa, Seigneur of Grožnjan, in the context of Koper's rebellion against the Patriach, which occurred on the 13<sup>th</sup> January, 1238 – more precisely, in an agreement sign at Cividale (Kos, 1928, 715) on the 3<sup>rd</sup> July 1239 between the Patriarch of Aquileia and Meinhard, Count of Gorizia (Kos, 1928, 685), in which the latter is granted the freedom to elect the Podestà in Istria or in Friuli, but not elsewhere,



*Fig. 4: The Castle of Momiano (photo: D. Podgornik, 2007)*

without the assent of the Patriarch of Aquileia. This occurred despite the fact that in a previous agreement between Berthold, Patriarch of Aquileia, and the representative of Koper, Koper had yielded to the Patriarch's demands regarding the appointment of the Podestà. This had been confirmed by Emperor Frederick in October, 1238, and a visit of the Patriarch concerning the revision of the statute had been announced (Kos, 1928, 696).

Vicardus of Pietrapelosa is also mentioned in Venice in 1253 and in Pazin in 1255, where with the surname "da Grožnjan" rather than "da Pietrapelosa" (Weisflecker, 1949, 155–156, 164, in: Klen, 1977, 13) he appears as a witness, or better representative, of the Count of Gorizia. In a document of Motovun dated 20<sup>th</sup> August, 1256, it emerges that Carseman, Baron of the Castle of Pietrapelosa and a vassal of the Marquis of Istria (CDI, 20 Aug. 1256), was Podestà of Motovun.

Henry of Pietrapelosa, along with Henry of Pazin and Philip of Kožljak (Cosliacco), in the role of ministeriales of the Count of Gorizia, is mentioned in two documents written in Buzet on 20<sup>th</sup> March, 1264. These documents show his involvement in re-establishing relations between the Patriarch of Aquileia and the Counts of Gorizia, Meinhard and



*Fig. 5: The Castle of Pietrapelosa (photo: D. Podgornik, 2007)*

Albert (Joppi, 1885, 31–35). On 13<sup>th</sup> July, 1264, Henry of Pietrapelosa was present in Muggia when the Patriarch Gregorio of Montelongo granted Henry I of Pazin and his wife Elisabeth of Pietrapelosa (daughter of the deceased Vicardus of Pietrapelosa) and their children the feud of the Castle of Lupoglav (*castrum de Lupoglau*) and upper Lupoglav (*Ober Lupoglau*), situated below the Castle, five farms at Dobropolje near Ilirska Bistrica (Villa del Nevoso) and some other possessions in the Windic March (Schumi, 1882–1883, 1884–1887), which Henry of Pazin and Cono of Momiano confirmed in the name of their offspring already born and yet to be born. This might prove that the da Momiano and the da Pietrapelosa families were also related. In any case, it did not prevent the violent conflicts that broke out in 1267, probably also caused by contrasting family interests. In which case, as the sources seem to indicate, this was an authentic feud between the Patriarch of Aquileia and the Counts of Gorizia with their allies.

So, we ask, what actually happened?

## THE FEUD AND THE VENDETTA

The situation was particularly aggravated in 1267 when Koper besieged Poreč and other places in Istria. The Patriarch tried to limit Koper's expansion with the help of Albert, Count of Gorizia, obliging him, along with several ministeriales of the Patriarch, to take a solemn oath (in Cividale on 3<sup>rd</sup> July, 1267) against the citizens of Koper. Among those who took the oath was Cono of Momiano, and Biaquino of Momiano was also among the witnesses present (CDI, II, 346, 569–570).

Though by this oath Count Albert had solemnly promised in a public act to support the Patriarch with all his troops in the exploit against Koper, he then proceeded to make an alliance with the town of Koper against the Patriarch. This iniquitous U-turn of Count Albert, who betrayed Patriarch Gregorio, moving troops against him, was decided only a few days after swearing to support him – a veritable dream for the people of Koper and a nightmare for Gregorio, Patriarch of Aquileia.

The primary objectives of this new alliance of the towns of Koper, Izola and Piran with Albert, Count of Gorizia, were the small fortresses situated along the upper courses of the tributaries of the river Quieto. Under Albert's guidance the troops of Koper, united with those of Piran and Izola and those of Cono of Momiano, first destroyed the Castle of Castelvenere and the Tower of Buzet, and then, with the intention of razing them to the ground, attacked at least five more neighbouring castles (Witsperch, Musche, Wisnavich, Zazilet, Muscardi). Then, on the night of 20<sup>th</sup> July, 1267, Count Albert and his brother, Count Meinhard, captured Patriarch Gregorio in his bed at Villanova near Rosazzo and dragged him barefoot on a nag to Gorizia,<sup>5</sup> where they held him for over a month (CDI, II, 361, 602; De Franceschi, 1939, 89; Greco, 1939, 33).

5 *Captus fuit venerabilis pater Gregorius patriarcha Aquilegiensis per nobilem virum Albertum comitem Goritiae apud Villam-novam sub Rosacio in aurora diei, dum erat in lecto, et nudipes ductus fuit Goritiam in uno roncino anno Domini 1267. die Mercurii, 12. exeunte Iulio; nullo alio capto praeter Iohannem Lucensem et paucis aliis vulneratis.* (AF, 197).



Fig. 6: Abbey of Rosazzo – detached fresco in the church (Wikimedia Commons. File: Rosazzo - fresco 2.jpg)

This action clearly gave some breathing time to the troops of Gorizia and Koper, who were joined by other Istrian notables, including the vassals of the Patriarch, among whom there was once again Cono of Momiano. Cono certainly had an ulterior motive for taking an active part in these preliminary skirmishes, which were followed by the above-mentioned assault of the fortified town of Pietrapelosa and the beheading of Carseman and Henry of Pietrapelosa: i.e. to revenge the murder of his brother Biaquino. As we shall see later on, in this conflict the murder of Biaquino was clearly closely connected to the first attack against Castelvenero. This reprisal was followed by the assault of the Castle of Kršan (Chersano, *Castrum Carsach*) (Štih, 2013, 133) in Istria; but when Count Meinhard “arrived in Udine [...] with his troops, he set many fires and the booty was so great that Count Albert couldn’t even imagine it”, as our source picturesquely describes the scene. Other assaults on fortified towns were made successfully in Istria, Friuli and the Karst Plateau (CDI, II, 361, 602).

The chief goal of the alliance was the conquest of the entire peninsula. Besides destroying numerous properties and redistributing political power in the Istrian hinterland in favour of the counts of Gorizia, this conflict led to another change: some Istrian towns and



*Fig. 7: The Castle of Pietrapelosa (photo: D. Podgornik, 2007)*

lands put themselves under the care and protection of Venice. Under the pressure of the troops of Koper and Gorizia, that first to do so was Poreč, on the 27<sup>th</sup> July, 1267. Although the alliance between Koper and the Count of Gorizia weakened liberties and autonomies, other Istrian towns followed the example of Poreč. Among these were Umag (1269), Novigrad (1270), Sveti Lovreč (1271) and later also Motovun (1275). Even though by these agreements the towns did not “transfer” sovereignty, which still remained in the hands of the Patriarchs of Aquileia, but “[...] entrusted themselves to the Venetians in protection and defense”, they succeeded in preserving their municipal autonomy, balanced by the powers exercised by the Podestà chosen from the Venetian aristocracy (De Vergottini, 1925, 22).

Considering the course of events, it could be argued that this was a classic case of feud as described by Otto Brunner (Brunner, 1939) known to us in a vast literature.<sup>6</sup> Particularly interesting is the fact that all the vassals of the Patriarch of Aquileia were also materially involved in these encounters, to the extent that the Count of Gorizia, the main vassal of the Patriarch of Aquileia, even broke his oath of alliance in order to side with Koper.

In this type of feud single vendettas (of blood) were the rule rather than the exception. They were usually resolved through arbitration, which took into account all the damage caused by both sides. The fact investigated here shows some further curiosi-

6 See detailed analyses complete with bibliographical references in Povolo, 2015, 195–244.

ties. Another clarification is offered by a relatively marginal comment made by Seigneur Pašental (Štih, 2013, 175–179) in the medieval document on the resolution of property lines (*Istarski razvod*) (Bratulić, 1989, 149–150)<sup>7</sup> between Castelvenero, Momiano and Piran, “[...] and these confusions, which you have started, after abandoning and repudiating your legitimate Seigneur, and slaughtered him in his own bed, and exterminated his heirs and posterity, and subjected yourselves to a new lord, [...]” (CDI, II, 364, 644).<sup>8</sup> According to several authors, this citation refers precisely to the “*turpiter interfectus*” that involved Biaquino of Momiano in July 1267 (Benedetti, 1964, 7–8).<sup>9</sup> The fact that the first attack made after the agreement of 3<sup>rd</sup> July, 1267 (between the Patriarch and the Count of Gorizia against Koper) was against Castelvenero suggests that the change in alliances within the structure of vassalage of the Patriarchs of Aquileia was of considerable significance. The events that followed also lead us to conclude that from the start of the conflict between the Patriarch and the allies of the Count, the Seigneurs of Momiano were completely on the side of the latter, while the Seigneurs of Pietrapelosa remained loyal to the common Seigneur, the Patriarch of Aquileia. It was probably the change in alliances that caused the intervention of Carseman and Henry of Pietrapelosa against Biaquino of Momiano. It would seem that Carseman and Henry of Pietrapelosa – at the time allies of the Patriarch – convinced some inhabitants of Castelvenero to show them the road to the Castle of Momiano, in order to reach Biaquino of Momiano’s bed and strangle him, as we read in the citation from the *Istarski razvod* quoted above.<sup>10</sup>

But was it really this event that led Counts Albert and Meinhard of Gorizia to disrespect the alliance with their Seigneur, the Patriarch of Aquileia, and to give them the pretext for joining forces against him? Unfortunately, the documents do not allow us to establish this for certain, though the evidence points in this direction. Indeed, independently of the circumstance that at the time the Counts of Gorizia were certainly among the most influential feudal lords in the region, in the system of conflict resolution in force in those years there had to be a justified motive for the cancellation of an agreement or for a challenge – or “revolt” – against the lord.

7 This particular document is conserved only in the Glagolitic transcription of 1502. Some have denied the authenticity of the document. See De Franceschi, 1885, 41–118, but a more recent study of Bratulić indicates a collection of various authentic acts of reconfining in Istria in the period between 1275 and 1375 (Bratulić, 1989, 6–12). Without doubt, the document was chiefly drawn up because of this feud in the years 1267–1277.

8 In the Glagolitic document: “*A te zmutnje ke vi jeste oblikovali pokle se jeste vašega pravega gospdina odvrgli i njega na postelje zaklali i njega red zatrli, [...]*” (Bratulić, 1989, 149–150).

9 In note 16 the author mentions the resolution of the Istrian borders, when the borders were set between Castelvenero e Momiano, then property of the Pašental, accusing the castellans of murdering the legitimate Seigneur.

10 There are those who would certainly have liked to complicate this story still more and make an even more tragic picture of it by claiming that Pietrapelosa actually castrated Biaquino in his bed (cf. [http://tibur-pula.blogger.index.hr/post/Momiano--kastel-momjan-castrum-mimilianum/14363467.aspx#at\\_pco=cfd-1.0](http://tibur-pula.blogger.index.hr/post/Momiano--kastel-momjan-castrum-mimilianum/14363467.aspx#at_pco=cfd-1.0)). But on the sole basis of the definition “horrendous crime” (*turpiter interfectus*) committed at the bedside, it is not possible to confirm this hypothesis. In the epoch of conflicts among knights, a vile murder in the heart of the night, thanks to the betrayal of serfs, when the victim cannot defend himself as a knight, is without doubt a terrible homicide.

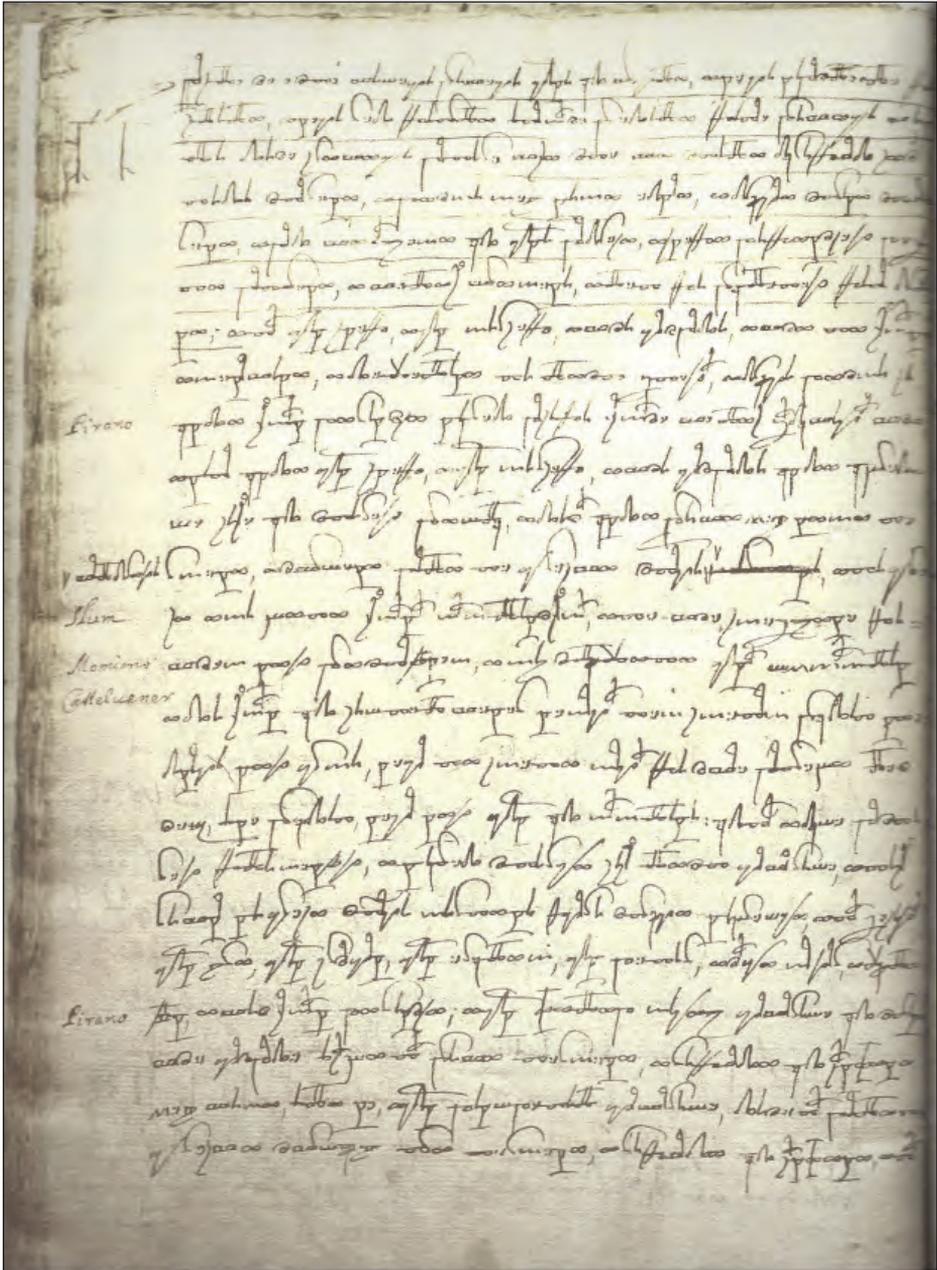


Fig. 8: Page of the Glagolitic manuscript that refers to the “turpiter interfectus” concerning Biaquino da Momiano in July 1267 (Bratulić, 1989, 31b)

The fact is that at that time the Seigneurs of Momiano were the most authoritative persons in the area. As vassals of Aquileia, they undoubtedly exercised great influence over the nearby towns, where they held the office of Podestà even against the wishes of Venice, and above all over Piran, which in that period was a declared ally of Koper and Izola. Though no specific document exists, it is still legitimate to suppose that in the days immediately preceding and following the solemn oath of 3<sup>rd</sup> July, 1267 (concerning the alliance of the Count of Gorizia with the Patriarch of Aquileia against Koper, which several ministeriales of the Patriarch had also joined, including, as we have said above, Cono of Momiano who took the oath along with Biaquino of Momiano) there had been considerable intense and lively diplomatic activity, since the alliance with Koper succeeded in shifting the balance in favour of that town. Considering the later developments, it seems legitimate to conclude that it was chiefly the Seigneurs of Momiano who tried to persuade the Count of Gorizia to join the alliance with Koper against the Patriarch, and that this is the reason why the Patriarch sent the Seigneurs of Pietrapelosa, who were loyal to him, against the Seigneurs of Momiano. No doubt Cono of Momiano was so lucky as not to be in the castle at that moment, and so Biaquino was killed in his stead. This event was evidently a sufficient and justified reason for breaking the solemn oath, and so for starting a feud.

These events shed particular light on the peculiarities of medieval feuds, which were characterized by frequent changes in alliances and founded on a network of family relations and spheres of interest in conflict over the exploitation of natural and human resources. And these circumstances also clarify the specificities of the system of conflict resolution in that age.

## CONFLICT RESOLUTION

The captivity of Patriarch Gregorio of Montelongo, as well as the conflicts and destruction that resulted until he was released on the 27<sup>th</sup> August 1267,<sup>11</sup> was the main reason for a series of truces between the Count of Gorizia and the Patriarch of Aquileia in the following decade. Until a lasting peace was declared (*pax et concordia perpetua*) on June 9<sup>th</sup> 1277 between Patriarch Gregorio's successor, Raimondo della Torre, and Count Albert of Gorizia, there were litigations and conflicts, compromises, truces, arbitrations and on-the-spot investigations. Below we examine 10 documents about the feud between the Patriarchs of Aquileia and the Counts of Gorizia and their allies, though the capture of the Patriarch remains the main offense:

1. *Compromisso* of the Patriarch (Aug. 1267) (AKG, 29, C, 114–115).
2. First *Compromisso* of the Count (25 Aug. 1267) (FRA, 87–90).

---

11 *Redemptio Gregorii patriarchae. Gregorius patriarcha Aquilegiensis anno 1267. die quinta exeunte Augusto exivit captivitatem dicti comitis Alberti Goritiæ, et conductus fuit Civitatem; procurato tamen per venerabilem patrem Wlotislaum archiepiscopum Salspurgensem cum ipso domno patriarcha, dum erat in captivitate, et cum Foroiuliensibus ex parte una et cum dicto comite ex altera, quod fuit per partes compromissum in ipsum archiepiscopum et domnum regem Bohemiae et postea confirmatum* (AF, 197).



Fig. 9: *The Castle of Momiano (photo: D. Podgornik, 2007)*

3. Second *Compromisso* of the Count (26 Aug. 1267) (AKG, 29, CI, 115–117).
4. *Truce* (Patriarch) (Aug. 1267) (AKG, 29, XCIX, 112–113).
5. *Compromisso* (after the murder of the Patriarchal vice-dominium and the destruction of the bridge over the Isonzo by the Patriarch) (30 Aug. 1268) (AKG, 22, 377; cf. AF, 197).
6. *Pax in forma conventionis pro bono pacis et concordie – fidantia seu treuga* (18 Aug. 1274; addition 19 Aug. 1274) (CDI, II, 361, 596–604).
7. *Truce* (hostility as before) (2. Oct. 1274) (AKG, 22, 401).
8. *Truce* between the Patriarch of Aquileia Count Albert of Gorizia and truce between the Patriarch and Koper (24 Feb. 1275) (CDI, II, 363, 606–609).
9. *Concordia – compromisso (de damnis hinc inde illatis postquam facta fuit praedicta pax;)* (13 May 1277) (AKG, 24, 429).
10. *Pax et concordia perpetua* (9 June 1277) (AKG, 24, 429).

The documents relative to these events clearly illustrate the chief features of the system of conflict resolution. In this period, with the rise of medieval towns there arose the scholastic structures and especially the universities that contributed significantly to the spread of writing as a technological-cultural means for the consolidation of power (cf. Goody, 1993). Moreover, this is the period in which so-called common law drew inspiration from the heredity of Roman law, which in that age had come back in vogue,

and from a series of legislative dispositions of Germanic laws, if we can call them that, in agreement with the collection *Monumenta Historica Germanica*<sup>12</sup>, as well as from the specificity of city law, in particular from customary law (Bellomo, 2011). The case of the conflict between the Patriarch of Aquileia and the Count of Gorizia is one of the examples of how common law was being formed.

An evaluation of these documents is therefore of great interest in order to understand how unwritten customs influenced the formation of written law in the social system of conflict resolution. First of all, it is possible to affirm that all the documents examined concerning that conflict were drawn up and adequately named according to notary rules, i.e., in agreement with the indications given to notaries by the famous Bolognese notary and judge, Rolandino de' Passaggeri,<sup>13</sup> in the middle of the 13<sup>th</sup> century. His monumental collection of norms and interpretations, which served mainly for university education and further training for the education of notaries, until today has been used only by notary scholars (Tamba, 2002) while legal historians are practically unaware of its existence. The printed version was published in 1546 in Venice in 1,186 large-format pages. It furnished an impressive quantity of legal suggestions and concrete examples for drawing up all types of written contracts known up to that time. In the sixth chapter, entitled *De Compromissis*, arbitration documents and drawing up treaties of peace and agreement (*pax et concordia*) are examined (Rolandino, 1546, in: Anastatic reprint, 1977, 147–159).

The military encounters that are the object of our study for the most part took place from 3<sup>rd</sup> July to 27<sup>th</sup> August 1267 (AF, 197),<sup>14</sup> when Counts Mainhard and Albert of Gorizia freed the Patriarch Gregorio from prison. At this point it would be useful to stress that these battles involved a large number of European personalities of the time, since the Bohemian king Ottokar II Přemysl, who during the imperial *interregnum* was undoubtedly the most powerful sovereign in this region, took interest. Thanks to his diplomatic skill and his resourceful politics, along with the Czech crown Ottokar II also won the titles of Duke of Austria (from 1251), Duke of Styria (from 1261) and Duke of Carinthia and Carniola (from 1269). What is more, in 1272 he was appointed General Captain of Friuli, thereby becoming *de facto* administrator of the Patriarchy of Aquileia and so of Istria. Thus, his power extended from Bohemia to the Adriatic until the time of his defeat at the hand of Rudolph of Habsburg in the Battle of Marchfeld on 26<sup>th</sup> August 1278. Therefore it comes as no surprise that these events were also carefully followed by the Venetians<sup>15</sup>, and in two letters of September and October 1267, even by Pope

12 I should like to emphasize that my research on this topic would have been far more difficult if in the last few years important collections of medieval documents had not been published online. They are available MGH, AKG, AF, FRA. In MGH the entire repertory of medieval legislation can be found.

13 Lat. *Rolandinus Rodulphi de Passageriis*, Bologna, 1215 about – Bologna, 1300.

14 Actually, De Franceschi (1885, 90), holds that the encounters continued until about 23<sup>rd</sup> October 1267, since on that date Patriarch Gregory granted feudal possession in Friuli to two inhabitants of Castelvenere, a certain Luvisino and a certain Giovannutto, in payment for services given and damages suffered during the recent encounters.

15 *Venetos multum ad patriarcham liberandum attuisse docet nos Andreas Dandulus, lib. X. part 41 apud Murat. SS. XII, 375* (AF, 197).

Clement IV in person, when he thanked King Ottokar for intervening in this conflict (AKG, 22, 375).

These documents testify to the extensive diplomatic activity between the two conflicting parties, which was carried on by mediators of the king in the name of the community, as well as to the modalities of conflict resolution, in particular to the drawing up of the acts of reconciliation, which guaranteed the preservation of individual and community honour in the social order. These compromises and reconciliations, though (or, as in the case dealt with here, just for this reason) imposed by the central power, out of tradition and ritual rules and, as we have seen, in agreement with the written law then establishing



Fig. 10: *Otokar II. Přemysl* (Wikimedia Commons. File 270px-Po2vNM.jpg)

itself in the structure of conflict resolution, led to lasting reconciliation and peace (Povolo, 2015, 217–220).

In the analysis of this conflict we should bear in mind that the parties involved were connected at least institutionally. The Counts of Gorizia were ministeriales and lawyers of the Patriarch of Aquileia and so his vassals, like the majority of their allies and even like King Ottokar in person. So why did the King not intervene with his own army, which was one of the strongest in Europe in this period, or why did he not submit the conflict to a court instituted by himself? Because, according to the customs and written laws of the times, it was also possible to resolve conflicts with the opponents' acceptance of a pacific transaction of the reasons for the dispute, in which the main role was entrusted to mediators who represented the community. According to custom, a conflict of this sort was treated in the same manner as a family feud (*Vindicta parentum, quod faida dicimus*)<sup>16</sup>. In these cases conflicts were resolved according to Lombard law, with reference to so-called private law, still based on the principles of tribal communities and collective responsibility, according to which every family, brotherhood, clan or tribe exercises social control at the same time as it answers for the single members of the community.<sup>17</sup> Social control and the safety of members of the community and of the community as a whole were also guaranteed by vendetta for injustices. But this customary system of conflict resolution allows both a violent solution and a pacific one, which had to be accepted by both of the opposing parties. Therefore it should not be thought that these customs were left to purely arbitrary acts; on the contrary, the rules of the game were very well defined. Still, in every legal system, as in every game, rules can be got round.

Many of these situations can be seen in the feud between the Patriarch of Aquileia and the Count of Gorizia in the years 1267–1277. Both parts recognized that they were in conflict (*querimonia*) and that “violent justice and injustice” (*violentis iuribus et iniuriis*) recurred (FRA, 89), while the Count of Gorizia went so far as to admit in writing that he had rebelled against the Patriarch (*fuimus contraria uel rebelles*).<sup>18</sup> Still, we can conclude that the system of conflict resolution was based on customary tradition which through community mediation aimed at friendly relations (... *cum via amicabilem compositionis*; AKG, 29, 114) and peace (*pace et concordia perpetua*), in contrast with the hatred (*inimititia*)<sup>19</sup> which at that time doubtlessly led to conflicts, in general bloody ones.

From the political-military point of view, the Counts of Gorizia took advantage of a particularly favourable situation when they fixed the conditions of the reconciliation,

16 See Du Cange, 1733. Cf. word of order: feud; under this term appear the majority of medieval laws determining these conflicts. Available at: <http://www.uni-mannheim.de/mateo/camenaref/ducange.html>.

17 Here I should like to mention two classical studies of conflict resolution in tribal communities: Evans-Pritchard, 1940; Gluckman, 1955.

18 *Verum si in hac parte nos uel heredes homines complices et fautores nostri inuenti fuimus contrarii uel rebelles, ex tunc eadem duo castra nostra in Aquilegensis ecclesie potestatem debent tradi et ipsi domini Rex et Archiepiscopus contra nos siue heredes uel homines siue complices et fautores nostros ipsi domino Patriarche suisque successoribus et Capitulo Aquilegensis ecclesie atque ipsius ecclesie fidelibus et deuotis in prestando auxilio adherebunt.* (FRA, 89).

19 See Du Cange, 1733, the word ‘inimititia’.



Fig. 11: *Vendetta in Florence, 1300* ([www.storiadifirenze.org](http://www.storiadifirenze.org))

since they were holding the Patriarch in captivity. We need only think of the many descriptions of medieval prisons, for example the story of the English King Richard the Lion-Hearted, to understand that at that time situations like these were commonplace (Kos, 1994, 109–115). In the case under examination, the proof can be clearly inferred in the quotation of the above-mentioned truce of 1274, when in 1267 the counts of Gorizia imprisoned the Patriarch, “just as always happens in wars” (*que solent fieri in guerris*).<sup>20</sup>

And so the Counts of Gorizia, Meinhard and Albert, freed the Patriarch Gregorio only after the intervention of authoritative mediators.<sup>21</sup> In the case of the Counts of Gorizia, the intercessor was Vladislav, Archbishop of Salzburg and nephew of the Bohemian King

20 *Item interfuerunt cum ipso Comite ac Fratre suo Comite Mainhardo a captione Domini Gregorii Patriarche, in quorum servicio fuerunt dampna omnia, que solent fieri in guerris.* (CDI, II, 361, 602). According to studies of Italian cultural environments in that age, the word “feud” was unknown, and in its place were used “inimicitia”, “querimonia”, “querela” and even “guerra” (cf. Vocabolario, 1612).

21 *Redemptio Gregorii patriarchae. Gregorius patriarcha Aquilegiensis anno 1267. die quinta exeunte Augusto exivit captivitate dicti comitis Alberti Goritiae, et conductus fuit Civitatem; procurato tamen per venerabilem patrem Wlotislaum archiepiscopum Salspurgensem cum ipso domno patriarcha, dum erat in captivitate, et cum Foroiuliensibus ex parte una et cum dicto comite ex altera, quod fuit per partes compromissum in ipsum archiepiscopum et domnum regem Bohemiae et postea confirmatum.* (AF, 197).

Ottokar II, who acted in his name (AKG, 22, 375); while in the case of the Patriarch of Aquileia, it was the Bishop of Olomouc, Bruno (AKG, 29, 112–117), who reached a compromise and truce (AKG, 29, 113) between the two opposing parties (AKG, 29, 113). It was determined that the truce would last until the next Pentecost (28<sup>th</sup> May 1268), while before All Saints' Day (1267) two arbiters, one representing the Patriarch and the other the Counts of Gorizia, were to describe and assess the damages caused by the conflicts in Friuli, and the same would be done by two other arbiters for the damages in Istria and on the Karst. Later, between Easter and Pentecost on 28<sup>th</sup> May 1268, they would announce the peace (*concordia et pace*).

As trustees of the agreement that “*deberet et posset componere, arbitrari, sententiarum et laudare, sive amicabiliter sive de iure inter partes, prout sibi placeret et videretur melius expedire*”, Bruno, Bishop of Olomouc, was chosen for the Aquileian party, and for the Gorizia party Vladislav, Archbishop of Salzburg. Moreover, the terms of reconciliation imposed the restoration of the prior situation<sup>22</sup>, and whoever violated or in any way offended or disturbed it or, worse, caused further damage, would have to pay a fine of 2,000 Aquileian marks<sup>23</sup>, half to the opposing party and the other half to his own repository of the contract. As security, the Patriarch of Aquileia gave his trustee, Bruno da Olomouc, lien upon the castle and the estate of Schwarzenegg near *Divača*, while the count of Gorizia as security gave the Archbishop of Salzburg, Vladislav, the castles of Gorizia and Karsperg<sup>24</sup>.

Four documents report these provisions, two for each party. It is likely that they were drawn up before the Patriarch of Aquileia was freed (FRA, 87–90; AKG, 29, 112–117).<sup>25</sup> As regards the contract of the reconciliation of August 1267, four documents have been conserved: two for the Patriarch of Aquileia (AKG, 29, 112–115), the compromise (*compromissis*) and the truce (*treuga*); while for the Count of Gorizia, Albert I, there are two versions of a compromise (FRA, 87–90; AKG, 29, 115–117). Clearly there was a reciprocal offer of and commitment to reconciliation, as well as a further definition of the conflict through arbitration. But it is interesting that each party made a commitment with

22 ... *in statum pristinum in quo ante captiuitatem ipsius domini Patriarche fueramus constituti* ... (FRA, 88).

23 ... *secundum ius possint et debeant terminare, promittentes sub pena duorum milium marcarum argenti* ... (AKG, 29, 114).

24 Karsperg or Carsperg was a castle near the village of Golac, south of Obrov, in the Brkini Hills; see Štih, 2013.

25 The dates have been preserved only for the two Gorizian documents, i.e., one of 25<sup>th</sup> August 1267 (FRA, 87) and the second of 26<sup>th</sup> August (AKG, 29, 117) but without the year. Still, since these two documents are almost the same – they differ slightly only in two points of the text, while all four agree that the key point of the resolution of the conflict is the detention of the Patriarch and the damage caused in Friuli, Istria and the Karst – we can conclude that they all date back to 1267, though the compiler of the published documents attributes to three of the documents (that of Gorizia of 26<sup>th</sup> August and the two of the Patriarch) the year 1268 (AKG, 29, 112–117). But, according to the contents, we can maintain without any doubt that this is the contract of the compromise between the two conflicting parties after the mediation of the above-mentioned bishop Bruno and archbishop Vladislav, before the declaration of truce and the release of the patriarch Gregory that took place on 27<sup>th</sup> August 1267 (cf. AF, 197). Cases of feud are known in which the opposing party avoided prison by signing a written document containing his renunciation of the vendetta (*Unfehde*) (Kos, 1994, 110–114).

its own procurator to cease hostilities: the Patriarch of Aquileia with the envoy (*missi*) of King Ottokar, Bruno, Bishop of Olomouc; and Albert Count of Gorizia, along with his followers, with the Archbishop of Salzburg, Vladislav. Therefore, the King's envoy was responsible for guaranteeing that his client would not violate the compromise agreed on, that is, the truce. If that were to happen, the transgressor would have to pay a penalty and surrender the properties given as security.

The two acts of reconciliation of the Count of Gorizia, the first on 25<sup>th</sup> August 1267 and the second on the following day, 26<sup>th</sup> August 1267, differ very little. At one point in the first document a part of the phrase that strictly obliges the Gorizian party to obey the King's dispositions is omitted.<sup>26</sup> Before the notary's signature a phrase is added which declares that the Gorizian party has signed and sealed the document. Here it is interesting to note that the first document was drawn up by the notary *Hermannus de Pertica Imperiali Auctoritate Notarius*, and the second by *Johannes de Lupito Sacri Imperii Publicus Notarius*. The reason for this change of notary is unknown; the missing part of the sentence leads us to think that, probably at the request of the Patriarch of Aquileia, the procurator Vladislav had obliged the Count to respect his dispositions as well as those of the King.

The difference between the Patriarch's two documents is more complicated. The first is a compromise (*secundum formam compromissi facti*), while the second is a truce (*treuga*) that was to last until the following Pentecost.<sup>27</sup> In both of them Bishop Bruno da Olomouc acts as guarantor for the reconciliation; to him is entrusted arbitration and judgment of the case with the Count of Gorizia<sup>28</sup>, "taking into account both the friendly reconciliation and the law".<sup>29</sup> This undoubtedly recalls the formulas that frequently appeared in legal documents, according to which in order to judge it was necessary to take into account both the customs and the laws (*consuetudines et iuris*). In this case the friendly reconciliation refers to the customary rite of reconciliation in conflicts.

Gregorio, the Patriarch of Aquileia, handed over both of these documents to Bishop Bruno;<sup>30</sup> by so doing he promised and solemnly swore to respect the agreement. In the same way, as has already been observed, the Count of Gorizia swore to Archbishop Vladislav. But whereas in the Aquileian compromise attention is called to the fact that it

26 At the beginning, the whole phrase read: ... *quod eorundem dominorum Regis et Archiepiscopi ordinationi seu amicabilei compositioni absque cuiuslibet contradictionis et dilationis obstaculo nos et nostri complices et fautores stabimus et obediemus* ... (FRA, 88), and after with the addition: ... *quod eorundem dominorum Regis et Archiepiscopi ordinationi obediemus* ... (AKG, 29, 116).

27 *fecimus et dedimus firmas treugas usque ad proximas octavas penthecostes* (AKG, 29, 113).

28 ... *quod cum nos libere, mere et pure compromiserimus in venerabilem patrem dominum Brunonem dei gracia episcopum Olomucensem tamquam in arbitrium, in arbitratorem et amicabilem compositorem sive iudicem de omnibus controversiis, litibus et questionibus, quas habemus et habere videmur cum nobilibus viris Meincharde et Al. comitibus Gor. et ipsi contra nos*, ... (AKG, 29, 114).

29 This definition was repeated in several parts of the four documents, for example, also in the following form: ... *in arbitratorem et amicabilem compositorem sive iudicem de omnibus controversiis*, ... *componere, arbitrari, sentenciare et laudare, sive amicabiliter sive de iure inter partes ovvero* (AKG, 29, 114) ... *complementum iustitie vel compositionis amicabileis* (FRA, 89).

30 ... *omnia namque supradicta in manu dicti domini Olomucensis episcopi promittimus attendere et inviolabiliter observare*. (AKG, 29, 113) ... *dedimus, tradidimus et consignavimus in manus supradicti domini Olomucensis episcopi* ... (AKG, 29, 114).

is sealed both by the Patriarch of Aquileia and the Count of Gorizia, the truce act seems to be unilateral: that is, the Patriarch of Aquileia guarantees it to the Counts of Gorizia and their followers.<sup>31</sup> At the same time, the truce meant renouncing recourse to vendetta, and the relative act was itself a document used in feuds, (Brunner, 2011, 105–106) pro-dromic to arbitration and friendly agreement, as well as to a legal solution of the conflict. Consequently, it is less important that the Patriarch was superior to the Counts of Gorizia (in both the religious and the civil hierarchies) than that the detention by the Counts of Gorizia had offended the party which for this reason had the possibility and the right either to declare a truce or else to continue the hostilities and the blood vendetta. Under the pressure of influential procurators, the parties involved in this conflict were forced to come to terms, and the two procurators of the King had the role of guaranteeing their reconciliation, so that if one of the parties violated the agreement, the procurators would have to punish him, as written in both the act of compromise and the truce.

At this point I would venture to compare the role of the above-mentioned guarantors with the rites of conflict resolution of Montenegro and Albania (*osveta*, *gjakmarrja*). In those regions there exists the institution of a person called *dorzoni* (in Albanian) or *jemci* (in Montenegrin, *jemac*<sup>32</sup>). This person is delegated to keep the truce, in Albanian *besa*, in Montenegrin *umir* (Đuričić, 1979, 8). After the victim of the dispute had accepted the procedure of reconciliation instead of the arbitrary solution of conflict, once the compensation promised him by the offender had been deposited, the compromise was stipulated thanks to the ritual mediation of the community. On this basis, and again thanks to the community's mediation, the opposing parties reached a truce, which meant the renunciation of vendetta and the continuation of negotiations and arbitration between the two parties. The truce could last for a maximum of one year. The truce oath, the *besa*, was pronounced publicly by the victim. For this reason the victim was called “donor of the *besa*”, which was “put into the hands” of one of the mediators named by the author of the crime. On their part, the mediators had the right to ask for the guarantee of the truce (Đuričić, 1979, 33). The guarantor of the truce was the so-called *dorzon* (etymologically from the Albanian *dorë* – hand), or *jemac* (in Montenegrin, guarantee), who supervised the respect of the agreement, and during the truce prevented a vendetta against those responsible for the crime.

A fundamental source for the study of the customary system of conflict resolution, not only for the territories of Montenegro, Herzegovina and Albania, but also for the European context, along with the Kanun of Lek Dukagjini and the Kanun of Skanderbeg, is doubtlessly the survey conducted by Valtazar Bogišić and his collaborators in the second

31 *Nos G. dei gracia ... Aquilegensis patriarcha ... fecimus et dedimus firmas treugas usque ad proximas octavas penthecostes viris nobilibus M. et Al. comitibus G. ac suis adiutoribusque eorum tam in personis quam in bonis, ...* (AKG, 29, 112–113).

32 In the Kanon Leke Dukadina (KLD); in the context of the blood feud and the truce, there are three sections relative to the guarantee: Ubistvo pod jamstvom (KLD §§ 939–940), Jemci krvne osvete (KLD §§ 973–976), Jemci novca za krvnu osvetu (KLD §§ 977–981); in general, the guarantee, or the dorzonja, is applied in all types of the contracts drawn up (KLD §§ 683–694), but also as a guarantee in favour of someone in proceedings before a tribal judge (Đuričić, 1975; cf. KLD §§ 1044–1072; Bogišić, Čizmović, 1999).



Fig. 12: Miniatura from the *Liber feudorum Ceritaniae* represents an homage (about 1200–1209) (Wikimedia Commons. File: Cerit7.jpg)

half of the 19<sup>th</sup> century.<sup>33</sup> However, Bogišić's sources say that the *jemci* were chosen only in the most serious cases, while it happened frequently that a *jemec* or *dorzon* – and in some cases even more than one – was chosen for each side (Đuričić, 1979, 27). The Albanian legal historian Surja Pupovci picturesquely mentions the importance of the *dorzoni* in the resolution of conflicts, describing the concluding rite of the *besa*: the agreement was reached when the two representative of the parties conclude it by holding hands, but

33 Several collections of legal customs of the southern Slavs have been published, edited by Valtazar Bogišić. As regards the customary system of conflict resolution, or the vendetta (bloody), that is, *osveta* (*mn.*), *gjakmarjja* (*alb.*), the most interesting is the study based on a questionnaire of 1873 (Bogišić, Čizmović, 1999, 345–383).

he adds that “during the agreement they could hold hands hundreds of times, but without the presence of the *dorzon* the agreement is still weak” (Đuričić, 1979, 14).

The *dorzon* whose role was to act as guarantor was chosen by the offender (KLD § 973). This had to be a person who was trusted by both parties, and who enjoyed honour and prestige; his family could not be involved in any blood feud (Đuričić, 1979, 24). He took a public oath (*faith* – in Albanian, *beja*) and guaranteed with his estate and honour to preserve the truce. If, on the contrary, the person he represented did not respect the truce and revenged himself, the *dorzon* had to kill him or use another adequate punishment; this worked in both directions, in the sense that if he failed to punish him, he himself would be punished (Đuričić, 1979, 42–43). In this case, therefore, the *dorzon* was also an authority who held repressive powers. He was the guarantor of the truce for the injured party, as well as being the culprit’s fiduciary.

The guarantors or fiduciaries (*fiduciarii*) were also often present in conciliation and/or judicial procedures in later periods.<sup>34</sup> While in civil matters this institution still plays an important role today, it has completely disappeared in the criminal sphere in European countries, though it has been kept in the United States as an institution in the penal system.

According to the rite we have just described, Albert put into the hands of Vladislav his commitment, or his oath, as we can understand from the document (*data fide manuali vice sacramenti in manus supradicty domini Wlodizlay*) (AKG, 29, 117). In this sense it was clearly a question of *immixtio manuum*, as we find it in the rite of investiture of vassals or notaries. This ritual gesture also constituted a form of penitence, since it was performed on the knees (*flexibus genibus*) or in some other position expressing penitence. A clear example of penitence in the reconciliation or the blood feud is given by the description of the concluding ceremony of the Montenegrin rite<sup>35</sup>. The party guilty of the crime publically states his repentance to the injured party, in the presence of representatives of the community, by crawling on the ground wearing only some of his underwear, barefoot and bareheaded, while slung across his shoulders there is a long shotgun attached to his belt. Drawing near and facing him, the injured party first takes away and then gives back the arm, saying: “First of all brother, then blood enemy, then once again brother for eternity. Is this the gun that took my father’s life?” After which, the injured part reconfirms his complete pardon to the culprit and they kiss one another fraternally. Despite the fact that there are other gestures in this ceremony that express the culprit’s profound penitence and humiliation,<sup>36</sup> the rite safeguards the honour of both the injured party and the culprit, as well as of the whole community, thereby establishing and maintaining norms and values.

34 At this point I should like to call attention to the extraordinary richness of the Venetian State Archive, which conserves in numerous funds documents relative to judicial proceedings e.g., the Council of Ten, the Heads of the Council of Ten, the *Avvogaria Comun*, the *Quarantia Criminal*, and so on.

35 This scene is also described by Boehm (1984, 136); but it was already registered in the field in an original manner by Bogišić in his questionnaire in the second half of the 19<sup>th</sup> century (Bogišić, Čizmović, 1999, 371–372) and it had been already painted by Vialla De Sommières in 1820.

36 He runs up to Bojković to pick him up quickly from the ground, but at that moment Bojković kisses his feet, his breast and his shoulder in Boehm (1984, 136).



Fig. 13: Paja Jovanović, *Umir krvi (truce)*, 1889. 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. Galerija matice srpske u Novom Sadu (<https://buk181.wordpress.com/2011/05/22/the-muzej-2-paja-jovanovic/krvna-osveta/>)

Just the sole gesture of taking away and then giving back the gun shows a clear tendency to hear the ritual appeal of reciprocity and community mediation. With the help of these rites the community creates a balance, exercises social control, and permits the reintegration and lasting reconciliation of the conflicting parties (Verdier, 1980, 24–30). Naturally, this is an ideal social formula, but it was evidently effective in the system of conflict resolution, as J. M. Wallace-Hadrill illustrates at the end of his legendary study, *The Bloodfeud of the Franks*:

*Feuding 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. The marvel of early medieval society is not war but peace. (Wallace-Hadrill, 1959, 487).*

Before going on to illustrate other features of the medieval conflict resolution system, we shall briefly examine some other documents about the conflict between the Patriarch of Aquileia and the Counts of Gorizia and their allies.



Fig. 14: Act of public reconciliation in Montenegro. *Voyage historique et politique au Montenegro* (1820) by Vialla De Sommières (Wikimedia Commons. File: VDS pg390 Act de Réconciliation publique devant le Tribunal du Kméti.jpg)

After the exchange of the acts of compromise and the declaration of truce, which in all likelihood led to the release of Patriarch Gregorio, the agreement was also confirmed (AF, 197). Unfortunately, the documents available do not allow us to know if the chosen arbiters managed to make an inventory of and assess the damages suffered by the two opposing parties by All Saints' Day (1<sup>st</sup> November 1267) or Easter (8<sup>th</sup> April 1268). We have no notice of possible conflicts during the truce, but just one month after its expiration (All Saints' Day, 28<sup>th</sup> May 1268), the reasons for the dispute had undoubtedly worsened, since on 3<sup>rd</sup> July 1268, under the hill of Medea to the west of Gorizia, the troops of Gorizia killed in an ambush the Patriarch's vice-dominium, Bishop Albert of Concordia.<sup>37</sup>

37 *De interfectione domni Alberti episcopi Concordiensis vicedomini patriarchae. 1268. die 3. intrante Iulio mense ante tertiam apud montem Medeam interfectus fuit venerabilis pater Concordiensis episcopus, vicedominus reverendi patris Gregorii patriarchae, et quidam alii cum eo per insidias ei impositas per fautores domni Alberti comitis Goritiae.* (AF, 197).

At this juncture Gregorio responded with force, showing his military prowess. On 27<sup>th</sup> July 1268 he set out from Udine with his troops to march against the Count of Gorizia, attacking him and destroying the bridge over the Isonzo on 12<sup>th</sup> August. Evidently, this violence once again triggered off the mechanisms of conflict resolution in use at the time, with the result that an act of compromise and reconciliation between the parties was made on 30<sup>th</sup> August 1268.<sup>38</sup>

Further information about the conflict dates to 1269 and refers to the death of the Patriarch of Aquileia, Gregorio of Montelongo, on 8<sup>th</sup> September. The new Patriarch, Raimondo della Torre, was not appointed until the first months of 1274. In the regions administered secularly by the Patriarch of Aquileia, i.e. in Friuli, Istria and the Karst, this was a period characterized by an interregnum, not only at the top of the hierarchy but also locally. More or less important conflicts continued in the areas under Venetian influence – the Istrian towns and those of the Counts of Gorizia and their vassals. The vassals of the Patriarchs of Aquileia were also involved; in keeping with their interests and expectations, they regularly passed from one side to the other, between Guelphs and Ghibellines, more or less under cover and in a confusion of lay and ecclesiastical powers. Nor was it by chance that for a certain time until the end of the conflict (1277) the situation was taken advantage of for his own personal interest by the Bohemian king Ottokar, who also became General Captain of Friuli in 1272.

The election of Raimondo della Torre as Patriarch of Aquileia at the end of 1273 coincided with the appointment of Rudolph of Habsburg as king of the Germans, though the German kings had claimed the imperial throne since 962. The Counts of Gorizia soon formed ties with the new ruling family, which benefitted them at first, but later it gradually took possession of all their properties (in 1363, the Tyrol; in 1374, Istria; in 1500, the lands of Gorizia). The rivalry existing with the Bohemian king helped them. Indeed, in 1274, on the strength of a decree of the National Assembly, Rudolph of Habsburg ordered the Bohemian king, Ottokar II Přemysl, to restore the properties of Babenberg and Spainheim, which led to a war between them. With the treaty of peace of Vienna in 1276, Ottokar renounced Austria, Stiria, Carinthia and the Slovenian March (or Windic March) in favour of Rudolph, who gave them to be administrated to Count Meinhard of Gorizia. After which, in the Battle of Marchfeld of 1278, Ottokar was killed. With the double marriage of his children to those of Ottokar, Rudolph neutralized his enemies and created in Austria, Styria, Carinthia and Carniola (that is, in the so-called hereditary Habsburg lands, to which the Tyrol was also annexed in 1363) the basis for the rise of the Habsburg dynasty.

And so in the conflict with Ottokar, Rudolph of Habsburg acted in full accordance with the concept of the system of conflict resolution in force at the time – particularly with his final, mythical act which, according to the mentality of the age, was the only thing that

38 *De exitu exercitus et de destructione pontis Goritiam. Dicto anno die Veneris 5. exeunte Iulio, exivit Gregorius patriarcha Utino cum suo exercitu contra dictum comitem. Et tunc die 12. Augusti destructus et dirutus fuit pons Isuntii prope Goritiam. Reversus est die penultima Augusti Civitatem; facto iterum compromisso inter dictas partes. Aug. 30.* (AF, 197; AKG, 22, 377).



Fig. 15: Coin of the Patriarch Raimondo della Torre with episcopal vestments, seated on the front with the gospels in his hand. Tower of the family coat of arms (Wikimedia Commons. File: Raimondo della Torre – Denaro.jpg)

could guarantee a lasting peace: the marriage between representatives of the opposing parties, or at least, as became prevalent later, the exchange of godparents.<sup>39</sup>

The new Patriarch of Aquileia also went to work at once to resolve the conflicts shaking the temporal power of the Patriarchs. Thus, on 11th February 1274 he and the Doge of Venice, Lorenzo Tiepolo, reconfirmed the peace that had been previously declared by Patriarch Gregorio with the Doge of Venice, Rainerio Zeno, in 1254<sup>40</sup>. Next he turned to what at first sight seemed to be the most difficult problem: the normalization of relations with the Count of Gorizia and his allies, above all Koper.

And so the often-mentioned document on the truce of 18<sup>th</sup> August, 1274 came into being.<sup>41</sup> Among other things, it is a document that contains a large quantity of interesting and original data useful for the study of the past both on the micro and the macro scale (CDI, II, 361, 596–604). As a supplement to this document, the very next day, i.e. on 19<sup>th</sup> August, as the agreement had stipulated, the Patriarch was presented with the inventory

39 Here, too, it is possible to compare this rite to the Montenegrin and Albanian ones, but medieval documents from all over the Europe also testify the use of this rite (see Smail, Gibson, 2009, 417–441).

40 *Cum inter Venerabilem Patrem dominum Raymundum Dei gratia Sanctae Sedis Aquilegiensis patriarcham ex una parte et Magnificum dominum Laurentium Theupulo Dei gratia Venecie Dalmacie atque Chroacie Duce dominum quarte partis et dimidium totius imperii Romanie et Comunis Veneciarum ex altera ... pacta et conventiones ... caudet ad talem concordiam* (CDI, II, 358).

41 *Pax in forma conventionis pro bono pacis et concordie – fidantia seu treuga*. Rolandino nel '200 illustra: *forma conventionis; Treuga est conventio de non provocando bellis ... est securitas ad tempus personis, & rebus ...* (Rolandino, 1546, 158 v).



Fig. 16: *Rudolf\_of\_Habsburg\_Speyer.jpg* (Wikimedia Commons)

of the damages and the list of participants in the battles that had taken place in July and August of 1267. This supplement tells of a vendetta of the Seigneurs of Momiano against those of Pietrapelosa following the murder (*turpiter interfectus*) of Biaquino of Momiano. And not only: the gruesome vendetta of Cono of Momiano had led him to undertake other military expeditions in the lands of Gorizia in the same years, seeing that, besides assaults on the Tower of Buzet and the Castle of Pietrapelosa, the document also reports attacks on other castles of the Patriarch.<sup>42</sup> Among the protagonists mentioned in the document we find not only Cono da Momiano but also Friderico de Mimiliano, Woscalco filio dicti Domini Chononis de Mimiliano, as well as Frater Galvanus et Fridericus de Mimiliano.

42 *Item Dominus Chono de Mimilliano interfuit cum Comite et in servicio Comitis apud Pinguentum et apud Writsperch apud Mascher et apud Wisnavich.* (CDI, II, 361, 602; AKG, 22, 399).

Despite the fact that the conflicting parties had promised friendship (*facti sunt amici*) and had sworn (*iuravit*) to respect the decisions of the three arbiters<sup>43</sup> in order to reach a settlement, harmony and peace (*de composition et concordia et pace*), it is clear that very soon new dissensions broke out (*facti inimici sunt ut prius, non obstante iuramento ...*).

The object of the next conflict was the small fortress of Cormons. The Count of Gorizia had already started out from Cividale with his soldiers to claim his right, but King Ottokar interceded once again, concluding a truce between the two parties. This is reported in a document of 2<sup>nd</sup> October 1274, (AKG, 22, 401) according to which the two parties agree that in case of future conflicts each side will name an arbiter to pass judgment on the reasons for the conflicts. Like many other times in the past, the conflicting parties committed themselves to respect the arbiters' decisions.

It would seem that in the arbiters' act of persuasion success smiled upon the Count of Gorizia once again, for the Patriarch of Aquileia confirmed his right to half of Cormons in an act of 24<sup>th</sup> February, 1275 issued in Cividale (CDI, II, 363, 606–609). In general, when this type of agreement was made in the presence of allies and followers of the disputing parties in the High Council<sup>44</sup> there were also representatives of the city of Koper present during the solemn oath of truce. In reality, in some other documents concerning the same conflict the representatives of Koper were among the witnesses, but in this case it was a question of a separate truce between the Patriarch of Aquileia and the city of Koper. Indeed, in this meeting the representatives of Koper seemed to have read the resolution of their own Major and Minor Town Council, and also, in agreement with the whole community of Koper, to have solemnly sworn on the holy Gospels that they would prevent all attempts at fraud or iniquity and would respect the truce faithfully, in no case and without any exceptions violating it.<sup>45</sup> Given that Koper was also under the secular dominion of the Patriarchs of Aquileia, we can see here the great autonomy that medieval communities had in the system of conflict resolution.

It seems that after this reconciliation the process of arbitration on the field finally got started, as we can see in the above-mentioned Glagolitic document, *Istarski razvod*. But things got complicated again in May 1277, when a new compromise was stipulated along with an agreement on the inventory of the damages caused after the peace agreement (*de*

43 *Unde datis securitatibus et praestitis iuramentis ... Dominus Patriarcha elegit Dominum Gothfredum Potestatem Paduanum. Dominus Comes elegit Dominum Ulricum de Tauures, et hii duo communiter elegerunt Dominum Gerardum de Cammino* (AF, 199; CDI, II, 361, 597).

44 *Memoratus insuper Dominus Patriarcha nomine Suo et supradictorum suorum desponsione solempni promisit; et prefatus Dominus Comes ad sancta Dei Evangelia corporaliter iuravit firmam pacem; ambo inter se ad invicem et omnia et singula sapradicta inviolabiliter observare pro se et suis, tenere et non contravenire aliqua occasione vel exceptione sub pena Trium Millium Marcharum denariorum Aquilegensium* (CDI, II, 363, 608–609).

45 *... predictae Civitatis Justinopolis de voluntate et consensu totius minoris et majoris Consilii et totius Communitatis Justinopolis, damus et concedimus plenam licentiam, et libertatem Nobilibus Civibus Nostris, videlicet Dominis Albertino Paduano, Carsto de Miriza, Zanetto de Upsso, Varino Hengeldei, Ricardino Blajono, Johanni Dietalmo, Almerico Spandinuci, Lanceloto Paltono, Facine de Tarsia, Nazario Bertulini, jurandi ad sancta Dei Evangelia, ... omni fraude remota et malicia inviolabiliter observare et non contravenire aliqua occasione vel exceptione.* (CDI, II, 363, 609).

*damnis hinc inde illatis postquam facta fuit praedicta pax*) (AKG, 24, 429). And in all likelihood it was just this agreement that led to the proclamation of lasting peace on 9<sup>th</sup> June 1277. Unfortunately, the reference to the proclamation of lasting peace is very succinct: it only reports that both parties would respect the arbitration of the four arbiters and would proclaim lasting peace (*pax et concordia perpetua*).<sup>46</sup>

Thus, just as the ideological structure of the high Middle Ages was built on the wave of the so-called peace movement after the year 1000, which separated God's truce – a temporary suspension of hostilities, distinct from God's peace, which meant perpetual peace – so the rite of resolution of conflict included the truce as a phase of suspension of hostilities. However, for the peace to endure peace it was also necessary to proclaim the so-called lasting peace, which was based solely on the satisfaction of both parties. It should therefore not come as a surprise that in the system of conflict resolution, already established in tribal communities, the ideal final ritual intended to guarantee an enduring peace envisioned marriage exchanges between the conflicting parties, or at least the exchange of godparents between the families involved.

On this subject there exists abundant documentation and evidence, to be interpreted using suitable methods of investigation. To clarify this cultural phenomenon more fully, I look to Guille-Escuret's interpretation. According to this scholar, the formula of a tribe of New Guinea reported by the renowned anthropologist Marshall Sahlins on the basis of field research is present in many places on our planet, "We fight against those we marry". (Sahlins, 1980, 71; Guille-Escuret, 1998, 171). Or, again, the publication of certain acts of conflict resolution in Marseilles in the middle of the 14<sup>th</sup> century: when after the vendetta (*vindicta*) the parties to the case had deposited the declaration of peace with a notary, there followed a notary's entry concerning the marriage between representatives of the families previously in dispute (Smail, Gibson, 2009, 426–427). At this point I certainly do not intend to go more deeply into the unifying role of conflicts in the community, but it is possible to confirm the observations or even just the insights of certain researchers, according to whom the system of conflict resolution in tribal communities was doubtlessly of great importance in forming the cohesion and unification of wider communities, not the least of which were national communities.<sup>47</sup>

The degree to which, thanks to written law, pacific resolution of conflicts through recourse to the law had taken the place of violent resolution – the key role of guarantor of agreements now being taken on by a notarial act<sup>48</sup> – is shown in customary rites by

46 De pace inter domnum patriarcham Raymundum et nobilem comitem Goritiae Albertum. *Anno Domini 1277. indictione 5, die Mercurii 9, intrante lunio, in Civitate Austria in palatio patriarchali fuit per domnos Walterobertoldum de Spengimbergh, Ioannem de Zuccula patriarchae, Ugonem de Duino et Henricum de Pisino, comitis Alberti arbitros pronunciata arbitrando inter eos firma pax et concordia perpetua.* (AKG, 24, 429). Notaries were chosen as judiciary administrators.

47 "Zmora's claim that feuding contributed to state-building fits well with this model", explains Carroll in his review of Zmora's book (Carroll, 2012).

48 Notaries were chosen as judiciary administrators, "able to give concrete answers to whoever wanted to protect his own interests without having recourse to arms, but to the law instead", Imerio (1050–1130 about), the first glossator, see Bellomo, 2011, 71.

significant elements of free will, since single individuals and communities were given the freedom to choose whether to resolve the conflict through friendly means, with community mediation, or to continue the violent solution.

The concept of a system of conflict resolution, which was reiterated and maintained in the community through symbolic ritual activities, established norms and values which, at least in the initial phases of written law, were included as obvious elements in written legal formulas. Thus, as a compulsory integrating element in the process of reconciliation and of guaranteeing lasting peace, the ritual gesture of the kiss of peace (*osculum pacis*) between the conflicting parties was maintained at the end of the rite of reconciliation. In some cases, this gesture was described in notarial acts.<sup>49</sup>

But let us return to the conflict in consideration. In 1277, with the proclamation of lasting peace, after ten years a settlement was reached to end the conflict between the Patriarch of Aquileia and the Count of Gorizia over the confinement of Patriarch Gregorio in 1267 and the damage it had caused. Is it legitimate to believe that the Patriarch of Aquileia and the Count of Gorizia, at the proclamation of lasting peace, exchanged the kiss of peace (*osculum pacis*)? The answer could be positive, considering that in drawing up all the ten documents regarding the resolution of the conflict, the indications of the Bolognese notary, judge and university professor, Rolandino, were adopted. Indeed, Rolandino maintained that there could not be a genuine lasting peace without its being reciprocally guaranteed between the parties directly responsible for the conflict and reconfirmed by the kiss of peace (*pax et concordia perpetua*) (Rolandino, 1546, 158–159v). It is precisely these concepts, expressed in written laws, that prove how the forms and ritual gestures of the customary system of conflict resolution were not only kept but were regularly included in the ritual formulas of written law. The documents that have come down to us regarding the conflict between the Patriarch of Aquileia and the Count of Gorizia explicitly testify to this. And not only, but also to the customary system of conflict resolution, in whose ideal image and rituals social values based on community mediation, reciprocity and the goal of enduring peace were reflected. What community would not desire these values? Both in social and interpersonal relationships, conflicts not only reflect the ongoing struggle for control of resources, but they are socially constitutive and are integrated into the system of social order (Gluckman 1955, 109–136). Conflicts generate alliances between different groups, in the past chiefly between kin groups or clans (Lévi-Strauss, 1963, 55–66). This is a general structural aspect of conflict, while the local or particular aspect comes out concretely through the struggle for resources, in the fabric of individual circumstances. Those who succeed in forming the greatest number of alliances that are loyal, various and often contrasting are those who prevail (Gluckman, 1955, 1–26). In our case, this was clearly better accomplished out by the Counts Gorizia than by the Patriarchs of Aquileia.

49 Some examples of documents on the exchange of the *osculum pacis* at the end of repacification procedures in the 14<sup>th</sup> century have been published in the above-mentioned study, see Smail, Gibson, 2009, 417–441, but a very precise testimony is that of Rolandino, 1546, esp. 158–159. Rolandino says that without personal contact between the parties peace cannot be enduring, and so at the end of the reconciliation the gesture of the *osculum pacis* is prescribed (Rolandino, 1546, 158–159), meaning the kiss on the mouth (*ore ad os*). Cf. Le Goff, 1985, 383–461, esp., 392; Petkov, 2003.

However, these disputes caused other actors to enter their territories – first the Venetians and then the Habsburgs themselves.

## THE ISTRIAN WAR

The enduring peace of 1277 did not put an end to the presence of Koper and Gorizia in Istria. In Pazin in the year 1278 Count Albert and the representatives of Koper, formed an alliance against Venice and its Istrian allies in the name of the Patriarch, though he was not actually present. They made a pact concerning the division of spheres of influence, according to which if they were victorious Koper would take control of the coastal towns, while to the Count would be left the possessions in the hinterlands of Istria.

In this circumstance, the alliance took advantage of the fact that Venice was engaged in a war with Ancona. After the siege of Motovun, which tried to defend itself courageously, the count of Gorizia conquered Sveti Lovreč (San Lorenzo del Pasenatico).



Fig. 17: Two churchmen giving the kiss of peace, 1240 (<http://www.jobev.com/medrom.html>)

If the Serenissima had initially decided not to oppose the alliance between Koper and the Count of Gorizia, preferring to tighten a vice around them gradually, at this point Venice attacked with all its forces. After the siege of Izola in February of 1279 it took possession of Koper, destroying part of the town walls and deporting the majority of the population. In January, 1283 the High Council of Venice got the news of the “surrender” of Piran, which represented not only the definitive end of the alliance between Koper and the Count of Gorizia but also the gradual loss of the political autonomy of the towns of Istria, though there were still to be attempts at regaining it in the future (Greco, 1939, 45–46).

Peace had still not arrived for the Istrians: the relations of force in the peninsula changed radically. The war between the Patriarch of Aquileia and the Counts of Gorizia and Istria against Venice, which lasted from 1283 to 1291, gave further proof of how alliances could change in the space of twenty-four hours.

In Muggia in March, 1283 the Count of Gorizia and the Patriarch of Aquileia made an alliance, which was joined by Padua, Treviso and Trieste. On that occasion all the Istrian towns that had put themselves under Venice took the side of Venice, including Koper, though the party of the Patriarch was still active. In this war, which Venice waged mainly against Trieste as it was a rising maritime port, Koper played an important role, since this city was the seat of the *Capitaneus Istriae*, which represented the embryo of the future centralized military government in Istria.

In the war, which lasted until the end of 1291 with an interruption between 1285 and 1287, besides the coastal towns from Muggia to the Canale di Leme, Venice conquered Antignana, a possession of the Patriarch in the hinterlands of the peninsula; the territory around San Pietro in Selve; and the Castle of Grožnjan, a possession of the vassal of Pietrapelosa. Dvigrad, Buje and Muggia surrendered. As compensation for war damages, the Patriarch gave up *de facto* his rights over the towns that had been lost.

It is no surprise, therefore, that Vicardus II of Pietrapelosa, whom the alliance with the Count and the Istrian cost towns the loss of his father Henry and his uncle Carseman, was the last vassal to pass to the side of the Venetians, opening the doors of the Castle of Grožnjan to them in 1287 (De Vergottini, 1925, 33; CDI, II, 428, 768–769). In 1285, during the two-year truce, in consequence of the armed resistance to the Patriarch of Aquileia put up by Vicardus II, the latter was forced to promise the Castle of Salež (Salise) for a value of 300 marks. The following year he exchanged this castle with that of Grožnjan (CDI, II, 735–736). In the years to come Vicardus II was to remain faithful to the Count of Gorizia, and after the disappearance of the Seigneurs of Momiano he was the most fervent supporter of the Seigneurs of Gorizia in northern Istria.

Despite the numerous occasions when he opposed the Patriarch, especially in questions concerning Friuli, where the conflict that had started in Istria had moved, Vicardus II was not excommunicated by the Patriarch until 1297, after the sack of the Friuli town of Perteole. After the excommunication, in October of the same year, Vicardus II had to repent publicly in Udine in the presence of the eminent prelates and nobles who made up the Patriarch’s court (CDI, II, 415, 735–736). It is interesting to note that more than of the slaughter of innocent people, Vicardus II was accused of destroying the campanile.



*Fig. 18: The lion of Montovun, with the closed book (photo: D. Podgornik, 2007).*

In his defense, Vicardus II blamed the destruction on Count Henry, who confirmed the accusation (CDI, II, 469, 838).

In 1302 Vicardus II, with Biaquino II of Momiano and other vassals of the Count of Gorizia and Istria, was once again in Friuli, where they continued the plunder of the possessions of the Patriarch. Nonetheless, five years later the Patriarch himself, by virtue of his guardianship over Henry II of Pazin, donated the feud of Kodolje to Vicardus II (Bianchi, 1847, 337, no. 1146).<sup>50</sup>

The Seigneurs of Momiano also frequently changed their banner. In the eighties they once again supported the side of Aquileia. It so happened that in 1290 Count Albert I of Gorizia captured and imprisoned Ulrico of Momiano. In 1309, during the war fought between Aquileia and Venice, when Henry II Count of Gorizia allied himself with the Patriarch of Aquileia, the Seigneurs of Momiano allied themselves with the Venetians. Not only: they subsequently took part in the rebellion of the Friuli nobles against the Patriarch, which ended in February, 1310 (Štih, 2013, 173). This change of sides was the likely reason for the uncontested occupation of Momiano by Vicardus II of Pietrapelosa the following year.

After the loss of Momiano in 1311, the Patriarch of Aquileia gave the Seigneurs of Momiano the feud of Castiglione between Buje and Grožnjan, where they continued to

<sup>50</sup> De Franceschi (1897, 163–164) held that the village Colton was Kršan below Pazin, while Klen (1977, 32), claimed that it was Kodolje (Codoglie), which later was part of the feud of Pietrapelosa.

practice their political pragmatism. So it was that in November of 1343 Biaquino and his son Francesco Voscalco put themselves and their Manor of Castiglione under the protection of Counts Meinhard VI, Henry III and Albert III of Gorizia, thereby siding with Venice in the Veneto-Gorizian war. In 1345, to punish this betrayal, the Patriarch of Aquileia had the vassal captured and the walls surrounding Castiglione destroyed. As citizens of Venice, Biaquino and his son were freed, but only thanks to the intervention of Venice.

The line of the first Seigneurs of Momiano died out in 1358 with the death of Francesco Voscalco, son of Biaquino, *qui decessit absque masculis heredibus ex se descendenti-bus*. All the feuds that the house had obtained from the Aquileian church went back to the Patriarch of Aquileia, who conferred them to Simone of Valvasone in Friuli on condition that *quod in loco de Castiglono numquam habeat facere Castrum aliquod edifican* (Štih, 2013, 179).

Almost at the same time the Seigneurs of Pietrapelosa also died out. The last member of this glorious and important Istrian family of feudal lords is found in the investiture of Nicolò, son of the deceased Peter Pietrapelosa. The division of all the possessions of his ancestors (Pietrapelosa and Grožnjan) (CDI, II, 741, 1253; Benedetti, 1964, 15–16) was confirmed in 1352 by the Marquis of Istria Jacopo Morello of Lucca.

## CONCLUSIONS

As we have seen, the last decades of the 13<sup>th</sup> century in Istria are marked by continual struggles for territorial conquests and wars that produced victims and devastation. The disastrous effects of these struggles were aggravated by the frequency with which epidemics were spread, also in neighbouring areas (so much so that bordering populations struck by the epidemic sometimes found refuge in Istria). This is what happened, for instance,



Fig. 19: *Amor Sacro e Amor Profano* by Titian as apology of Divine and Profane Law (Wikimedia Commons. File:Tiziano – Amor Sacro y Amor Profano (Galería Borghese, Rome, 1514).jpg)

after the military encounters that occurred between 1267 and 1277, and even more after the 1283–1291 war between Venice and Aquileia that was fought in Friuli and Istria. The peninsula was hit especially hard, “decimated, burnt down, desolate and brutally debauched”. The inhabitants of adjacent zones such as Carniola, Carinthia and Croatia arrived in the region, settling chiefly in the territory of Koper, Izola and Piran, which were among the most vulnerable areas.

However, it is the documents concerning the feud between the Patriarch of Aquileia and the Counts of Gorizia that are evidence of how written laws show that the ritual forms and gestures of the customary system of conflict resolution were not only maintained but were regularly inserted into the ritual formulas of written law. Above all they document



*Fig. 20: The Ark of Rolandinus Rodulphi de Passageriis in Piazza San Domenico, Bologna (Wikimedia Commons. File:San domenico, bologna, arca.JPG)*

how the customary system of conflict resolution, in its ideal image and through rituals, reflected social values based on the mediation of the community, reciprocity and the propensity to achieve a lasting peace. Comparisons with the custom of conflict resolution in Montenegro, Albania and Herzegovina confirm the hypothesis of a number of the ritual and procedural features of custom in written law. In addition, they confirm the fact that the customary conflict resolution system, also called *vindicta*, *faida*, *blood revenge*, *krvna osveta*, *gjakmarrja* etc., was in fact a concept. Ritually it consists of three phases: gift (compromise), the truce (Oath) and lasting peace (amor). The three phases, brilliantly described by Le Goff on the case of knights' investiture in his work *The Symbolic Ritual of Vassalage*, are valid on the level of secular authorities' organisation. Concept, obviously developed back in primary human communities. In social and interpersonal relations, conflicts are not only a reflection of the continual struggle for control of resources; rather, they are an integral part of the system of social order. Indeed, conflicts generate alliances between different groups, in the past chiefly between kin groups and clans. This is a general structural aspect of conflict, while the local or particular aspect is shown concretely through the struggle for resources, in the interweaving of single circumstances, where those who succeed in forming the greatest number of loyalties, differing and often contrasting alliances, are the ones who prevail. In our case this was clearly better accomplished by the Counts of Gorizia than by the Patriarchs of Aquileia.

The fact remains, however, that already in 1305 Biaquino II alienated Momiano to Fredrick of Prampero Friulano, only to buy it back two years later (1307). In the spring of 1311, Viskard II of Pietrapelosa conquered Momiano, and on 7<sup>th</sup> May of the same year transferred ownership of the castle to Fredrick of Prampero for 200 marks, with the commitment not to cede it to anyone for six years, especially not to the Venetians or the city of Koper. Subsequently, the Patriarch of Aquileia invested Fredrick of Prampero with the feud of Momiano. But already in December of 1311 Fredrick *de sua manu et tenuta* surrendered it, selling it and investing Count Henry II of Gorizia and his heirs with the Seignourage of Momiano; the Patriarch could do nothing but ratify the investiture of Count Henry II of Gorizia and his heirs with the feud of Momiano. The ceremony took place on 6<sup>th</sup> October 1312 in Udine (Carli, 1791, 158–159).

Thus it was that in 1312 the feud of Momiano passed into the hands of the Counts of Gorizia. This was, in fact, the ultimate vendetta of the family of Pietrapelosa, with the important difference that this time it came about without a *turpiter interfectus*.

*TURPITER INTERFECTUS*.  
GOSPODI MOMJANSKI IN PETRAPILOŠKI V OBIČAJNEM SISTEMU  
REŠEVANJA SPOROV V ISTRI V 13. STOLETJU

Darko DAROVEC

Univerza Ca' Foscari Benetke, Oddelek za humanistiko, Dorsoduro 3484/d, 30123 Benetke, Italija

e-mail: darko.darovec@unive.it

**POVZETEK**

*Listine o sporu med oglejskim patriarhom in goriškim grofom (1267–1277), ki so v ospredju pričujočega članka, kažejo tedanje značilnosti sistema reševanja sporov. To je čas, ko so se z vzponom srednjeveških mest oblikovale izobraževalne ustanove, zlasti univerze, ki so bistveno pripomogle k razširjenosti pisave kot kulturno-tehnološkega pripomočka za izvajanje oblasti. To je še čas, ko je t. i. učeno pravo črpalo svojo snov tako iz dediščine rimskega prava, ki je tedaj ponovno vzniknila, kot iz vrste pravnih določb germanskih predpisov, če naj jih tako poimenujemo skladno z zbirko Monumenta Historica Germanica, svojskosti mestnega prava ter še zlasti na podlagi običajnega prava, ki v svoji idealizirani podobi in s pomočjo obreda izražajo družbene vrednote temelječe na mediaciji skupnosti, recipročnosti in težnji k trajnem miru. Primerjave z običajem reševanja sporov v Črni gori, Albaniji in Hercegovini potrjujejo hipotezo o mnogih ritualnih in procesnih značilnosti običaja v učenem pravu. Potrjujejo še, da je bil običajni sistem reševanja sporov, imenovan tudi vindicta, faida, krvna osveta, gjakmarra ..., koncept. Ritualno je sestavljen iz treh faz: dar (kompromis), premirje (prisega) in trajni mir (amor). Tri faze, ki jih je v delu Simbolno obredje vazalstva na primeru investiture vitezov briljantno opisal Le Goff, veljajo na ravni organizacije posvetne oblasti. Koncept, ki se je očitno razvil že v primarnih človeških skupnostih.*

*Oblikovanju učenega prava tako lahko sledimo tudi na primeru spora med oglejskim patriarhom in goriškim grofom v drugi polovici 13. stoletja. Vseh 10 obravnavanih dokumentov o reševanju spora pri sestavljanju listin namreč sledi napotkom bolonjskega notarja, sodnika in univerzitetnega profesorja Rolandina (Rolandinus Rodulphi de Passageriis) iz druge polovice 13. stoletja. Rolandino med drugim pravi, da ni pravega trajnega miru, če si tega ne zagotovita neposredno odgovorni strani v konfliktu, in to potrđita tudi s poljubom miru. Prav te dikcije v zapisanem pravu pričajo, kako so se ritualni obrazci in ritualne geste običajnega sistema reševanja konfliktov ne le obdržali, temveč bili neposredno sprejeti v ritualnih obrazcih učenega prava.*

*V družbenih odnosih in interakcijah so spori ne le odraz nenehnega boja za resurse, temveč so družbeno konstitutivni, so vgrajeni v sistem družbenega reda. Spori namreč generirajo tudi zavezništva med različnimi skupinami, v preteklosti v glavnem sorodstveno oziroma klansko povezanih. To je globalni strukturni vidik sporov, lokalni ali partikularni vidik pa se v praksi kaže tako, da v boju za resurse v spletu posameznih okoliščin prevladajo tisti, ki uspejo združiti čim več različnih in pogosto konfliktnih*

*lojalnih zavezništev, kar je očitno v našem obravnavanem sporu bolje uspevalo goriškim grofom kot pa oglejskim patriarhom. Toda njuna nasprotja so na njune teritorije privedla druge igralce: Benečane in Habsburžane.*

*Ključne besede: fajda, krvno maščevanje, dar, premirje, mir, oglejski patriarhi, goriški grofi, Momjan, Petrapilosa, Istra*

#### SOURCES AND BIBLIOGRAPHY

**AF** – Annales Foroiulienses (AF). Vol. XIX. Hannover, 1864.

**AKG** – Archiv für Kunde österreichischer Geschichts-Quellen (AKG). Vol. 22 (Wien, 1860), Vol. 24 (Wien, 1860), Vol. 29 (Wien, 1863).

**Bellomo, M. (2011):** *L'Europa del diritto comune*. Roma, Il Cigno G. G. Edizioni.

**Benedetti, A. (1964):** *Gli antichi Signori di Petrapilosa, Trieste, Pagine Istriane*.

**Bianchi, J. (ed.) (1847):** *Odoricus de Susannis, Thesaurus Ecclesiae aquilejensis*. Udine [s.n.].

**Boehm, C. (1984):** *Blood Revenge. The Enactment and Management of Conflict in Montenegro and Other Tribal Societies*. Philadelphia, University of Pennsylvania Press.

**Bogišić, V., Čizmović, M. (ed.) (1999):** *Pravni običaji u Crnoj Gori, Hercegovini i Albaniji*. Knjiga IV. Beograd, Podgorica, Unireks.

**Bratulić, J. (1989):** *Istarski razvod. Priredio, predgovor napisao i komentarima popratio Josip Bratulić*. Pula, IKK "Grozđ", Čakavski sabor.

**Brunner, O. (1939):** *Land und Herrschaft. Grundfragen der territorialen Verfassungsgeschichte Österreichs im Mittelalter*. Baden bei Wien [s.n.].

**Carli, G. R. (1791):** *Antichità Italiane, Appendici di documenti spettanti alla parte quarta*. Milano, nell'Imperial Monistero di S. Ambrogio Maggiore.

**CDI** – Kandler, P. (1986): *Codice Diplomatico Istriano*. Trieste, Editore Tipografia Riva S.p.A.

**Carroll, S. (2012):** *Hillay Zmora. The Feud in Early Modern Germany*. Cambridge University Press, 2011 (Reviewed by). Published on H-HRE (<http://www.h-net.org/reviews/showrev.php?id=35932>, October, 2012).

- Darovec, D. (2007):** Petrapilosa: grad, rodbina, fevd in markizat. Koper, Založba Anales.
- De Franceschi, C. (1885):** Studio critico sull'istrumento della pretesa reambulazione di confine del 5 maggio del 1325, Indizione VIII, tra il Patriarca di Aquileia Raimondo della Torre col mezzo del suo marchese d'Istria Guglielmo di Cividale, il conte Alberto di Gorizia ed Istria, ed i veneziani. Archeografo Triestino, II, Nuova serie 11, 41–118.
- De Franceschi, C. (1897):** I castelli della Val d'Arsa. Atti e Memorie della Società Istriana di Archeologia e Storia Patria, XIV, 135–198, 337–393.
- De Franceschi, C. (1939):** Il ramo dei Duinati di Momiano e il suo secolo di storia. Atti e Memorie della Società Istriana di Archeologia e Storia Patria, Parenzo, 50.
- De Vergottini, G. (1925):** Lineamenti storici della costituzione politica dell'Istria durante il Medio Evo, II. Roma, Società istriana di archeologia e storia patria.
- Djuričić, M. R. (1975):** Arbanaška zakletva – beja. Zagreb, JAZU.
- Duričić, M. R. (1979):** Čuvari bese. Beograd, SAZU.
- Du Cange, C. (1733):** Glossarium ad scriptores mediae et infimae Latinitatis. Parisiis: sub oliva Caroli Osmont. See: <http://www.uni-mannheim.de/mateo/camenaref/ducange.html> (10. 10. 2015).
- Evans-Pritchard, E. E. (1940):** The Nuer, A description of the modes of livelihood and political institutions of a Nilotic people. New York, Oxford, Oxford University Press.
- FRA – Fontes rerum Austriacarum (FRA), Diplomataria et Acta.** Band I., Urkunden zur Geschichte von Österreich, Steiermark, Kärnten, Krain, Görz, Triest, Istrien, Tirol: aus den Jahren 1246–1300, Wien 1849, no. LXXIX.
- Gluckman, M. (1955):** Custom and Conflict in Afrika. Oxford, Basil Blackwell.
- Goody, J. (1993):** Med pisnim in ustnim. Študije o pisnosti, družini, kulturi in državi. Ljubljana, Škuc, Znanstveni inštitut Filozofske fakultete. (orig. The Interface Between the Written and the Oral. Studies in Literacy, Family, Culture and the State. Cambridge, Cambridge University Press, 1987).
- Greco, M. (1939):** L'attività politica di Capodistria durante il XIII secolo. Atti e Memorie della Società Istriana di Archeologia e Storia Patria, Parenzo, 49, 1–46.
- Guille-Escuret, G. (1998):** Družbe in njihove narave. Ljubljana, Studia Humanitatis. <http://www.uni-mannheim.de/mateo/camenaref/ducange.html>
- Joppi, V. (ed.) (1885):** Documenti Goriziani del sec. XII e XIII. Archeografo Triestino, II, Nuova serie 11, 377–405.
- KLD – Shtjefën K. Gjeçovi (1933):** Kanuni i Lekë Dukagjinit. Shköder. In: Vukčević, D. K. (2011): Kanon Leke Dukadžina. Podgorica, CID.
- Klen, D. (1977):** Iz prošlosti Kostela – Petre Pilose i njegovih sela. Buzetski zbornik, II.
- Kos, M. (1928):** Gradivo za zgodovino Slovencev v srednjem veku, 5: 1201–1246. Ljubljana, Leonova družba.
- Kos, D. (1994):** Imago iustitiae. Historični sprehod skozi preiskovanje, sojenje in pravo pri plemstvu v poznem srednjem veku. Ljubljana, Znanstvenoraziskovalni center SAZU.
- Le Goff, J. (1985):** Za drugačen srednji vek. Simbolno obredje vazalstva. Ljubljana, Studia Humanitatis.

- Lévi-Strauss, C. (1963):** Structural Anthropology. New York, Basic Books.
- Marsich, A. (1869):** Notizie intorno Pietrapelosa in Istria. [Capodistria], Angelo Marsich. MGH – Monumenta Germaniae Historica.
- Petkov, K. (2003):** The Kiss of Peace. Ritual, Self, and Society in the High and Late Medieval West. Leiden, Boston, Brill.
- Povolo, C. (2015):** Feud and vendetta: Customs and Trial Rites in Medieval and Modern Europe. A legal-anthropological approach. *Acta Histriae*, 23, 2, 195–244.
- Rolandino, R. (1546):** Summa Totius Artis Notariae. Anastatic reprint, ed. by the Consiglio Nazionale del Notariato. Bologna, Arnaldo Forni Editore, 1977.
- Sahlins, M. (1980):** Au coeur des sociétés – raison utilitaire et raison culturelle. Gallimard, Paris.
- Scarton, E. (2013):** Il patriarcato di Aquileia: una formazione politica originale. Paper given at the Giornata di studi Città della strada, città della spada: Udine medioevale, 29 novembre 2013, held at the seat of the Società Filologica Friulana. In: <http://www.cerm-ts.org/file/relazione-patriarcato-scarton.pdf> (1. 2. 2016).
- Schumi, F. (1882–1883, 1884–1887):** Urkunden und Regestenbuch des Herzogtums Krain, Bd. I, II, Laibach, 2, 135.
- Smail, D. L., Gibson, K. (2009):** Vengeance in Medieval Europe: A Reader. Toronto, University of Toronto Press.
- Štih, P. (2013):** I Conti di Gorizia e l'Istria nel medioevo. Centro di Ricerche Storiche, Rovigno.
- Tamba, G. (2002):** Rolandino e l'ars notaria da Bologna all'Europa. Atti del convegno internazionale di studi storici sulla figura e l'opera di Rolandino organizzato dal Consiglio notarile di Bologna sotto l'egida del Consiglio nazionale del notariato, Bologna, European capital of culture, 9–10 ottobre 2000, Milano, Giuffrè.
- Verdier, R. (1980):** La vengeance dans les sociétés extra-occidentales, textes réunis et présentés par Raymond Verdier. Paris, Cujas.
- Villa de Sommières, L. C. (1820):** Travells in Montenegro. Containing a Topographical, Picturesque, and Statistical Account of That Hitherto Undescribed Country. London, Richard Phillips and Co.
- Vocabolario (1612):** Vocabolario degli Accademici della Crusca. Venezia. Available at: <http://vocabolario.sns.it/html/index.html> (15. 09. 2015).
- Weisflecker, H. (1949):** Die Regesten der Grafen vor Görz und Tirol Pfalzgrafen in Kärnten, I Band, Innsbruck.
- Wallace-Hadril, J. M. (1959):** The Bloodfeud of The Franks. *Bulletin of the John Rylands Library*, 41, 459–487.