The Thin Border Between Justice and Revenge, Order and Disorder: *Vražda* (Enmity) and Institutional Violence in Medieval Croatia

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One of the characteristics of medieval customary law which mostly distinguishes it from the present perception of law and order is connected with the problem of using violence and justifying it for securing justice. This feature was expressed in many variants, all of which had in common that they were in some way institutionalized and terminologically defined, so most contemporaries had a clear image of their contents.

Formulations which insured achieving justice through resorting to violence appear in the sources under different names. Sometimes it was the case that various contents were designated by various terms, linguistically and semantically more or less related, but sometimes these terms were only translations of the same terms in different languages. Some of these concepts have attained vast popularity, such as the Italian word *vendetta*, and most of them have come down in colloquial speech to depict the so-called feud (German: *Fehde* or English: *blood feud*).

The use of violence to insure order and justice is neither a medieval phenomenon nor limited to only one civilisation, yet it is one of the basic mechanisms expressed more or less in a large number of societies; its use is primarily motivated by the need to secure protection for the members of certain social communities in relation to the outside world. Such an approach thus lies at the very root of legislation, especially in the case of the applying the *talion* principle, present in the oldest known statutes, such as Hamurabi's and others, by which it is allowed, in order to achieve justice, to inflict adequate harm on the person who had violently hurt a victim.[1] Still, in the course of historical development the customs by which an individual insured justice by independently resorting to force and violence have mostly been replaced by other forms of social pressure. The use of force has mostly been taken away from individuals

[1] On the principle of *talion* and its connection to the principle of self-help and their ethical implications, see Ernest Van Den Haag, "The *Lex Talionis* before and after Criminal Law," *Criminal Justice Ethics* 11 (1992) 1: 2-3.

and given to the community (in the legal system and its institutions), and such customs have an aura of illegitimacy and violence in modern perceptions.

One of the main reasons why this development went in such a direction lies in the manner in which traditional legal history perceived and, for the most part, still perceives, legal development – as a general constant progress towards accepting "higher" principles whose full expression is experienced in modern society and its law; those principles that are stipulated differently are mostly perceived as barbaric and primitive.

As in many other aspects of historical research, especially those from the medieval field, the encounter with other human and social sciences and their methodologies played an important role in formulating a different attitude from the one mentioned above, first of all the encounter with anthropology, which soon led to questioning the belief in the overrated idea of development as progress.[2]

The first important break-through into a substantially different understanding of the regulation of violence in the Middle Ages was made by the Austrian historian Otto Brunner (1898-1982) in his *Land und Herrschaft. Grundfragen der territorialen Verfassungsgeschichte Österreichs im Mittelalter*.[3] The book immediately became influential in Austrian and German historiography,[4] but it was unfortunately published just shortly before the beginning of the Second World War, when Brunner flirted with Nazism (as did many other Austrians who were thrilled about the *Anschluss*). This slowed down the book's reception in the historiography of other countries, although the criticism of Brunner's ideology was not related to the book itself, in any case not to the part relevant to our story.[5] The English version came to life only in 1984, by which time the debate on Brunner's results had been more or less transferred to (or better, opened) in the Anglophone historiography.

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[2] On the importance of anthropology for the transformation of the historical sciences during the twentieth century, see Mirjana Gross, *Historijska znanost. Razvoj, oblik, smjerovi* (Historical science: development, shape, directions) (Zagreb: Sveučilište u Zagrebu, Zavod za hrvatsku povijest, 1980), 328-31.

[3] Otto Brunner, *Land und Herrschaft. Grundfragen der territorialen Verfassungsgeschichte Österreichs im Mittelalter* (Vienna: Wissenschaftliche Buchgesellschaft, 1939). I used the English translation based on the fifth revised German edition from 1965: Otto Brunner, *Land and Lordship. Structures of Governance in Medieval Austria*, trans. Howard Kaminsky and James van Horn Melton (Philadelphia: University of Pennsylvania Press, 1984).

[4] The book received in 1941 a Verdun reward of the Academy of Sciences in Berlin, and had two more editions during World War II (1942 and 1943). See more in: Brunner, *Land and Lordship*, xiii.

[5] On the topic see more in the preface of the English edition: Brunner, *Land and Lordship*, xiv-xvii. Lately, Brunner's work once again came under the strike of criticism, mostly within the historiography of the German-speaking area. For further information, see Peter K. Miller, "Nazis and Neo-Stoics: Otto Brunner and Gerhard Oestreich before and after the Second World War." *Past and Present* 176 (2002): 144-186.

Concerning the blood feud and similar legal and social institutions, Brunner emphasized the "legality" of these forms of "legal" actions, but also the fundamental difference in the perception of war and peace in the Middle Ages, contrary to our contemporary understanding, when war is perceived as something the opposite of peace and strictly under state regulation. Using the example of Austria, Brunner showed that the medieval state did not insist on this matter and that, besides the conditions of war and peace, there was also a certain condition of "non-peace." The terms themselves for some forms of blood feud, especially the more explicit ones, are identical to the terms for war (for instance, *guerra*); such conflicts could occur within a state's borders, even against the ruler himself, without formally infringing on the fact that the state was at peace. Brunner also pointed out that there was a clear difference between blood feud and regular violence, conflicts or disorder. Institutionalised forms of violence had to be played out according to certain rules and within certain boundaries; they had to be formally proclaimed, different legal and physical persons had the right to various forms of conflict in accordance with their legal positions, there were various ways to terminate enmity at a certain moment (arbitration, reconciliation), mostly followed by good documentation (in the Austrian case by charters called *Urfehde*), and so on. Persons involved in such conflicts were formally and legally not perceived as criminals, although the opposite side in the conflict frequently did not admit this fact and used this element as propaganda against the adversary. That happened especially when a blood feud was directed against the ruler and he was in a position to suppress it quickly. The basic goal of these conflicts was not revenge per se, but achieving some kind of justice. The argument against the adversary could also be, if necessary, that his goal was not just or not correctly formulated. Yet, these conflicts were not only a legal phenomenon but also a social one, closely connected with the perception of honour and a sense of duty.[6]

Brunner's analysis was continued in a somewhat altered form by his translator, Howard Kaminski, who applied it to research on the existence of blood feud amongst the French and English nobility, and noticeable silence among historians relating to it. He explained the non-interest of historians with the animosity which "statist historians"[7] showed towards all phenomena and institutions that they perceived as a result of state weakness or social disorder. In the same context, he stressed the importance of violence and the right to use it as a distinctive mark of Western European nobility.[8] The relationship of territorial authority and right to use violence was also discussed for the most famous form

[6] Brunner, *Land and Lordship*, 1-94.

[7] While stating that they thought of historians whose research interests were primarily oriented to the history of the state and its central institutions, which was the main characteristic of nineteenth- until mid-twentieth-century historiography.

[8] Howard Kaminsky, "The Noble Feud in the Later Middle Ages," *Past and Present* 177 (2002): 55-83.

of medieval blood feud, the Italian *vendetta*,[9] and similar phenomena in the Occitan cities.[10] For all the aforementioned cases it is evident that these forms of violently insuring justice were also sanctioned by the society, but there was also a certain tendency of the community (or state authority) to limit feuding and put it under direct control.[11]

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Croatian medieval sources show that the social situation in the late medieval Croatian lands was not significantly different from the one depicted by Brunner for late medieval Austria or by other authors for England, France and Italy. In the same manner, Croatian historiography did not give more attention to the problem, mostly for the reasons mentioned above connected with the impostation of legal history as a history of continuous legal development. Thus, the blood feud and other similar phenomena were treated as relics of ancient social regulations. It is worth mentioning that, to my knowledge, the first "modern" attempt to interpret the phenomenon was published in Croatian legal and historical writings as early as 1869 in an article entitled: "On Revenge, Reconciliation and *Vražda* according to the Old Serbo-Croatian Legal Custom," by Božidar Petranović.[12] But despite this, until the present day the phenomenon has not resulted in a significant monograph interpreting the historical and legal historical picture. Certainly, some regulations from Croatian legal sources that touch on this problem are incorporated into Croatian legal historical writings, such as the synthesis of certain legal branches by Lujo Margetić,[13] but even there the problem is not specifically researched, most of all because of its incompatibility with today's general classification of law. A worthwhile move to

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[9] A particularly interesting contribution, with a detailed account of the whole problem, is an article by the English historian Trevor Dean, "Marriage and Mutilation: Vendetta in Late Medieval Italy," *Past and Present* 157 (1997): 3-36. On the social role of the *vendetta* in late medieval Italian society see also Lauro Martines (ed.), *Violence and Civil Disorder in Italian Cities, 1200-1500* (Berkeley: University of California Press, 1972).

[10] For more details see Daniel Lord Smail, "Hatred as a Social Institution in Late Medieval Society," *Speculum* 76 (2001): 90-126. On the phenomenon of the so-called "capital enmity" (*inimicitia capitalis*) see also Robert Bartlett, *"Mortal Enmities": The Legal Aspect of Hostility in the Middle Ages* (Aberystwyth: University of Wales Aberystwyth, 1998).

[11] Somewhat greater attention was given to research into violence in the early modern period. As a good overview of Anglo-Saxon historiography (with extensive bibliography) see Guy Halsall, "Violence and Society in the Early Medieval West: An Introductory Essay," in Guy Halsall (ed.), *Violence and Society in the Early Medieval West* (Rochester and New York: Boydell Press 1998), 1-45.

[12] Božidar Petranović, "O osveti, mirenju i vraždi po negdašnjemu srbsko-hrvatskome pravnom običaju," *Rad Jugoslavenske akademije znanosti i umjetnosti* 6 (1869): 1-19.

[13] *Vražda* or *homagium* as paying a retribution for murder or other misdeeds is thus mentioned there. See Lujo Margetić, *Srednjovjekovno hrvatsko pravo. Obvezno pravo* (Croatian medieval law. The law of obligations) (Zagreb and Rijeka: HAZU, 1997), 131, 164, 251, 315, 328, 363-364, 367.

a comprehensive interpretation of legal principles, including the issue of revenge as one of the mechanisms of reacting to a crime outside of court, is especially visible in the recent research of Nella Lonza,[14] and some attention has been given to it in certain works from the field of social history.[15]

The institutions in question are mentioned in the sources from the Croatian area under various terms. The most frequent term that one comes across is *vražda* (in the meaning "enmity," Latin: *inimicitia* or *inimicitia capitalis*), but other Latin terms, such as *guerra* (as mentioned above), are also used.[16] Despite that, various (but actually quite similar) forms of these conflicts are recorded in all Croatian areas regardless of their medieval territorial affiliation (in medieval Slavonia as well as in Croatia and Dalmatia), the type of society (communal city societies and non-urban areas), and class (from nobility to peasantry). Regulations of those conflicts appear in normative records (city statutes, such as those of Split, Dubrovnik, Šibenik and so on,[17] and statutory or customary law codes of other regions, such as the law of Poljica[18]), but also in descriptive sources. In the latter, the most frequent records are those of a private legal nature, in which reconciliation is noted and from which it is possible to reconstruct in more or less greater detail the whole course of events that led to it. Such examples are offered in the documents concerning the reconciliation amongst the Šubići in 1247,[19] the arbitration between the Kačići of Nadin and

[14] Nella Lonza, "Tužba, osveta, nagodba: modeli reagiranja na zločin u srednjovjekovnom Dubrovniku" (Suing, revenge, settlement: models of reaction to crime in medieval Dubrovnik), *Anali Zavoda za povijesne znanosti HAZU u Dubrovniku* 40 (2002): 57-104.

[15] On the institution of *vražda* and the relations between territorial and kindred solidarity, see Damir Karbić, "Hrvatski plemićki rod i običajno pravo" (Croatian noble kindred and customary law), *Zbornik Odsjeka za povijesne znanosti Zavoda za povijesne i društvene znanosti HAZU* (henceforth: *Zbornik OPZ*) 16 (1998): 84-88.

[16] A worthy collection of keywords and interesting ideas on the problem (as well as on all other terminological problems of legal and historical character) may be found in Vladimir Mažuranić, *Prinosi za hrvatski pravno-povijesni rječnik* (Contributions to a Croatian legal and historical dictionary) (Zagreb: JAZU, 1908-1922; reprint: 1975). See, for instance, "*vražda*" (1602-1604), "*inimicitia*" (437), "blood" (546-53), "*homagium*" (553), "revenge" (857-59), "to kill" (1482-1483), "peace" (657-60), and so on.

[17] See below. It is worth mentioning that the first historian who wrote on *vražda* (perceived as money compensation for murder) was John Lučić-Lucius, who started his discussion on this special Croatian and generally Slavic legal institute with the analysis of chapter 76 of the sixth book of Dubrovnik's statute law from 1308. See John Lučić-Lucius, *Memorie istoriche di Tragurio ora detto Trau* (Venice: Curti, 1673-74), 514-15; idem, *Povijesna svjedočanstva o Trogiru* (Historical testimonies on Trogir), trans. Jakov Stipišić, vol. 1-2 (Split: Čakavski sabor, 1979), 1084-87.

[18] For more details, see Karbić, "Hrvatski plemićki rod," 86.

[19] For more details, see idem, "Politička moć i rodovska kohezija. Primjer Šubića Bribirskih (12.-15. st.)" [Political power and kindred's cohesion. The example of the Šubići of Bribir (from the twelfth to the fifteenth century)), in Suzana Miljan and Marko Jerković (eds.), *Izabrane teme iz hrvatske povijesti* (Selected themes from Croatian history), Biblioteka Dies historiae, vol. 3 (Zagreb: Hrvatski studiji, 2007), 107-08.

nobles who had a clash with them in the 1270s,[20] the reconciliation between the kindreds of the Karinjani and the Tiskovci-Strmičani in front of the Chapter of Zadar in 1394,[21] that of the nobles of Cetina and the city-commune of Split from 1403,[22] of the commune of Brač and the Bogavčići counts from 1397,[23] of nobles of Kamešnica and Raven in Križevci County from 1384,[24] and so on). A certain number of documents exist in which some individuals are authorised by the city to obtain justice (retaliation) for themselves by violent acts against other cities or a district population after having exhausted other possible means. These are, for instance, documents in which the city authorities of Trogir authorise their citizens to act against those of Split,[25] but also verdicts and measures against those who carried out blood feuding without such authorisation, as it is seen in the records from Trogir from the end of the thirteenth century on the dispute between the sons of Lampredio and Jacob Peci.[26] Narrative sources are also informative on such practices, such as the *The History of the Bishops of Salona and Split* by Thomas the Archdeacon, who retells in great detail various cases that happened inside and outside of Split;[27] or the *Historia* of Miha, son of Madio, for whom it is noticeable that he was well acquainted with the practice from the terminology he uses while telling about various events.[28] Similar references can easily be found in other sources as well.

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[20] Tadija Smičiklas et al., *Codex diplomaticus Regni Croatiae, Dalmatiae et Slavoniae* (henceforth: *CD*), vol. 6 (Zagreb: JAZU, 1909), 111-12 (doc. 99), 128 (doc. 115), 159 (doc. 145).

[21] For more details, see Karbić, "Hrvatski plemićki rod," 85; Ivan Majnarić, "Rod Karinjana krajem XIV. i tijekom prve polovice XV. stoljeća" (The Karinjani kindred at the end of the fourteenth and during the first half of the fifteenth Century), *Zbornik OPZ* 25 (2007): 42-43.

[22] Lučić-Lucius, *Memorie*, 516-19; idem, *Povijesna svjedočanstva*, 1088-94.

[23] *CD* 18, 241-44 (doc. 167).

[24] *CD* 16, 489-90 (doc. 369).

[25] *CD* 6, 422-23 (doc. 358). On the problem of how retaliation was determined by the statutes of Split, see below.

[26] For more details see Lučić-Lucius, *Memorie*, 127-29; idem, *Povijesna svjedočanstva*, 322-26.

[27] The most famous example of such a case in the city is the conflict of Dujam, son of Draž, and the sons of Vitalis from the late 1230s, which led to the brief establishment of the so-called "Latin government" (*regimen Latinorum*) in Split. In the same chapter, Thomas also refers to the conflict of Count Gregory of Bribir and Count Domald, defining it by the term of *inimicitia capitalis* (184-85). See Toma Arhiđakon, *Historia Salonitanorum atque Spalatinorum pontificum*, ed. Olga Perić and Mirjana Matijević Sokol (Split: Književni krug, 2003), 184-89 (ch. 32); Thomae archidiaconi Spalatinensis / Archdeacon Thomas of Split, *Historia Salonitanorum atque Spalatinorum pontificum / History of the Bishops of Salona and Split*, ed., trans. and annot. by Damir Karbić, Mirjana Matijević Sokol and James Ross Sweeney (Budapest: Central European University Press, 2006), 210-15 (ch. 32).

[28] Hence, for instance, Miha, referring to the rebellion of Šibenik and Trogir against Ban Mladen's authority in 1322, states that the city had an alliance *contra banum Mladenum et suos fratres guerram promoventes*, thus depicting that conflict as a blood feud of the cities

In the following I will address several cases from which one can observe the manner in which various forms of blood feud were socially acceptable as a part of the customary and legal system as well as in late medieval legal theory. A good example where this can be traced is recorded in the statute of Split. The statute of Split was compiled under the redaction of the actual *potestas* of Split, Perceval of Firmo, a lawyer professionally trained in canon and civil law. Thus, his redaction is distinguished by order and the great influence of Roman law.[29] For that reason, institutions like the blood feud are not directly regulated in the statute, but the existence of the concept (and thus not only its practical but also its theoretical acceptance) is confirmed by mentioning it in many chapters that concern other issues. The legal institution of blood enmity is mentioned in several places in the statute. Thus, for instance, it is stated as the third reason why parents could disinherit children: "if the son publicly associates and fraternizes with mortal enemies of his father or his ancestors" (*si filius frequenter et publice utitur et conuersatur cum inimicibus capitalibus patris sui, uel suorum ascendentium*).[30] The existence of mortal enmity among some persons is also given as a reason why someone could not be accepted as a witness against another person (*Et in testes non recipiantur ... inimici capitales contra aliquem*).[31] When the regular court procedure was dismissed because of the importance of the case and the authority of the judge was given to the *potestas*, as was done, for example, in cases connected with managing grain, the testimony of mortal enemies could not be accepted as a reason for conviction (*dum tamen per capitales inimicos testes aliquis non debeat condemnari*).[32] It is

against the Šubići. but not as war (*bellum*). See "Incipit historia edita per Micam Madii de Barbazanis de Spaleto de gestis Romanorum imperatorum et summorum pontificum pars secundae partis de anno Domini MCCXC," Vitaliano Brunelli (ed.), *Programma dell'I. R. Ginnasio superiore di prima classe in Zara alla fine dell'anno scolastico* 22, 1877-78 (1878): 41; Miha Madijev de Barbazanis, "Historija" (History), Vladimir Rismondo (ed.), in Vedran Gligo and Hrvoje Morović (eds.), *Legende i kronike* (Legends and chronicles) (Split: Čakavski sabor, 1977), 173.

[29] The foundation of the statute of Split in Roman law is explicitly stated by Percival himself in the preface of the statute. See *Statut grada Splita. Srednjovjekovno pravo Splita* (The statute of Split. The medieval law of Split), ed. Antun Cvitanić, 2nd ed. (Split: Književni krug, 1987), 2; *Statuta et leges civitatis Spalati*, ed. Jaromír J. Hanel (Zagreb: JAZU, 1978), 1. The connection with Roman law is also acknowledged by modern scholarship. See, for instance, the introductory study of Antun Cvitanić in *Statut grada Splita*, xxxix.

[30] Book 3, ch. 19; *Statut grada Splita,* 95; *Statuta et leges*, 76. Although that chapter was under direct influence of the *Novella* 115 of Emperor Justinian from 542, it is worth mentioning that the possibility of the existence of blood enmity between citizens was not part of Roman law in general and of that *Novella* in particular; thus one deals with a later interpolation. It is interesting that in the law code of Poljica, although the tradition of Roman law is less present there, the *Novella* is repeated almost literally, but without this interpolation. See: Lujo Margetić, *Hrvatsko srednjovjekovno obiteljsko i nasljedno pravo* (The Croatian medieval family and inheritance law) (Zagreb: Narodne novine, 1996), 269-71.

[31] Book 3, ch. 8; *Statut grada Splita,* 86; *Statuta et leges*, 69.

[32] Book 5, ch. 35; *Statut grada Splita,* 263; *Statuta et leges*, 203.

interesting that one could also not be a representative in suits against his mortal enemies (*Nec compellatur facere aduocationem contra inimicos suos capitales*) nor in cases against individuals close to him,[33] when it was admitted that such animosity clouded objective judgement. With these cases of the specific legal and customary treatment of blood enmity in the statutory law of Split, the sole definition of mortal enmity written in the regulation on witnesses is particularly interesting and worth citing in full:

> It is considered that mortal enemies are those who were wounded in clashes among the witnesses themselves or those against whom they would testify, or if that happened among their fathers, mothers, brothers, sisters or also cousins or relatives or sons-in-law, and later, reconciliation was not made among them. Also in other cases of mortal enmities, which are marked as such by the *potestas* and his court, this kind of witness can be legally declined.
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> (*Inimici autem capitales intelligantur ex percussionibus, factis et commissis inter ipsos testes et illos, contra quos testimonium proferunt, uel inter eorum patres, matres, uel fratres, uel sorores carnales, uel etiam consobrinos, uel cognatos carnales, uel generos, inter quos postea reconciliatio amicitię non interuenerit, aut si alię inimicitię capitales uidęantur potestati et suę curię esse legitime ad ipsos testes repellendos*).[34]

It is evident that mortal enmity is considered personal, but also, if not even more so, as a family affair (in which relatives by marriage are included), and that the statute insisted on the fact that such animosity had to be terminated by formal reconciliation.

Peace and reconciliation among the denizens of Split were basic characteristics of desirable social organisation that run through the statute. The importance attributed to them is visible from the paragraph used to define the duties of a *potestas*. Exactly the maintenance of "blessed peace and tranquillity" (*bona pax et tranquilitas*) is stated there as a reason why during a trial one had to hold to the principle of justice (*equitas*) and law (*ius*),[35] by which it was implicitly acknowledged that the breaking of justice automatically led to discord and revenge. The importance of peace (this time as a collective value important for the whole community) is even more emphasised by the fact that a whole paragraph is dedicated to the duty of the city rector,[36] who is to keep peace (*tenere et obseruare pacem*):

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[33] Book 3, ch. 101; *Statut grada Splita*, 144; *Statuta et leges*, 113.

[34] Book 3, ch. 8; *Statut grada Splita*, 86; *Statuta et leges*, 69-70.

[35] Book 2, ch. 16; *Statut grada Splita*, 35; *Statuta et leges*, 28.

[36] The chapter does not deal exclusively with the duty of the *potestas*, but with the *rector* in general. The latter term, with that of *potestas*, in the period of the formation of the statute of Split also included individuals who ruled the city under the title of captain (with a somewhat emphasized military role), but it could also have been applied to any other form of city authority (from communal *rector* to the city *comes*). From this notion the importance

... with all people and persons, cities and communes with which the city of Split lives in peace. And if he (the rector) discovers that the city of Split is in dispute with anyone, he is responsible to do everything to reconcile the commune and people of Split with them, at the same time preserving the honour of the city, and with the consent of the nobles and general council of the city (*... cum omnibus et singulis hominibus et personis, ciuitatibus et communitatibus, cum quibus ciuitas Spalati pacem habet; et si inuenerit, quod ciuitas Spalati haberet discordiam cum aliquibus, teneatur pro posse pacificare commune cum eis et commune et homines ciuitatis Spalati; cum honore tamen dictę ciuitatis et cum consilio nobilium ciuitatis prędictę et cum consilio generali ipsius ciuitatis*).[37]

This regulation has a counterpart in the chapter which prescribes how the commune can start a conflict with another party. There the point in question is not a declaration of war, since it was not possible for Split as a commune to do that, but actually a variant of blood revenge, this time of a commune against its enemies, which is apparent from the term itself used for that conflict (*guerra*). This chapter insists that in the council the question cannot even be raised if there are fewer than 100 councillors present, explaining this with a rule that "on difficult issues a mature and useful decision has to be made" (*arduis factis debet maturum et salubre consilium exhiberi*). The additional importance to the rule is awarded by the clause that it should not be altered in the future, and the understanding that any discord and conflict are in principle wrong is expressed also by the apotropeic exclamation cited in the very title ("About engaging a feud, not to be" – *De noua guerra, quod absit*).[38]

The importance of city authorities in establishing and maintaining peace among the city-dwellers is visible even in the fact that the statute comes back to this question. Thus, in chapter 47 of the fourth book, it is emphasized that "the *potestas*, rector, and officials of the commune of Split" are required to "do everything possible to make those who are quarrelling to reconcile and harmonize" (*potestas et rector et offitiales communis Spaleti teneantur ... per omne bonum offitium, quod commode fieri potest, compellere discordantes huius ciuitatis ad pacem et concordiam faciendam*). While doing this, even oath-taking (*vinculo sacramenti*) and giving material guarantees can be used as a means of coercion. If peace could not be achieved without persuasion because of the depth of discord amongst the parties, the city *potestas* was given the right to confine the peace-breakers "in particular places in and outside the city" (*Et si discordia esset talis, quod non possent partes ad concordiam perduci, tunc rector dicte ciuitatis faciat discordantes stare in certis locis infra ciuitatem uel extra ad suum arbitrium, donec ad concordiam peruenerint*). In the case of avoiding submitting warranty, he had the right to ban the trouble-makers from

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of this regulation is also visible because the legislators wanted thereby to ensure a longer duration (regardless of the possible changes in the system of government).

[37] Book 2, ch. 17; *Statut grada Splita*, 36-37; *Statuta et leges*, 29.

[38] Book 2, ch. 34; *Statut grada Splita*, 44-45; *Statuta et leges*, 36-37.

the city and its district as a punishment, with an additional fine. The warranties that the chapter prescribes were substantially higher in the cases which led to permanent enmity among city families ("as a murder of a father, son, brother, nephew, cousin or an uncle; *de homicidio inter eos commisso ut puta de patre, filio aut fratre carnali, aut nepote carnali, uel fratre consobrino, uel patruo, uel auunculo carnali*) than in those proposed for personal conflicts among non-related individuals. Thus, the guarantee that there would not be violence as revenge for a murder was 1000 pounds, and that for personal injuries from 25 to 200 pounds.[39] Even though the seriousness of the crime is relevantly different, the discrepancies in the amounts of the guarantees still seem significant.

Despite the expressed desire for peace, the statute of Split still acknowledged the necessity of using violence to ensure justice, but in these cases it emphasized the importance of the procedure and a previous attempt to resolve the dispute peacefully. One way to achieve justice in this way is based, in the case of damages inflicted by external factors, on the already-mentioned retaliations about which the statute of Perceval speaks in great detail in two chapters of the sixth book. Stating the reasons to start retaliation, the statute emphasizes robbery or existence of unpaid debt in some other community. The process begins with a letter which the commune of Split was to send to the authority of the area where the accused originated. The letter was to be included in the Book of Reformations, to be sealed and sent back to the sender by special messenger; a report about the delivery also had to be written down in the Book of Reformations. The letter was to demand the recipient to do whatever was necessary so that justice could be served. After delivering the letter it was necessary to wait 15 days for a reply, after which, if there was no reply, a new letter was to be sent, also by messenger, and one was again supposed to wait 15 days for a response. After that deadline had passed, the court of Split, within its abilities, was to start a procedure and determine the facts (the truthfulness of the plaintiff's statements and the value of the damages) and then report their decision to the great council, at which at least 60 councillors should be present. Based on this report, the councillors, in a secret vote with *ballotte*, were to make a decision to conduct retaliation and the means of doing it (on property or on the person and his property).[40] The person who carried out retaliation was obliged to bring the things confiscated, within two days after the confiscation, before the communal authority, who were to assess them and record this estimate in the Book of Reformations. Only then could the plaintiff be paid from them and, if he broke this regulation, he was then fined 25 pounds and was to be forced to surrender the belongings in question to the communal authorities.[41] Besides this description of the procedure, the statute deals with retaliation when it affected the rights of foreigners, stating that they should be treated fairly so that the

[39] Book 4, ch. 47; *Statut grada Splita*, 200-02; *Statuta et leges*, 156-57.
[40] Book 6, ch. 6; *Statut grada Splita*, 275-76; *Statuta et leges*, 211-12.
[41] Book 6, ch. 7; *Statut grada Splita*, 277; *Statuta et leges*, 212-13.

commune and citizens of Split would not suffer damages from retaliation.[42] Similar conditions for starting retaliation are prescribed by other statutes as well, as, for instance, the statute of neighbouring Trogir from 1322,[43] and extant documentation confirms that they were carried out in practice as well.[44] In any case, to retaliate was a long and legally regulated procedure, first of all intended to insure the administration of justice, and was not perceived as arbitrary personal violence.

In contrast to this practice directed to the outside world, the general attitude of later scholars has been that revenge and self-aid inside commune were forbidden. This is based firstly on the understanding of chapter 15 of the fourth book of the statute of Split, which forbids that an injustice done to a person or relative (to the third generation) may be revenged through any other crime.[45] That this is not a correct interpretation is seen from the fact that in some places the statute mentions revenge as a mitigating circumstance or even as full justification for violent acts. The best example of this case can be seen in the statutory definition of a professional assassin (*assessinus*), who is to be punished more severely, the same as the person who hired him for the crime, than those killing for revenge. The statute explicitly states that:

> One who murdered someone cannot be considered a professional assassin if the victim had earlier murdered his father, mother, son, brother, sister or grandchild, or an uncle or relative or cousin; because, when speaking of murders of this kind there is no room to use the word assassin (for the one who is retaliating). The (only) one who is considered an assassin is a foreigner who is paid with money to commit the crime.
> (*Nec intelligatur assessinus ille, qui percusserit aliquem, qui percussus prius percusserit patrem, matrem, filium, fratrem, sororem carnalem, uel nepotem carnalem, aut patruum, aut auunculum carnalem, uel cognatum carnalem, aut fratrem consobrinum dicti offendentis, quia assessinus in talibus coniunctis personis non uendicat sibi locum. Et ille intelligatur assessinus, qui forensis fuerit et per pecuniam conductus ad maleficium committendum*).[46]

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[42] Book 3, ch. 48; *Statut grada Splita*, 112-13; *Statuta et leges*, 90.

[43] Book 3, ch. 58; *Statut grada Trogira* (The statute of the city of Trogir), ed. Antun Cvitanić (Split: Književni krug, 1988), 153; *Statutum et reformationes civitatis Tragurii*, ed. Ivan Strohal, Monumenta historico-juridica Slavorum Meridionalium 10 (Zagreb: JAZU, 1915), 123-24.

[44] See, for instance, note 25 above.

[45] Book 4, ch. 15; *Statut grada Splita*, 181; *Statuta et leges*, 142. Immediate self-defence was, of course, perfectly allowed. See: Book 4, ch. 45; *Statut grada Splita*, 199; *Statuta et leges*, 155.

[46] Book 4, ch. 48; *Statut grada Splita*, 202; *Statuta et leges*, 157-58. It is worth mentioning that the law code of Poljica severely punished a contracted murder (ch. 37a): *Ako li bi ubio tko koga zakonom ašašinjskim* (If anybody killed someone according to the tradition of assassins). See *Poljički statut* (The law-code of Poljica), ed. Miroslav Pera and Zvonimir Junković (Split: Književni krug, 1988), 436-37.

That, of course, does not mean that murder was allowed even in the case of revenge, but it is clear that it was at least a mitigating circumstance and was understood as socially acceptable behaviour. This attitude is more clearly expressed in some other statutes. Thus, in the statute of Šibenik, implicitly stated is an obligation to retaliate for unjustly murdered close relatives, because, for the most serious insults, as the rather common: "Your wife is a whore," it is also noted that: "If your father or brother or son died a shameful death or he was hanged, go and retaliate."[47] Thus, in the case of Šibenik, exercising revenge was not socially unacceptable, but ignoring it was; and because of the fact that it was included in the statute in this manner it may even be considered to have been legalized by the law.

The fact that, either in Split, revenge was not considered a crime in certain cases as it is testified to in a regulation in chapter 32 of the fourth book of the statute, which specifically allows the use of adequate violence (including injuries with or without weapons) on a foreigner who had hurt some citizen of Split. The right to retaliate not only applied directly to the victim, but was extended to his blood relatives (*consanguinei*), by which the regulation entered the domain of the classical perception of the blood feud. It was still important to emphasize that the avengers had to follow a prescribed procedure and to prove in front of the *potestas* that the foreigner struck first.[48] In any case, this example shows that the commune was primarily interested in following legal procedure and controlling arbitrary violence to be sure that violence was committed exclusively within the framework of its control.

* * *

The aim of this small contribution is to show the need for scholarly evaluation of the use of institutional (even ritualized) violence as a means to achieve justice and social balance in the Middle Ages, and also that studying these phenomena has escaped the epistemological schemes developed by traditional historiography to a great extent (especially those dealing with the history of law). The approach of modern historiography addresses the problem from a much broader interdisciplinary perspective, using frameworks set up by the social sciences, first of all anthropology. Croatian historiography should also follow this example. As I have tried to show, sources allow research into these problems on the level of depicting particular events as well as through normative sources (primarily city and other statutes) so that one can hope that they will soon attract the substantial attention of more researchers.

(Translated by Suzana Miljan)

[47] Book 6, ch. 3; *Knjiga statuta, zakona i reformacija grada Šibenika* (The book of the statutes, laws and reformations of the city of Šibenik), ed. Zlatko Herkov (Šibenik: Muzej grada Šibenika, 1982), 175; *Volumen statutorum, legum et reformationum civitatis Sibenici* (Venice: Moretti, 1608), fol. 75'.

[48] Book 4, ch. 32; *Statut grada Splita*, 191; *Statuta et leges*, 149.

AT THE EDGE OF THE LAW

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At the Edge of the Law:

Socially Unacceptable and Illegal Behaviour in the Middle Ages and the Early Modern Period

Edited by

Suzana Miljan

and

Gerhard Jaritz

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Preface

This publication contains selected papers from a conference held in Zagreb (Centre for Croatian Studies, University of Zagreb) in 2009, dealing with the medieval and early modern period, and translated into English for this purpose.* The main goal was to gather papers on a topic that has not been researched enough amongst Croatian historians, that is, the socially unacceptable and illegal behaviour of individuals who were "walking at the edge of the law." The general idea was also to present various research questions at the intersection of social and legal history, from the problem of feuding in medieval society to the various types of delinquency by pilgrims. The emphasis was put on the Croatian territory in the Middle Ages (from Slavonia to Istria and Dalmatia) and set in a broader (East) Central European context. The articles follow a chronological sequence, starting from the High Middle Ages, with a particular focus on the late medieval and early modern period.

The first paper is by Damir Karbić, who deals with the use of violence as a means of obtaining justice and re-establishing order, which was one of the peculiarities of the medieval legal system when compared with Roman law. After presenting different cases of feuds in Croatian sources, he discusses, how medieval communal legislation treated feuds as a separate legal institute, using the example of the city statutes of Split.

Marija Karbić concentrates on the ways in which women from the medieval urban settlements of the Sava and Drava *interamnium* came into conflict with the law by various criminal actions, from insults or brawls to abortion and murder. She connects those problems with the economic situation of these women, basing the analysis mainly on theft and prostitution cases. The women were sometimes punished severely, but sometimes pardoned or punished minimally.

The problem of gambling along the eastern Adriatic coast is the research subject of Sabine Florence Fabijanec. She analyses the urban statutory regulations stretching from the thirteenth to the sixteenth century. She deals with the adoption of legal provisions against gambling and shows the diversity of approach to gambling from city to city.

Gerhard Jaritz analyses the interdependence between late medieval material culture, human behaviour, religious discourse, and legal culture using the example of actions connected with *superbia* that played a role in public

* The Croation version of the conference proceedings is published as Suzana Miljan (ed.), *Na rubu zakona: društveno i pravno neprihvatljiva ponašanja kroz povijest*, Biblioteka *Dies historiae*, vol. 3 (Zagreb: Hrvatski studiji, 2009).

urban arguments. The secular authorities emphasized moral, national, and religious components, highlighting the necessity of averting God's wrath.

The perception of the behaviour of pilgrims is the topic of Zoran Ladić's contribution. He shows, in contrast to the idealized vision of pilgrimages and pilgrims, that pilgrimages made by average medieval or early modern believers were also considered superstition and that the pilgrims often engaged in fights, robberies, prostitution, and other forms of delinquent behaviour.

Paul Freedman offers an article on late medieval and early modern public acts of torture and execution, which were carefully choreographed events whose solemnity and meticulous preparation made the infliction of mutilation and death horrifyingly impressive. He also concentrates on the various *topoi* of peasant rebellion as described by literate contemporaries, such as rape, murder, cannibalism, the roasting of victims, and so on.

Lovorka Čoralić deals with Croats accused in the records of the Venetian Inquisition. Four types of accusation can be recognized: conversion to Islam, Protestantism, the use of magic, and conduct considered improper for clergymen (priests and other members of religious orders).

The last article is by Slaven Bertoša, dealing with poor social conditions in Istria in the early modern period that led to hunger, poverty, depopulation, and general insecurity, which in turn provoked dangerous behaviour, robbery, and murder. Capital crimes were under the jurisdiction of the *Potestà* and Captain of Koper or, respectively, the Captain of Rašpor with his seat in Buzet. The village communities were also starting to organize themselves by introducing patrols, although in a modest way.

The collection of articles tries to popularise the topics for one plain purpose, that is, to erase the border between history and legal studies, since until now one cannot actually speak of "interdisciplinarity," but only of looking at many research problems from various reference points. Hopefully, this volume will be useful not only for historians dealing with this poorly researched topic of (Croatian) historiography, but also for a wider public generally interested in the functioning of the legal and social system in the past.

Finally, my special gratitude goes to Judith Rasson for copy editing the volume and to Gerhard Jaritz for offering the opportunity to publish it as a special issue of *Medium Aevum Quotidianum*, thus promoting this research on an international level.

Suzana Miljan