The Croatian noble kindred. An attempt to its analysis.

by

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Abstract

The main aim of this paper was to search similarities and differences among the Croatian and Hungarian noble kindred in their basic structures.

Unfortunately, the authors who have been searching the problems of this type of kinship relations, did not try to solve these problems as part of the common system, but rather have been trying to research them separately. This paper represents the first attempt, as far as I know, to put this problem into a comparative context.

The paper consists of three parts. The first part deals with the appellations used for the kindred in Latin, Croatian and Hungarian sources, the second, main part, with the internal structure of the kindred (roles of the father and the mother, position of the offspring and the siblings, as well as common duties of the kinsmen) and its position in larger territorial and legal units (county, Croatian kingdom, lands of the Holy Crown of Hungary, some specific organisations) and the third, with the basic structure of the kindred's property.

Declaration

I, the undersigned candidate for the M. A. degree in Medieval Studies declare herewith that the present thesis is exclusively my own work, based on my research and only such external information as properly credited in notes and bibliography. I declare that no unidentified and illegitimate use was made of the work of others and no part of the theses does infringe on any person's or institution's copyright. I also declare that no part of the thesis has been in this form submitted to any other institution of higher education for an academic degree.

Budapest, the 12th of August, 1994.

Damir Karbić

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Introduction

Nobility organised in the form of kindreds represented a very important social layer in all countries of "numerous nobility" such as Poland and the Hungaro-Croatian kingdom. In this paper I will try to discuss some problems connected with the family structures of the kindred and to propose some different topics of further research.

Generally speaking, kindred is a type of family organisation based on real or fictitious descendancy from the same ancestor, whose members held some property in common and lived in the same household. This is a form of extended family covering several generations, as well as divided to several collateral branches (cousins in different grades of affinity and their families).

This form of family structure was widespread in the area between Baltic and Adriatic Sea. In the late Middle Ages the western border of this area was the same as the border of Polish and Hungaro-Croatian kingdoms towards the Empire. The eastern border is not so clear, but it seems that the kindred organised nobility also covered Lithuanian, Moldavian and Valachian territories[1], as well as those of Bosnia. It also seems that the area, in the early Middle Ages, spread further to the west, to includ Bohemian lands and the territories of Polabian Slaves, but that system dissolved in those countries already by the eleventh century.

The same border (with the exception of Valachia and Moldavia) represented the division between the western and eastern forms of Christianity, as well as between two systems of governmental organisation (one more or less directly

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1 For a general overview about Polish kindreds see: N. Davies, *Gods' Playground*, vol. I, Oxford 1991[6], pp. 201-255. For Polish and all other of these nobilities including Hungarian see also: O. Subtelny, *Domination of Eastern Europe*, Kingston and Montreal 1986, pp. 13-52.

influenced by the Frankish Empire, later the German and French kingdoms, another from Byzantium). It is possible to argue that its position at the conjunction of these two civilisations, as well as its frontier character, influenced the creation and long preservation of this kindred system.

Support into this idea could be the fact that peripheral regions of the Polish and Hungaro-Croatian kingdoms preserved the system longer than some of the central areas. One of the reasons for this could be a weaker influence of the central government, as well as the greater need for a large number of warriors due to assaults by the Ottomans at the close of the Middle Ages. This need could be easily met with the nobility organised in such a way.

Historiographies of the area tried to explained this phenomenon by linking it to similar institutions from the early period of each country's history. They tried to explain it as the remnant of some "tribal" or "prefeudal" institution, usually held up as a genuine product of their "nation". In that way Croatian historians first tried to explain *pleme* (Slavonic denomination for kindred) as a remnant from the Slavonic migration period and Hungarian historians Hungarian *nemzetség* (Hungarian denomination) as direct successor of lineages participating in the Hungarian conquest of the Carpathian basin. What seems ridiculous, in the case of such arguments, is that more or less similar institutions have been treated as unique developments.

The "prefeudal" character of the institution is in some way explained by the Marxist concept of societal stages of development, which concept was for some time quite influential in this area. A beneficial result of its influence was that it made historians more aware of the social element as a main factor in the development of the kindred, but also exercised a negative influence by preemphasizing that it had its roots in some kind of primary democracy (an idea also expressed in different way by "bourgeois" historiography) and trying to avoid associating it primarily with the problem of a developing nobility.

I shall try here to give only a brief review of Croatian historiography dealing with the problem of kindreds. I am very aware that I am not competent enough to give a similar review of Polish and Hungarian historiography dealing with the same problem. In spite of that, I shall try to refer also to some works of Hungarian historiography if they influenced Croatian historiography, or supplied me with some other ideas, leaving the Polish works out of interest.

The reference point for the developing interest of Hungarian nineteenth century historians in this problem was the reference of Simon de Keza to 235 Hungarian lineages which took part in the conquest of the Carpathian basin. Croatian historians found similar reference point in the story about the negotiations between twelve Croatian kindreds and king Kálmán about succession to the Croatian throne in 1102.

This feature marked both historiographies for some time. Hungarian historians tried to establish a connection between those lineages and later kindreds. Very soon it was obvious that this task could not be successfully accomplished and János Karácsonyi already had rejected it in his, more or less genealogical, work about Hungarian kindreds published in 1901.[2] In spite of its misleading premise, interest in this topic bore several interesting articles and succeeded in establishing genealogies and facts concerning the history of Hungarian (sometimes including Croatian and Slavonian) noble kindreds.

The efforts of Croatian historians from the same period have focused on establishing, through the analysis of sources the credibility of the aforementioned story. Unfortunately, contemporary political thinking heavily influenced the debate which arose between them and contemporary Hungarian historians, although its style

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2 J. Karácsonyi, *A magyar nemzetségek a XIV szazad középeig* [Hungarian kindreds to the midst of the fourteenth century], Budapest 1900-1902, vol. I-III.

and scientific methods proceed at a considerably high level. In reality, before the first world war and dissolution of the Austro-Hungarian Monarchy, neither party wanted to distinguish the debate properly from the current policy and solve it.[3]

This discussion continued afterwards among Croatian historians, and was finally solved by Nada Klaić[4], although some other historians (e. g. Stjepan Antoljak[5]) did not completely accept her solution to the problem. She elaborated the former idea of Milan Šufflay[6] and disregarded this story as a source for the beginning of the twelfth century and transferred the origin of the institution of twelve noble kindreds of the Croatian kingdom to the fourteenth century.

Although also misleading in many points, that debate is important for my topic as it resulted in growing interest towards the problem of noble kindreds. Several

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3 This debate is very well reviewed in the following works: F. Šišić, *Priručnik izvora hrvatske historije* [Manual of sources for the Croatian history], vol. I/1, Zagreb 1914, pp. 459-528; N. Klaić, *Plemstvo dvanaestero plemena kraljevine Hrvatske* [Nobility of the twelve kindreds of the Croatian kingdom], Historijski zbornik, vol. IX, Zagreb 1956; S. Antoljak, *Pacta ili Concordia od 1102* [Pacta or Concordia of 1102], Zagreb 1980, pp. 11-43.

4 N. Klaić, *Postanak plemstva "Dvanaestero plemena kraljevine Hrvatske"* [Origin of the nobility of "Twelve kindreds of the Croatian kingdom"], Historijski zbornik, vol. XI-XII, Zagreb 1958-59.

5 S. Antoljak is the author of, besides the afore mentioned book, the one of the most important articles which treats the problem of the kindred organised nobility "*Izumiranje i nestanak hrvatskog plemstva u zaleđu Zadra*" [Disappearance of the Croatian nobility from the surrounding of Zadar] (Radovi Instituta JAZU u Zadru, vol. IX, Zadar 1962).

6 M. Šufflay in his article "*Zu den ältesten kroatisch-ungarischen Beziehungen*" (Ungarische Rundschau, vol. IV, Budapest 1915) first described the organisation of twelve noble kindreds of the Croatian kingdom as an organization of Croatian *šljahta*.

published works elaborate at least a large part of the material concerning noble kindreds in Croatia.[7]

After the first world war historians showed, except for the aforementioned debate, a considerable interest for the question of development of nobility in Croatia. As a result of this interest some valuable contributions to this problem were published. M. Barada[8] and Lj. Hauptmann[9] did the main efforts.

The second direction of Croatian historiography important for my research is the efforts of legal historians to analyse legal sources (customary law codes) issued in Croatia. The main problem with those works is that their authors did not try to consider them as law codes referring in the first place to the noblemen (or other similar groups, e. g. jobagiones castri), but have rather assumed that they were

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7 The most important work concerning this topic is that of V. Klaić (*Hrvatska plemena od XII. do XV. stoljeća* [Croatian kindreds from the twelfth to the sixteenth century], Rad JAZU, vol. 130, Zagreb 1897), who also wrote many articles dedicated to the genealogy and history of different noble families, as well as to the historical geography of different regions. This work was continued by other historians, especially by F. Šišić, R. Lopašić and E. Laszowski (see Bibliography in the appendix to this thesis).

8 M. Barada, *Postanak hrvatskog plemstva* [Origin of the Croatian nobility], Časopis za hrvatsku povijest, vol I, Zagreb 1943. The same author also wrote a detailed study dedicated to the kindred Lapčani (*Lapčani*, Rad JAZU, vol. 300, Zagreb 1953).

9 Lj. Hauptmann, *Podrietlo hrvatskog plemstva* [Origin of the Croatian nobility], Rad HAZU, vol. 273, Zagreb 1942; idem, *Hrvatsko praplemstvo* [Croatian old nobility], Razprave SAZU, vol. I, Ljubljana 1950.

remnants from Slavonic antiquity, leaving behind many similarities between them and the customary law code of the Tripartitum.[10]

The main criticism I can put on all these works is that they tried to solve the problem of Croatian noble kindreds out of its context, i. e. out of comparison with the similar institution in Hungary. One possible reason for such a situation can be found in a very bad knowledge of Hungarian historiography more recent than the first world war and it for sure bears a considerable part of guilt. But, what is even more strange is that even the older historians did not want to connect this two institutions, although it is very hard to believe that they did not know efforts made by the Hungarian side. Even the historians who have been politically inclined to Hungary in that period did not want to refer on it.[11]

For the more recent generations of historians this feature was in reality due to the lack of information, partially because of language problems and partially because

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10 See for example: M. Kostrenčić, *Nacrt historije hrvatske države i hrvatskog prava* [An outline of history of Croatian state and law], Zagreb 1956; O. Mandić, *Bratstvo u ranosrednjovjekovnoj Hrvatskoj* [Fraternity in the early medieval Croatia], Historijski zbornik, vol. II, Zagreb 1950; I. Milić, *Porijeklo prava bližike na prvokup i otkup nekretnina* [Origin of the right of "bližika" for buying and rebuying of real estate], Historijski zbornik, vol. V, Zagreb 1952; Đ. Ljubić, *Lige i posobe u starom hrvatskom pravu i njihov odnos prema Poljičkom statutu* ["Lige" and "Posobe" in the old Croatian law and their relation towards the law code of Poljica], Rad JAZU, vol. 240, Zagreb 1931.

11 Very strange is for example the fact that afore mentioned Karacsonyi's book did not gain to much attention among the historians in Croatia, although it has a special part dedicated to the Slavonian and to the Croatian noble kindreds. It seems specially strange because J. Karácsonyi was frequently debating with Croatian historians and some less important of his works has been even translated in Croatian and published in periodicals.

the way of the solving of this problem was already traced. To this set of obstacles is possible to add also inadequately weak connections between Croatian and Hungarian historians, especially medievalists, in some extent bound to the problems caused by later political development, which made possibility of relation even more complicated.

A very important approach for my research is that of Hungarian historian Erik Fügedi. He turned from the searching of aristocracy in the framework of political history to that of family and social history. Unfortunately, his results are not very well known in the Croatian historiography. In this paper I shall try to use results of his investigations of structure of Hungarian noble kindreds as comparative material for my research and I am very indebted to his works even in the way of organising the material.[12]

Before I pass on the main part of this paper it is necessary to explain what are the parameters of the present research. In the geographical sense it is covering all area of medieval kingdom of Croatia leaving behind Dalmatia (which was organised in the completely different manner as some loose confederation of territorially unconnected units - communes) and medieval kingdom of Slavonia, more directly influenced by the Hungarian customary law. In the chronological sense my research is focused on the period of the fourteenth, period of the final organisation of political structures of Croatian kingdom during the hereditary banship of bans from the Šubić kindred and re-establishing of royal power of the Angevin dynasty, and the fifteenth century, during which started the process of dissolution of noble kindreds under the

12 Similar approach is in the framework of Croatian historiography used by the late N. Klaić. She, unfortunatelly, did not deal too much with the history of nobility in particular, but she in their works made many stimulating hints on different problems connected to this problem. I feel very indebted to her too, as to one of my teachers and the person who has, in many ways, enabled searching of the new topics and methods in the Croatian medieval history.

influence of assaults of Ottomans and migrations of their members towards the north and west[13], but with the slight excursions in the previous and later period if it is necessary for better understanding of some feature.

The main sources I am dealing with are customary law codes and charters. The first group provides me with the more or less elaborated legal theory and the second gives me the opportunity to check whether it can be confound with the practice. Comparisons are based on the E. Fügedi elaboration of the Tripartitum, as it is already explained.

In this work I shall primarily refer to two customary law codes - the Law code of Poljica (*Poljički zakon*) and the Law code of Novigrad (*Novigradski zbornik*). The first one is recording the customary law of the county of Poljica in the southern part of medieval Croatia and the major part of it can be dated in the fifteenth century, although there are some possibilities that some parts are recorded even in the fourteenth century.[14]

The law code of Novigrad contains customary law which was, according to its preamble observed "*from Nin to Knin*", i. e. in the central part of the medieval Croatia. Unfortunately, it is recorded only in the sixteenth century by the Venetian government in Zadar to help to the officials not to confront with the Croatian customs.[15]

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[13] General review of the political history of Croatia can be found in: J. Fine, The Late Medieval Balkans, Ann Arbor 1990[4].

[14] M. Pera, *Poljički statut* [The law code of Poljica], Split 1988, pp. 385-412. This and the following note refer on the editions of customary law codes I am using as sources.

[15] M. Barada, *Starohrvatska seoska zajednica* [The old Croatian village comunity], Zagreb 1957, pp. 149-158.

Unfortunately, both of these law codes are less elaborated than Tripartitum, mainly because they are only recording the customary law and do not comment it as Verbőczy did. On the other hand, because of this feature they are maybe more reliable witnesses for the customary law than the Tripartitum.

I did not take into consideration some other customary law codes (that of Vrana and Vinodol), mainly because they are going out of the period under review (the law code of Vinodol is recorded in 1288) or it seems that they are referring on some particular groups (such as *feudatarii* or *jobagiones castri*) and for their elaboration it will be necessary to expand my researches.

This paper is only the first attempt to systematise this problems and only the further research may enable me to solve it in future. I can only hope that even in this very imperfect shape it can enlighten this question at least a little.[16]

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16 I would like here to express my gratitude to Iván Borsa, Pál Engel, János Mihály Bak and István Petrovics who helped me during my investigations and writing of the thesis, as well as to all my professors and colleagues who helped me during the work on this thesis. The special thank I owed to prof. J. M. Bak, who gave me on use yet unpublished article "Kinship and privilege" of the late E. Fügedi and helped me with translating another Hungarian texts.

Terms used for the appellation of the kindred

The sources written in Croatian always use the word *pleme* for the term kindred. This word could be derived from the other word *plod* (fruit) and denotes result of the procreation.[17]

In spite of that, Latin terminology for the same content was very diverse. Sources use different terms, but with the different frequency. Documents in the database I made (unfortunately it covers only a part of the material, but I suppose that for this question it is enough representative) the most frequently use term *genus* (it appears exactly 350 times). Beside that it appears once more as *nobilis genus* (referring on the Mogorović kindred in 1431[18]), but it can be understood only as the stylistic characteristic of this document.

All other denominations are less frequent. The most frequent among them is term *generatio*, which appears exactly 50 times. Three documents use term domus (once for the Šubić kindred in 1411[19], once for the Virević kindred in 1451[20] and once, very late, for the Mogorović kindred in 1550[21]). The same term is recorded

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[17] P. Skok, *Etimologijski rječnik hrvatskoga ili srpskoga jezika* [Etimological dictionary of the Croatian language], vol. III, Zagreb 1973.

[18] Povijesni arhiv [Historical archive], Zadar (further: HAZD), Spisi zadarskih bilježnika [Acts of notaries of Zadar], Acts of notary (further: SZN), Theodorus de Prandino, b. IV, fasc. V/3, 18.08.1431.

[19] S. Zlatović, *Bribirski nekrolog XIV. i XV. vieka* [Necrology from Bribir], Starine JAZU, vol. XXI, Zagreb 1889, p. 85.

[20] HAZD, SZN, Datia et incantus civitatis Iadre, b. II, pp. 83-83'.

[21] HAZD, SZN, Johannes Michael Mazzarellus, b. IV, fasc. VII, 10.11.1550.

also in its Italian equivalent *caxata* in the case of the Šubić kindred in 1449 or *casata* in the case of the Dražuljani kindred from the same year[22].

The Mogorović kindred is once, although very late, recorded as *familia*[23], the Šubić kindred as *stirps* in 1457[24] and Virević kindred as *progenies* in 1350[25]. Literary text speaking about the twelve noble kindreds of Croatian kingdom uses term *tribus*, never mentioned in the charters, but rather taken from the Bible[26].

The fact that *genus* and *generatio* represented the same thing can be easily seen because the same kindred are denoted by the both terms. Beside that, even the same person can be denoted in both ways. For example John, son of Budislav of the Šubić kindred is recorded as *de genere Subich* in 1392[27] and as *generacionis Subich* in 1393[28]. The same thing happened in the case of denominating of Cosmas, son of

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[22] HAZD, Arhiv Šibenika [Archive of Šibenik], b. VIII, fasc. IV/8b, p. 133.

[23] V. Klaić, op. cit., p. 54.

[24] HAZd, Arhiv Šibenika, b. XV-XVI, fasc. 15d, p. 41.

[25] T. Smičiklas, *Codex diplomaticus regni Croatiae, Dalmatiae et Slavoniae* (further: CD), vol. XI, Zagreb 1913, p. 631.

[26] For the content of the story see subchapter about the position of the kindred in larger territorial units in the next chapter. The *Vulgata* frequently refers on the jewish tribes with that term (e. g. Gen. 49:28; Num. 1:4; Deu. 12:5; Apok. 5:5) and it was apparently translated into Croatian as *pleme* which made the terminological confusion for the writter.

[27] Znanstvena knjižnica [Scientific Library] (further: ZK), Zadar, manuscript collection, ms. 849, Articutius de Riuignano, pp. 45-45', 21.10.1392.

[28] Miscellanea, Državni arhiv u Zadru [State Arcive of Zadar], vol. I, pp. 16-17, 21.10.1393.

Thomas of the Tugomirić kindred in 1450 and 1456[29], as well as in the case of John, son of Marin of the Lapčani kindred in 1429 and 1433[30]. It is easy to provide a very long list of similar cases.

Except of *pleme* in Croatian charters is possible to find two other terms, but apparently not of the same meaning. This terms are *koljeno* or *koljenšćina* (lit. knee, but in the basic meaning of branch) and *hiža* (house). Both terms denotes some lesser units than is kindred, obviously some its parts.

The charter issued by the count Thomas of Corbavia in 1447 gives a good example for usage of term koljeno. Count Thomas testifies that some noblemen of the Nebljuh kindred came in front of him in their own names, as well as procurators

oda v'sih' četirih' kolen' plemena Nebluškoga[31]

and testified that all members of the kindred approved some transaction with the land property of one of their members.[32]

The charter issued by the vice captain (*vicekapitan'*) of Senj Ladislas in 1486 provides similar example. He testifies that nobleman Matthew Svilić from Mohlić in co. Bužan was sent to him

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[29] HAZD, SZN, Nicolaus Lantana, b. I, fasc. I/4, 28.03.1450; idem, Johannes de Calcina, b. V, fasc. VII/5, pp. 212'-213, 17.03.1456.

[30] S. Ljubić, *Listine o odnošajih između južnoga Slavenstva i Mletačke Republike* [Documents concerning relations between Southern Slavs and Venetian Republic], vol. IX, pp. 55-56 (22.03.1433); HAZd, SZN, Johannes quondamm. Ostoye, b. I, fasc. I/3 (29.10.1433), fasc. III/1 (6.02.1429).

[31] ... of all four branches of the Nebluh kindred...

[32] Đ. Šurmin, *Acta Croatica*, vol. I, Monumenta historico-juridica Slavorum Meridionalium, vol. VI, Zagreb 1898, doc. 98, pp. 170-172.

od s'trane četirih' kolen'šćin' brat'e s'voe[33]

to represent them in the case for some their land in the village Šćitari.[34]

The same term can be understood in some other way, as the generation or the grade of affinity, but at least can be taken for sure that term *koljeno* was not used as equivalent for *pleme*, but for denoting of some closer unit.

The charter issued by the judicial seat of the *Mogorović* kindred of Lika from 1499 gives an example for the usage of term *hiža*. All judges are listed not by their kindred, because all are the members of the Mogorović kindred, but according to their *hiže* (houses). These judges were

Iv(a)n' S'tarac od hiže Tvrdković', Grgur Nel'ković' od hiže S'lavković', Jak(o)v' Rad'čić' od hiže Paladinić', Jurislav' Piričić' od hiže Sop'čić', Ivan Surotvić' od hiže Tugomerić'.[35]

It is also worthy to mention that *hiža* is direct equivalent of the Latin term domus or Italian terms *casa*, *casata* and *caxata*, but it seems that in the Croatian charters it was never used in the meaning I already explained for that words.

Unfortunately, the equivalent charters written in Hungarian are not preserved from the same period and it is not possible to search Hungarian terms for kindred. In spite of that, some work in this field can be done by usage of later sources, such as

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[33] ... in name of four branches of his kinsfolk ...

[34] idem, doc. 207, pp. 311-313.

[35] idem, doc. 274, pp. 417-420.

It seems that words *domus* translated as *kuća* (written as *kuchya*) in Croatian and as *ház* (written as *haz*) in Hungarian, Vrančić does not use in the figurative meaning. It also seems that Latin word *familia* is understood more as the members of household than the real, blood related family. It can be supported by its translation in German as *Haus gesind* and in Hungarian *cseléd* and *ház népe* (written as *cheled* and *haz nepe*). In some way it can be treated as a reference on the clientele system of *familiaritas*, rather then on the system of kinship.

What I can conclude from this short review of terminology used for denoting of a kindred is that Latin terminology does not represent real differences between different types of institutions, but only inadequate elaboration of the translating terms. Kindreds has obviously been denoted by their vernacular forms (*pleme* in Croatia and *nemzetség* or *nemzet* in Hungary). Other vernacular forms as *koljeno* and *hiža* obviously did not denote the same thing as kindred, but rather different subdivisions of it.

This short review shows that usage of terminological analysis can enable better understanding of some features, but it must be done after the establishing of complete corps of the relevant sources, what supersedes the limits of this paper.

The structure of the kindred

a) The common duties of kinsmen

In this subchapter I will try to discuss only the duties of kinsmen defining their attitude towards the outer world. Relations inside the kindred will be discussed later. The most important common duty of kinsmen was the protection of fellow kinsman and vengeance against murderers of members.

There are several charters from the end of the fourteenth century which describe the functioning of that system. I shall refer to two of them. A Croatian charter issued by the counts of Corbavia in 1393 preserves the first example of such. Counts Thomas and Butko testify that Dujam Mlničević, his cousin Mrmonja, his kinsman George Slavetić and their brothers declared in front of them that they found a certain nobleman called Netrmac and his kindred innocent in the murder of their *brother* Jurman. Netrmac excused himself before them by appointing pristalds.[38] They commonly concluded that they cannot raise the question of responsibility for that murder again against Netrmac and his relatives.[39]

is by The chapter of Zadar issued the second, Latin document in 1394. It states that Ivan and Micelj, sons of the late Ratko, Gregory son of the late Stipan, Ratko son of the late Radoslav, all from the kindred of Tiskovac and Strmičani, relatives of the late Božić Gojslavić of the same kindred, establish peace with Vladiha, son of the late George Petričević of the Karinjani kindred regarding the case

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[38] Pristald (Croatian form *pristav*) was lower official of the judicial seat entrusted with enforcing the decisions of the court.

39 Đ. Šurmin, op. cit., doc. 32, pp. 98-99.

of the death of the aforementioned Božić Gojslavić. Twenty six years ago Vladiha's father, George, captured Božić, and handed over to ban Imre Lacković, who hanged him. Due to that circumstance

> *subgerente inimico humane nature maxime inimicitie, scandala et iurgia surrexerunt, et usque in presentem diem fuerunt inter consaguineos dicti condam Bosichii et dictum condam Georgium ac dictum Uladicham eius filium et consaguineos eorum, et proclamata fuit in dominum Uladicham inimicicia capitalis quod sclauonice siue more Crohatorum uocatur urasda, nunc autem interueniente gratia sancti Spiritus ac divino auxilio suadente sedatis hinc inde inimicitiis, malis uoluntatibus, iurgiis et scandalis quibuscumque, eorum bona et propria uoluntate, sponte et ex certa scientia obsculo (!) pacis interueniente pro sese eorumque heredes et subcessores, ac uice et nomine omnium et singulorum de dicto genere Tiscouaç et Stermiçani...*

On the other hand, Vladiha paid them a fee also called *vražda* as stated *iuxta morem et consuetudinem Crohatorum*. The exact sum was not precisely printed in the document, perhaps because it was already strictly defined in customary law.[40]

From both documents it is obvious that blood vengeance was a quite widespread custom, at least in the second half of the fourteenth century, including cases when a representative of the state was the injuring party and members of a kindred mere accomplices. It seems that customary law even prescribed the form of vengeance together with the way of breaking off the sequence of violence. Vengeance could be stopped by paying a strictly calculated sum of money to the kindred of a deceased person. The way to rebuff false accusations was to appoint pristalds whose duty was to guarantee that the accused did not commit the crime and

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40 Miscellanea, vol. I, Zadar 1949, doc. 9, pp. 18-19.

maybe to inquire into the possibility of guilt. Some ritually prescribed gestures (kiss of peace) followed the act of reconciliation and a common declaration in front of some place of authentication or other authority, such as counts or judicial sees, closed the matter.

In the customary law code of Poljica, the only one which uses the term kindred explicitly,[41] several articles, contrasting with the law code of Novigrad which doesn't deal with problems connected, described these features. Unfortunately, the law code of Poljica doesn't tell us much about the vengeance of kinsmen and it seems that the common duty of all fellow county-men replaced this kind of institution. The kinsmen only had the right to inherit the property of a deceased person and receive *vražda* for his life.

The law code of Poljica frequently states that the whole county takes common responsibility for the murder or wounding of some person, however, only in strictly defined cases. One of these cases involved the killing of a person who enslaved another. This was treated as self-defence and the whole community took responsibility. Even if someone for some reason (probably because of blood relation to the killed man) threatens him because of the murder commited under such circumstances, that one can be killed and this murder could be also treated as the self defence.[42]

Except for the responsibility for killing, in some cases the revenge of murder or some other corporal damage was also treated as a common duty of the whole county, even in cases when victim and killer belonged to the same kindred. A good example of this exists in the article entitled "*About blood*". The whole community was obliged to prosecute the murderer of a brother, cousin, relative or kinsmen as

41 The law code of Poljica frequently refers to the term kindred in its Croatian form *pleme*.

42 M. Pera, op. cit., pp. 424-427 (article 29).

well as to protect its own members who commited murder out of vengeance. If the victim came from the county, while the murderer did not, but the reason for murder was revenge, other fellow county-men weren't obliged to pursue the killer, nor did they have to defend their own member if the reason for murder was not vengeance or self defence. If the conflict was between two foreigners it was regarded as something what didn't touch the county, the fellow county-men didn't have to participate in the prosecution of killer.[43]

The law code of Poljica strictly defined the payment of *vražda* for different cases of murder and corporal damage. The usual amount, the so called *dead blood*, was 240 liras. But in some cases it was doubled, as in the event of premeditated murders and from ambush. Half of the previous amount, a fine called *live blood*, paid for corporal damages, but also for deaths incurred in quarrels or by self protection.[44]

A very interesting feature in the law code of Poljica is that sometimes kindred solidarity was less powerful than other obligations. Two articles deal with such a situation. One article prescribes punishment for a person who tried to commit treason or to provoke rebellion against the Venetian Republic (at that time Poljica was under the sovereignity of it). The punishment is extremely severe: the accused must be burned. Very indicative for the kindred solidarity is that anyone who tried to protect the culprit or to persuade others not to punish him and did it *from brotherhood or some other inclination* must be punished in the same way.[45] Another article prescribes confiscation of the ancient estate in favour of kinsmen for a person

43 idem, pp. 434-437 (article 36).

44 idem, pp. 436-439 (article 37).

45 idem, pp. 452-455 (article 55).

betraying or causing the damage to his lord. Also interesting is the fact, that the same article states that relatives of the accused cannot be prosecuted for his felony.[46]

The most probable conclusion I can draw from this material is that during the fifteenth century some other kinds of loyalty partially replaced former kindred's solidarity, very strong in the fourteenth century. On the other hand it is obvious that the kindred's solidarity continued to play very important role. The larger community needed to impose very high penalties on people who didn't obey its rules because they contradicted to this type of solidarity. But, the exceptions were made in the cases of vengeance, which were treated as legitimate social obligations and attenuating circumstances.

One article of the law code of Poljica, dated for 1476, illustrates this supposition. It stated that some leagues and parties appeared in the county, as well as some quarrels, tensions and disagreements caused by blood vengeance and other, unfortunately non directly specified, reasons and scandals. Due to these, the whole county decided that everyone's right had be respected and that all cases had to be solved according to the law. If someone broke this decision, he should be treated as a traitor, have his moveable property confiscated in favour of the county, his ancestral property in favour of his relatives, his house burned and be exiled under the threat of capital punishment.[47]

The article "About malediction", taken from cannon law, defines another way of protectioning members.[48] It prohibits anyone from communicating with excommunicated person, but the exemption is done for members of his household.

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46 idem, pp. 484-485 (article 79).

47 idem, pp. 490-493 (article 88).

48 Article is based on a slightly different version on *Decretum Gratiani* (can. XI, q. III, c. CIII).

However, if he dies during the excommunication, he cannot be buried with other Christians, but out of the graveyard.[49]

Ways of positive protection can be found in Law code of Novigrad. When specifying reasons why someone cannot be regarded as a reliable witness in court, the Law code of Novigrad laconically states that "*il suo per il suo non e creto ne compagno per il compagno*", which probably means that no one can testify for his own [kinsfolk], or a companion for a companion.[50]

The main problem with both of this articles is that they do not explicitly state the basic unit to which they apply. As general remark, this goes for the whole of this chapter, as well as E. Fügedi's article on the system of the *Tripartitum*, which I use as a major comparative study. One of the reasons for such a feature may be the fact that all aforementioned collections of customary law were written relatively late in the period, when dissolution of the kindred's homogeneity had already taken place. Beside that I suppose that these articles reflect much a older state and at the same time illustrate the conflict among the older pattern of kindred solidarity and the new pattern of solidarity based on belonging to a territorial or an administrative unit.

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49 M. Pera, op. cit., pp. 428-429 (article 32).

50 M. Barada, Starohrvatska seoska zajednica [Old Croatian rural community], Zagreb 1957, p. 165 (article 11).

b) Paternal power and its limitations

The system of the Tripartitum, as described in E. Fügedi's article, grants considerable power to the father. The father had the right to punish and even incarcerate his sons, to alienate all the property and to send his son as a replacement hostage for himself if he fell into captivity[51].

Unfortunately, normative sources from which it is possible to reconstruct the duties and rights of the father in the Croatian customary law codes are very concise and, as a consequence, weak. They are principally concerned with property rights and silent about other, more usual situations, like feeding, clothing and punishing of children.

The father's position is slightly better described in both customary law codes I used in this analysis in the questions connected with property and inheritance. It seems that the right to disinherit sons was very restricted in both cases.

The customary law of Poljica explains the cases in which "a *father can disinherit his sons in good conscience*" in the chapter under the significant title "*Law about sons and fathers*"[52]. This article listed thirteen cases which can be treated as justifying for this act, as well as for denying the right to dowry.

These cases can be grouped to three major groups, the first dealing with the relationship in the family, the second with relations between the family and the outer world and the third with behaviour of the children outside of family. Cases which fall into the first group are the following: beating of the parents, disrespect of them,

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51 E. Fügedi, Kinship and Privilege. The social system of medieval Hungarian nobility as reflected in customary law. Manuscript will be published in: Past and Present.

52 M. Pera, op. cit., p. 446-447 (article 49c).

attempts to murder them, dishonouring of the father's bed, disrupting the drafting of last wills, and the refusal to support a mentally ill parent. The second group consists of cases connected with accusing the parents in court (except for acts against the faith, and treason) and cases connected with fathers falling into captivity. In the third group it is possible to place cases connected with lawless life (if the son is a criminal or a companion of criminals or if he is engaged in some "*dishonest and humiliating profession which the parent didn't deal with, for example: acting*", and a daughter choses a dishonest life instead of marriage.

The law code of Novigrad didn't contain any similar article, only that the father had the right to dismiss his sons without property if they wanted to separate from without just cause, in which case he had only to give them some thing of symbolic value[53]. If he forced them to go against their will, he had to divide the property to equal parts, keep one part for himself, and give sons the rest[54].

From these articles it seems that, in some cases, the father had the right to disinherit almost completely (in the case of Novigrad) or even completely his children (in the case of Poljica), but in very restricted situations. This feature somehow contradicts to the system of the Tripartitum, where it is almost the only right the father didn't have.

Unfortunately, I do not know any evidence from charters connected with disinheriting of sons, so I cannot prove wheter this rule was used in legal practise or not. On the other hand, the case concerning female children mentioned in the law code of Poljica, can be illustrated by one similar example, but not from the region

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53 In that case the father has only to give them a hoe, an axe and a rope, which causes me to suspect, although not explicitly stated, whether that rule applied only to peasants families. In the other case it had only simbolyc meaning.

54 M. Barada, op. cit., p. 159 (article 1).

and social estate I am dealing with. In spite of that, some remnants of same legal practise can be found in the following example. One inhabitant from Zadar writes in the testament of the case, where he disinherited his daughter Cvita because she become prostitute in 1303[55].

Among the cases mentioned in the law code of Poljica the most interesting seem to be those connected with the children's attitude towards a father in captivity. It seems that the father, in contrast to the system described in Tripartitum, didn't have legal means to give a son in exchange for himself. He could only expect that the son under moral obligation would try to pay the ransom and to guarantee for him. He could only punish his son if he neglected this duty by excluding him from the heredity.

Unfortunately, the law code of Poljica and evidence from the charters do not allow me to decide whether these cases were common or simply a particular custom of the region.

Speaking about paternal duties, E. Fügedi concludes that the Tripartitum, albeit tacitly, expresses the rule that the father must preserve the ancestral estate intact and pass it on his children. The law code of Poljica explicitly states the same rule in the article "*Chapter about ancestral estates*". This article prescribes that if someone has ancient property inherited by his ancestors, he has a duty to cultivate it, hold it in usufruct and live from it. Spending or dissipating ancestral property without great need is treated as something dishonest, and the article concludes that the owner has to "*leave it where he found it, as it is stated in old law and custom*"[56].

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55 M. Zjačić-J. Stipišić, Spisi zadarskih bilježnika [Acts of the notaries of Zadar], vol. II, Zadar 1975, pp. 60-61 (doc. 122).

56 M. Pera, op. cit., pp. 444-445 (article 49a).

The same article also states that, during his lifetime, a man has the right to dispose with his property according to his free will, as well as in his testament.[57] Although written in the aforementioned article this seems that only to refer to other types of property and not the ancient estate, the division of which between parents and children or brothers and relatives was strictly ordered, as we shall see in the chapter dedicated to relations among siblings and that to ancient and other types of property.

c) Role of woman

E. Fügedi's summary of the position of the woman was basically the same in both , the Tripartitum and Croatian customary law, although the Tripartitum again received better elaboration. A woman had the right to keep property which she brought into marriage and the gifts she received and to be supported if her husband dies until the time of her death or remarriage.

The law code of Novigrad specifies division of property between mother and children. Her dowry and vestments are explicitly excluded from divisible property, but other property must be divided equally: one part is kept by the mother and the others pass onto the sons and daughters[58]. The Tripartitum doesn't speak about this possibility. I think that the aforementioned article refers only to the use of property, because otherwise, it would contradict the right of inheritance of sons expressed in the same law code, as well as on mobile property.

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57 idem, pp. 446-447 (article 49b).

58 M. Barada, op. cit., p. 159 (article 2a).

The law code of Poljica doesn't speak about this matter either. It only explicitly states that the widow has a right to live with her children unless she wants to remarry. If she remarries she has the right to take her dowry and some smaller things if they are passed onto her by her late husband's last will. In the case of remarriage she doesn't even have right to participate in the property of her deceased sons, but their property must be divided between their brothers, sisters or kinsmen[59].

The treatment of the right of the wife to take with her dowry into a second marriage differs somewhat in the two Croatian law codes. The code of Novigrad explicitly states that if the widow dishonours the marital bed, the brothers of her late husband have the right to expel her, but not to retain any part of her dowry and clothes. They are even obliged to recompense her for the possible augmentation of live stock due to her dowry. If she remarries, her former brothers-in-law are obliged to hand her over to her new husband honourably, which may include even some additional gifts or payments[60].

The relevant article of the code of Poljica explicitly says that she can take only "*the dowry which she brought to him (i. e. to her late husband) and which didn't spend before*"[61].

According to the Tripartitum a woman has the right to cede personal property in her last will to her husband, if she doesn't, it will be inherited by her children (if she has any) or her parental relatives. The law code of Novigrad expresses the rule that she can leave it to anyone, but if she does not, the legal heirs are only the

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59 M. Pera, op. cit., p. 501-503 (article 100).

60 M. Barada, op. cit., p. 168 (article 17).

61 ... nego samo da vazme dotu koju je k njemu bila donila, koja se nade nepotraćena, ...

daughters "*and not the brothers*".[62] It probably seems that the woman's kinsmen do not have a right on her property. If she dies before her husband and children and didn't make a will, her property remains with her husband. If her son dies before his father the property passes to his parental relatives.[63]

Contemporary documents better describe cases connected with property rights of women. There are several charters in which some nobleman testifies that he received some money as dowry of his future wife. In all these documents dowry consists only of money and some movable goods and never of land.

A good example for such a situation is a receipt for dowry issued at the chapter of Zadar in 1391. In this case *ser* Borin, son of the late Jurislav from Karin of the Karinjani kindred, testifies that he received 500 liras of solids from *ser* Bartolo de Milano, patrician of Zadar, in the name of his future wife Maria, daughter of late Dujam Paladinić from Hvar. In the same document Borin promised that he would preserve, neither harm nor cheat her, and return the dowry to her or everyone to whom she gave a right to it in all the cases of restitution of dowry under the penalty of a quarter of this amount.[64] *Ser* Bartolo and Borin together requested the chapter

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62 Et se fosse di vestimenti ovvero della dote della madre, a chi la madre sua lasciasse, sara bene lasciato; et se non avesse lasciate a qualcuno, va alle figliole et non alli fratelli (M. Barada, ibid.).

63 M. Barada, op. cit., p. 168-169 (article 18).

64 Quam pecunie quantitatem ut premittitur in dotem datam ipse ser Borin per se suosque heredes et successores solemniter stipulatione sine aliqua exceptione iuris uel facti promisit et se obligauit supradicto ser Bartolo de Milano stipulanti uice et nomine ipsius domine Marie conseruare necnon malignare uel aliqualiter defraudare (!) et dare, reddere et restituere ipsi domine Marie seu eius heredibus et successoribus aut cui ius ... dederit in omnem euentum dotis restituende sub pena quarti dicte quantitatis pecunie in dote date...

of Zadar to issue the security contract in the form of a privilege for the assurance of Maria and her posterity.[65]

The other type of document which testifies to the property rights of women are receipts for money spent from her dowry by her husband, usually connected with some mortgage of the husband's property instead of this money.

A good example for it is given in 1411 in the case of Jacob, viceban of Dalmatia and Croatia, of the Šubić kindred. Jacob testified in front of the chapter of Knin that he

> *in dotem seu nomine dotis a domina Prya filia quondam Tomasi Tomaseuich de Sibenico sua videlizet consorte sexingentos ducatos in auro habuisset. Quos quidem sexingentos ducatos ipse Iacobus hiis temporibus inpacatis super suis negociis expendidisset et specialiter eo tempore cum de propriis suis propter fidelitatem domini regis obseruandam fuisset expulsus.*

Because of this he gave in mortgage to his wife 10 *sortes* of his land in two villages and all his possessions in a third with all possessionary rights until the moment of repayment of that sum of money.[66]

What seems the biggest difference between system of Tripartitum and Croatian customary law in all this cases is that the dowry is treated as money paid by a woman's family to the future husband and not as his gift to the bride. Dowry is, in these cases, what the Tripartitum called *res paraphernales*, although sources from Croatia always call it *dos*.

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65 ZK Zadar, manuscript collection, ms. 849, Register of notary Articutius de Riuignano, pp. 21'-22.

66 Magyar Országos levéltar [The State archive of Hungary], DL (further: MOL, DL) 33347.

What looks even more curious is that in the case of the marriage between the Croatian peer John II Nelipić and the Hungarian lady Elisabeth Bubek count John II, referring to the fact of dowry, did not use explicitly either Croatian or Hungarian terminology. He wrote that

> *quod quia magnifica et generosa domina Elizabeth filia viri magnifici condam domini Detrici Bubeck de Pelsewlch alias regni Hungarie palatini ritu romane ecclesie nobis fuerat data in consortem ... ipse etiam dominus Dietricus palatinus predictus iamfate domine Elizabeth filie sue copiosam et magnam quantitatem thezauri et pecunie valoris in toto decem millia ducatorum aureorum dedit, contulit et assignavit.*

In the same document count John spoke about her testamentary legation of this money to their daughter Catherine and how he spent this money for some of his needs during the wars with the Ottomans, Venetians and other enemies. Because of that he recompensed his daughter with the mortgage of some of his castles until the payment of that money.[67]

As seen, count John spoke neither about *res paraphernales* nor about dowry, although when talking about money given at marriage to his daughter he always referred to it with the term *dos*.[68]

Neither customary law codes explicitely states the obstacles to marriage. It seems that the only rules applied to marriage were those of canon law which forbade marriage between relatives closer than the forth degree. Godparents and their descendants were treated as relatives. Any attempt at marriage between relatives needed papal dispensation.

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67 Thallóczi, L.-Barabás, S., Codex diplomaticus comitum de Frangepanibus, vol. I, MHH, Dipl. vol. XXXV, Budapest 1910, doc. 256, pp. 240-242.

68 idem, doc. 199, pp. 164-166, doc. 200, pp. 166-169, doc. 218, pp. 189-191.

The marriage of Catherine, sister of count Mladin III of the Šubić kindred, to her cousin of the fourth grade, count John son of George from the same kindred represents an example for such a case. Pope Benedict XII approved their marriage in 1337. The bishop of Skradin received their request and passed it on to the pope. Unfortunately, only the pope's response is preserved, but it makes possible a reconstruction of the bishop's request. He wrote

> *quod ad sedandum graves guerras et inimicitias, que inter eos ac eorum communes consaguineos et amicos, pacis emulo procurante, vigere noscuntur, ex quibus Villarum et Castrorum subversio, homicidia et alia mala plurima sunt secuta, necnon ad pacem et concordiam inter eos, actore domino, reformandam utriusque partis amicis procurantibus habitus est tractatus, ut idem Iohannes Georgii Comes et Catharina soror dicti comitis Mladini matrimonialiter copulentur.*

The problem resulted from their relationship as cousins in the forth grade and they

> *matrimonium huiusmodi contrahere nequeunt, dispensatione super hoc apostolica non obtenta.*

The pope agreed to their request, ordered the bishop to marry them and, very important for my topic, to declare the son born from that marriage as legitimate.[69] Obviously, the most important feature in obtaining the pope's agreement was legitimacy of offspring, maybe even more important to such a highly political marriage than in some other. Of course, religious considerations cannot be excluded either.

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69 A. Theiner, Vetera monumenta Slavorum Meridionalium historiam illustrantia, vol. I, Romae 1863, p. 194.

The other important problem I should try to trace here connects with the choice of marriage partner. The first question is whether there were some marital restrictions arising from the noble status of the family of the bride or the bridegroom.

The first document which can help enlighten the problem is a charter from 1350 which describes the procedure of claiming noble right. This was the case of the *Virević* kindred in co. Luka who claimed that they were equal in nobility to members of *the twelve noble kindreds of the Croatian kingdom*. That document, issued by Stephen *tocius Sclavonie et Croatie banus,* from 1350 states that the ban held a diet *cum omnibus Croatis in eadem Luka convenientibus*. He was than requested by Novak, son of Stanislav, Marin and Stephen, sons of Bank, Michael et Jacob, sons of the count Streza, Saracen, son of Mladočevnić and Blagonja, son of Stojslav of kindred Virević, to consult with *universos nobiles eidem ... congregationi adherentes* about their nobility and to confirm it. After the consultations they decided

> *quod prefati ... nec non progenitores ipsorum ac tota parentela eorundem, Virovnygh, licet de nulla generatione duodecim generationum Croatorum ... fuissent et in numero nobilium extitissent, et inter ipsos Croatos, ac prefatos ... parentellam ipsorum de Virovnygh, matrimonialis copula hic et hinc celebrata fuisset, et ipsi Croati de progenie Virovnygh ipsamque ... duxissent in uxores legitimas, et sic ipsa progenies Virovnygh in numero nobilium permansissent et nunc permanere.*[70]

Obvious from this passage is that there were some obstacles for concluding marriage between non-noble and noble kindreds, as well as stating some kind of inequality between different layers of the nobility itself. On the other hand it seems

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70 CD, vol. XI, p. 631.

that marital connections could be used as an instrument of ennoblement or at least of getting recognition from the higher strata of nobility.

The interesting part of the passage is also the fact that the charters mention only brides from the Virević kindred as proof of their nobility, and not the possibility that some Virević could have taken a wife from some of these noble kindreds. This could have resulted from complete transferr of the woman to the kindred of her husband after marriage and the loss of her rights towards the paternal kindred.

The other possible approach to this question is to search concrete examples of wives mentioned in the sources with their father's and husband's name. Unfortunately, I am not completely prepared to speak about this problem on the basis of all possible data, because I haven't researched all relevant material but only some parts thereof. In spite of that, I will use for explanation the example which I already have and try to give some conclusions on its basis.[71] The above mentioned cases of John II Nelipić and his daughter Catherine, as well as of George Jurišić Šubić I were not taken into consideration, because they refer to members of the highest strata of nobility and may not represent a usual pattern.

A select list of women known by both identifiers is the following:

1) Dimina, daughter of the late *Cvitko Poletčić* and widow of *Peter Kačić*[72]

2) Helen, daughter of the late *Jacob Lasničić* and wife of *Ratko Drahiašić Čudomirić*[73]

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71 The example I have used contain about 500 different documents, but it is maybe only one half of the complete material. Unfortunatelly, women are usually mentioned as *wifes* (*consors, uxor*) or *widoves* (*relicta*) and only very exceptionally with the father's name, even in cases where they played a very active role in legal negotiations.

72 ZK Zadar, Manuscript collection, ms. 849, Register of notary Articutius de Riuignano, p. 57'-59', 24.08.1393.

3) *Catherine Višević Čudomirić,* widow of *Anthony Bilošić Lapčanin*[74]

4) *Margaret Vorta,* wife of *Ugrin Ugrinić Šubić*[75]

5) *Marry,* daughter of *Dujam Paladinić* and wife of *Borin Karinjanin*[76]

6) *Radoslava Garlovac,* wife of *Jurislav Karinjanin*[77]

7) *Suzana de Georgiis,* widow of *Ivan Mihaljić Šubić*[78]

8) *Žuvica de Cucilla,* widow of *Dobrul Šubić*[79]

9) *Prija,* daughter of *Thomas Tomasović* from Šibenik and wife of *Jacob Šubić*[80]

As visible from this short list, it seems that members of the Croatian kindreds married either members of other kindreds (1-3) or Dalmatian urban patricians (5, 7-

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73 HAZD, SZN, Articutius de Rivignano, b. II, fasc. VII, 22.04.1399, 6.08.1399.

74 HAZD, SZN, Johannes de Casulis, b. VI, fasc. X/8, p. 261, 7.10.1478.

75 S. Ljubić, op. cit., vol. IX, p. 54, 25.04.1432.

76 ZK Zadar, Manuscript collection, ms. 849, Register of notary Articutius de Riuignano, pp. 21'-22, 28.02.1390.

77 CD, vol. XII, p. 427, 11.07.1357.

78 HAZD, SZN, Theodorus de Prandino, b. VI, fasc. I/2, p. 42, 20.10.1408.

79 HAZD, SZN, Theodorus de Prandino, b. I, fasc. I, 313v, 17.11.1412.

80 MOL, DL 33347, 30.06.1411.

9). Unfortunately, we cannot determined the origin of the people mentioned above under the numbers 4 and 6, which may give us an alternative view on the problem[81].

A very interesting case among the mentioned ones is that of *Marry Paladinić*. *Paladinić* is one of the noble families of the island Hvar in southern Dalmatia and it is puzzling how they connect with a family of counts from Karin, very far from them.

The case of *Suzana de Georgiis* is indicative as well. *De Georgiis* were one of the Zadar's noble families and its members were always very strong supporters of anti-venetian and royalist policy in Zadar. Some members of the family even became *miles aulae regie* by order of king Louis in 1345, and held distinguished positions in the system of Angevin government in Dalmatia after the peace treaty of Zadar.

The system of subordinating women, more or less directly expressed in the Tripartitum, could be also traced in Croatian customary law codes. As proof of this feature I quote three articles from the law code of Poljica.

Someone who beats somebody's wife, sister or daughter without real reason pays double penalty for violence. If he does that after breaking into a house or courtyard, the penalty must be doubled once more.[82]

In the case that some woman verbally attacks a man, he is not allowed to hit her, but to respond verbally. But, if she attacks him physically, without his cause, he has a right to chase her with a stick to the doorstep of her house.[83]

If someone beats or rapes a female person the law prescribes the same punishment as for murder, but states that the identities of the male and female must

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81 Very strange family name *Vorta* can be explained by the mistake of Venetian notary who made transcript of document.

82 M. Pera, op. cit., pp. 440-441 (article 42).

83 idem, pp. 440-443 (article 43).

be taken in consideration, and the reason and the form of the rape. The article concludes that there are a lot of different situations which cannot all be listed, but must be examined case by case. It lists only three cases. The first is very general and deals with the female person. In this case the penalty is expressed as dead blood. The second case deals with married women or engaged girls. In that case the rapist pays double penalty, one to the woman or girl and another to her husband. The third prescribes that, in the case that neither the girl nor the perpetrator are married, and they are of adequate condition, he must marry her or provide her with a dowry good enough to enable her to marry in proper way.[84]

It is obvious that the law code expresses the idea that woman has to be protected, but usually as somebody's wife, sister or daughter. The subordinate position of woman is clearly described in the second of the cases I explained, where a man has the right to chase her with a stick, what looks to me very humiliating. However, it is important that he may only do so up to her doorstep.

The role of women in the procreation of offspring can be traced in one rule of the law code of Novigrad. This rule forbids pregnant woman to take an oath for any cause before she gives birth to the child. What is especially curious is that the same rule is recorded twice in the same law code. This prohibition can be understood in two ways. One of them is that a pregnant woman was considered impure and the other, which I consider more probable, is that the belief of the time was that God might penalize any offence against the oath by harming the child. But at least, the fact that pregnant woman is explicitly mentioned in this case testifies to the great importance of pregnancy in their system of thinking.[85]

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84 idem, pp. 510-511 (article 110).

85 M. Barada, op. cit., pp. 166, 174 (articles 14 and 34).

Generally speaking, the position of women in Croatian and Hungarian customary law was more or less similar. The biggest difference was in the treatment of the dowry, in the system of the Tripartitum usually considered also as Morgengabe or payment of husband to the wife, and, in the Croatian system, as money paid from the bride's family to the future husband. But, in both cases, the further treatment of that property was approximately the same. It remained the personal property of the woman and she had a right to take it with her into the second marriage or to pass it on to whomever she wanted. In both systems women were subordinated to husbands and even their protection was based on it. The role of the mother was maybe slightly more emphasised in Croatian law codes.

d) Position of offspring and relation between siblings

Tripartitum differentiates four legal sorts of offspring: *posteritas, proles, liberi* and *heredes*. Each of these categories defines different parts of the legitimate offspring. The most important and narrow meaning contains the term heirs (*heredes*). It includes only male offspring. The most broad meaning has the term posterity (*posteritas*) which includes male and female children of a man. These two terms are most frequent in the sources. The other two categories: *proles* (children born during the lifetime of the father) and *liberi* (children and grandchildren taken together) didn't have any special juridical meaning, and because of that they appeared in sources very seldom.

The distinction between heredes and posteritas was crucial in cases of donations of land property and, because of that, always quoted in the donational charter. Because of inheritance patterns, which I shall speak about later, it was very important to define each piece of property in that way.

This distinction was a common feature of Croatian and Hungarian customary law. The system of donations was used in the same way in both countries. The donors frequently stated that they were giving some property to some man, his heirs and to the posterity of his heirs. For example, this formula is used when count Franko of Corbavia granted some possessions to his *familiaris* Vid, son of John of Gomiljane of the kindred Lapčani and

> *per ipsum eius heredibus heredumque suorum successoribus et posteritatibus vniuersis.*[86]

A similar formula is recorded in Croatian. The charter describing the exchange of the village Zahumlje for village Kosinj between count John Frankapan and George of Kosinj gives an example for that. Count John testifies that he gave Zahumlje to George, his son John and

> *nih ostanku i ostavšemu ostanku.*[87]

Croatian terminology relies on the same pattern, but using it less consequently than the Tripartitum. Even Pergošić's translation of the Tripartitum, made in the last quarter of the sixteenth century, does not consequently use such terminology. It could testify to some slight differences in the system, but it is more probable that this feature depended on dialectal differences or some other linguistic phaenomenon.

The most frequent of terms used in Croatian written sources are *ostanak* and *ostatak*. According to the context they can be translated as *posteritas* (most frequently), *heres* and *successor*. Pergošić as *ostanak* sometimes translates the word *posteritas* and sometimes the word *heres*. For example, the phrase *filii haeredesque*

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86 MOL, DL 11721. The same feature is very frequently mentioned in different charters.

87 ... to his posterity and posterity of their successors... (Đ. Šurmin, op. cit., doc. 273, pp. 414-417).

... *nobilium* he translates as *sinove i ostanki plemenitih ljudi*. The oft-mentioned law code of Poljica uses the term *ostatak*, usually in the meaning of *posteritas*.[88]

Similar meaning can be attributed to the term *nasljedak (naslidak, nasledak)*. To define it strictly is quite complicated. For example, one charter issued by the judicial seat of Knin in 1451 uses phrase "*i nega ostanku i ot ostanka naslidku*" translatable as "*and to his posterity and to the heirs of his posterity*"[89]. The sequence of legal types of offspring, if translated in this way, is a little strange because something is first granted to the offspring in a wider sense and then restricted only to closer category.

The term *naslidak* is used parallell with *ostanak* in the foundational charter of the monastery of Saint Mary in Gradčina in Lika from 1490. Founders of the monastery, noblemen from family Drašković (members of kindred Mogorović), promise that the monastery wouldn't be disturbed in its rights neither from them nor *od' ostanka n(a)šega ili naslidka* (from our posterity or heirs).[90] The sequence of terms again would be more appropriate in reversed order.

Term *nasljednik (naslednik, naslidnik)* is less ambiguous. It is usually used for *successor*. In that meaning it is used in Pergošić, as well as in some charters, but sometimes it also covers meaning of *heres*.[91]

The same meaning covers also the term *poslidni*.[92]

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88 V. Mažuranić, Prinosi za hrvatski pravno-povijesni rječnik [Contributions for Dictionary of Croatian Legal History], Zagreb 1908-1922, pp. 850-851.

89 Đ. Šurmin, op. cit., doc. 113, pp. 193-196.

90 idem, doc. 231, pp. 343-349.

91 V. Mažuranić, op. cit., pp. 718.

92 Đ. Šurmin, op. cit., doc. 71, p. 135.

For posterity or heirs Croatian written sources sometimes use term *diete (dite, dete)* (child). In these cases it is also hard to distinguish proper meaning. Sometimes it is also used in the meaning of *proles*, which meaning is the most close to the modern meaning of the same word.[93]

Very seldom, but interesting is usage of collective noun *diet (dit)* in the meaning of *liberi*. One of the kindreds of co. Bužan in 1503 (or some branch of it) is defined as *Kmeća dit*.[94] It is very hard to translate it properly, but the most close translation could be "children of nobleman / jobagy".[95]

This short review of Croatian terminology shows that this question must be properly researched in future, as well as some other problems connected with legal and family history. In this moment and in this paper it is quite impossible to solve the problem of direct equivalents for Croatian or Latin terms in other language, but it was at least necessary to refer to this problem to. For real solution it will be necessary to establish some kind of detailed dictionary of all possible terms with their equivalents and then it may be possible to see whether these differences lie in the linguistical or in the legal sphere.

As E. Fügedi summarises the obligations of sons towards parents, the son was totally subjected to paternal power until the moment he reached full age or divided with the father ancestral property. Even after this moment he owned to the father respect, as well as to the guardian in the case that he was an orphan.

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93 V. Mažuranić, op. cit., p. 235.

94 idem, p. 235.

95 Kmet was in older texts used for wealthy and respectable man (e. g. in the law code of Vinodol from 1288), and later took meaning of serf. Similar development shows word jobagy (lat. iobagio) in Hungarian.

Tripartitum uses two categories for full age: legal age and full age. Legal age was reached with 14 years by boys and with 12 by girls and then they could sue at court. Full age was reached with 24 by boys and with 14 by girls and in that moment they could dispose of land property.

The Croatian legal sources are, once again, less explicit in that matter, as well as in others. The law code of Novigrad defines only two cases. The first is that a servant is credible in court with 16, and servant-girl with 12.[96] This can be treated as reaching of the legal age. Interesting is that boys according to that reached it two years later then in the system of Tripartitum.

The other case is for the children in general. It orders that a women who remarries cannot take her children with her, but leave them to the brothers of her former husband until they reach "*the age of reasoning*" what means 16 years.[97]

The law code of Poljica refers only to the age necessary for someone that he can be pursued for ancestral property. It specifies that boy who is orphan can be pursued for ancestral property only when he reaches 18 years, but it is not allowed to him to do any illegal or violent act towards the others connected with ancestral property relying on his minority.[98]

Reflex of the same custom can be found in the charter issued by ban Mladin II in 1321. One of the accused

> *Johannes uero predictus filius olim Michaelis Wlczete dixit se a nobis (i. e. from ban Mladin) graciam habere de non respondendo in iure, donec fuerit etatis habilis ad cingendum spatam*

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96 M. Barada, op. cit., p. 165 (article 10).

97 idem, p. 168 (article 17).

98 M. Pera, op. cit., pp. 500-501 (article 99).

and it was granted to him[99].

Although it is explicitly stated that he had special "grace" from ban Mladin not to be sued, it is possible that it could have roots in some kind of common custom that reaching of legal (or maybe full) age was connected with ability for arms or even with some kind of initiation as dubbing. The trial in the said document dealt with question of ancestral property, so the similarity between it and before mentioned article could be possible.

Before reaching of legal and full age child must be, according to the Tripartitum, put under guardianship if it is orphan. Tripartitum elaborates the system of choosing the guardian and his rights and duties. The first right on guardianship had the mother, which is the only case when Tripartitum prefers the woman to male relatives.

In Croatian law codes this question is not very well elaborated. The law code of Novigrad, as it is already said, speaks only about the case of the mother's remarriage and gives the guardianship to father's brothers. Unfortunately, it doesn't refer to this fact with any explicit term, but only says that she must leave children to them.[100]

The law code of Poljica only refers to the situation that a widow must be supported together with her children from the property of her late husband if she doesn't remarry. If she remarries she cannot even inherit anything from her children. This property will be inherited by their relatives from father's side.[101]

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99 CD IX, doc. 16, pp. 21-24.

100 M. Barada, op. cit., p. 168 (article 17).

101 M. Pera, op. cit., pp. 500-503 (article 100).

Because of the total absence of the term guardian in Croatian customary law codes some authors conclude that this institution didn't exist in medieval Croatia. But, from other sources it is obvious that guardianship was practised and it shows common features to the system of Tripartitum.

From documents issued by the chapter of Zadar (which doesn't use term *tutor*) can be concluded that widow had rights of guardianship over underaged children. Beyond that, sometimes it is explicitly stated that someone sells some piece of property "*uerbo et consensu matris sue*". This formula is also quite frequent in contemporary notary acts. Unfortunately, documents refer generally to *procuratores* or *commissarios* and not to *tutores*.

Function of the guardian is annotated very seldom in the sources. It is for example recorded in the case of the trial among count Nicholas of Zrin and Franciscans of Zadar in 1499. Problem appears because in that moment counts of Zrin were Slavonian noblemen for almost 150 years and it can be influenced by the Slavonian legal system, more directly connected to the Hungarian one or even direct influence of the terminology used by royal chancellery.[102] The object of the process was one village in the Luka county in Croatia, but it doesn't necessarrily meant that every main actor of the process was appointed according to the Croatian customs.[103]

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102 MOL, DL 33109. Guardian of minor count Nicholas recorded in that trial was called Martin Berojević, but in this moment I am not able to identify him exactly and to see wheter he was Croatian or Slavonian nobleman.

103 Interesting statement about differences of legal system of Croatia and Slavonia is recorded in the same process. Iudices arbitri deputated by the both sides in their report to the king Wladislaus from 1498 testify that problem appeared because some of them came from kingdom of Croatia and some from kingdom of Slavonia "*que quidem duo regna in aliquibus iudiciariis consuetudinibus minime conueniunt*" (ibid.).

Although it is not explicitly mentioned in the sources as a legal term, it is very hard to believe that the content of this function wasn't existed in medieval Croatia. Someone had to do legal operations for minor heirs and to represent them in the court because of their legal incapacity. It is maybe possible to conclude that position of the guardian was weaker than in Hungary and maybe divided among different other functions (that of *procurator* or *commissarius* of the testament of the late father).

Traces of the guardianship performed by the widow can be found in before mentioned acts of the chapter of Zadar. One example is recorded in 1390 when George, son of late Radoslav from Koruplje from the kindred Tugomirić and Ruža, widow of late John Vuković Slavinić from the same kindred and place sell in front of the chapter 1 *sors* of their land (it seems that they hold it in common) to some citizen of Zadar

> *ex ingenti pernicia et fame ac pro uictu, uestitu et substentatione filiorum ipsius quondam Iuani et dicte Ruse ne fame pereant.*[104]

Interesting is that Ruža does it "cum expressis consensu, scitu, uerbo, licentia et uoluntate dicti Georgii uenditoris", maybe because they held it in common (which also is not quite clear from the text of the charter), or maybe because of some kind of guardianship.

Even the more complicated situation is recorded in the document from the following year. In this case Margaret, the widow of Simon from Bicina from the kindred Lasničić sells to the one nobleman from Zadar

> *urgente nimia et extrema paupertate eius et Marci et Sabete filii et filie predictorum domine Margarite et quondam Simonis pro eorum et*

104 ZK Zadar, Manuscript collection, ms. 849, Register of notary Articutius de Riuignano, pp. 13'-14', 12.04.1390.

cuiuslibet eorum substentatione corporali ne fame pereant ... et pro redemptione ... vnius domus dictorum Marci et Sabete posite in ciuitate Iadre in confinio sancti Helie ... totam et integram sortem terre patrimonialis dicti quondam Simonis de Bicina ... in villa Vschipachi.[105]

Margaret does it "*cum expressis consensu, scitu, uerbo, licentia et uoluntate*" of Andrew Mrdešić and Vladiha Petričević from Karin and of the kindred Karinjani "*commissariorum ut asseruit dicti quondam Simonis*" and in the presence of Budislav Mišić from Bribir and Borin Borislavić from Karin, whose role is not explicitly stated. The prerogatives which Margaret used in this case are very much alike to those prescribed to the guardian in Tripartitum. She is dealing with the ancestral property of her children and does it to enable herself to raise, feed and dress them.

Another case which illustrates "maternal" power over the children is recorded in the act of the same chapter in 1394. In that document Matthew, the son of late Gregory from Bribir from the kindred Šubić sells to the one nobleman of Zadar 2 *sortes* of his land with all rights and two serf's seats in the village Kamenjani

ibidem presentibus domina Paua relicta quondam Petri de Volcha de dicto genere Subich de Birberio et Iohanne filio suo et dicti quondam Petri de eodem genere Subich ac promictentibus videlizet ipsa domina Paua et dicto Iohane eius filio cum consensu dicte matris eius ... huic venditioni ullo unquam tempore non contradicere ... ratione affinitatis uel consanguineitatis.[106]

The most interesting element in this statement is that property mentioned in it can be described as ancestral and because of that role of Pava cannot be explained

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105 idem, pp. 20-20', 17.02.1391.

106 HAZd, SZN, Petrus de Sarçana, b. I, fasc. III, pp. 523-523', 8.08.1394.

out of kindred's network. It is obvious that she acts in this case as the tutor of her son because she cannot inherit any rights in the ancestral property of the kindred of her late husband.

Except to the parents and guardian son had obligations on loyalty towards the other members of the kindred - his brothers, cousins and other relatives. This feature reflects the most strictly the nature of the kindred, because other features can be also applied on the nuclear families.

Obligations toward other relatives are reflected in both customary law codes I am using in this paper. The law code of Novigrad unfortunately deals only with the questions connected with property and I shall refer to it a little later. The law code of Poljica deals with these problems too, but also refers to some other features. Some of them I already mentioned in the first subchapter and it isn't necessary to explain them again. On this point I shall only shortly refer on the article which regulates attitudes about the grades of kinship related in the article about murders.

The most strong relation was between real brothers. It can be very clearly seen from the fact that killer of his own brother looses all his rights in his kindred and in the county, his part of ancestral property must be inherited by the closest relative and all members of the kindred and county are obliged to pursue him to the death if they found him in the county. Beside the content, in this article are very significant two phrases. The article begins

Ako li bi tko ubio brata prisnoga, ča ne daj bog.[107]

This exclamation is used only with this grade of affinity and gives some stronger accent on the heaviness of the crime.

The second grade expressed in the same article covers closer and farther cousins called also brothers (*Ako li bi tko ubio brata ne prem prisnoga*). The penalty

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[107] ... If someone kills his own brother, what let God prevent ...

is much less specific. Article only refers that this one must be prosecuted according to the level of "fraternity" (*koliko mu je bio blizu u bractvu*).

The third level appointed in this article refers to the murder of a farther relative or a member of the kindred (*Ako li bi tko ubio bližnjega ali vrvnoga*), but only if he did it to inherit the part of the ancestral property held by the victim. The article even doesn't prescribe some definite penalty, but only says that this part of the property mustn't cede to the killer, but to any other to whom it cedes according to the decision of the kindred (*po razlogu od plemena*). But, if the victim had one or more daughters they have the right to keep this property for themselves.[108]

It seems that the strength of the relation between different grades of affinity was already very weak. It can be influenced by a great number of the members of one kindred, which normally influenced weakening of their personal relations.[109] On the other hand in this article there is a reference to the institution "*denial of blood (proditio fraternae sanguinis)*" mentioned in Tripartitum in more severe sense.[110]

The bond among the members of the kindred was very much based on the common property and the rules of the inheritance. Both customary law codes give a lot of space to the explaining of this pattern, as well as some other sources. The division of the ancestral estate didn't break all bonds between members, but in some way caused their weakening. The division of property was not only the way for a son to escape from the paternal power, but as well more independence towards other relatives.

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108 M. Pera, op. cit., pp. 434-436 (article 36a-36c).

109 Whole county of Poljica was divided among three noble kindreds, hypotethically related one to the others through common ancestors.

110 Pergošić's translation of Tripartitum uses terms "*odaja (izdaja, odanje, predanje) bratinske (bratine) krvi*" (V. Mažuranić, op. cit., pp. 442).

The law code of Novigrad refers to the rules for division of the property in a few articles. The first case is division of the property between a widow and her sons and daughters. She had to divide property to equal parts, similarly as a father if he is alive, to retain one part for herself as well as her dowry, and to distribute other parts between children.

In the case of division after the both parents passed away, the division is regulated similarly to the rules of Tripartitum. The oldest brother has right to inherit the raiding horse, if they held it in common, but he is obliged to recompense it to the others. The youngest brother inherits parents' house and father's armour. Sisters must be compensated by the brothers in the vestments, and their part divided among brothers.[111] If sisters do not marry, they must be supported by brothers in vestments and food. In the case that some sister wouldn't want to marry and decides "to serve to God", she must be supported in the same way.[112]

The unmarried widow has also the right to a part of property and she receives the part of her late husband.[113]

Some contradiction in the system is obvious from the fact that another article, especially referring to the inheritance pattern of the nobility, prescribes that girl who doesn't marry has the right to use the estate and to mortgage it or sell in necessities. But if she marries this property passes over to the "brothers who are nearest to this possession", and if there are no such brothers to the ruler who rules the country.[114]

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111 M. Barada, op. cit., pp. 159 (article 2).

112 idem, pp. 160 (article 3).

113 idem, pp. 168 (article 17a)

114 ... ma ascende alli fratelli ..., i quali sono vicini della possissione ... (idem, pp. 160-161, article 5).

This feature can be maybe explained with supposition that it doesn't refer to real brothers, but brothers understood in broader sense (cousins and relatives) or that the first rule refers only to non-noble population. This other possibility seems to me hard to believe, especially because it is referring to some features as armour and riding horse more appropriate to be connected with nobility than with peasants.

Similar problem appears when the law prescribes the division among the brothers if they divide before the harvest. The works described in this article (ploughing or working in the field) are more appropriate for the peasants, but it is not possible to exclude the possibility that they refer on the poorest strata of the nobility as well. The general rule applied in this case is that everything has to be divided according to the job one already did. In spite of that some things have to be divided according to the total number of members (even the children and women).[115]

Some regulations of the law code of Poljica show similar patterns of inheritance and division of the property. Brothers "*closer or farther*" have to divide the property to equal parts, but the youngest has the right to parents' house. But, the article explicitly states that it is applied only to ancestral property. It seems that other movable property must be divided in the same way. Something what has been donated to someone "as a payment or reward from lords" is excluded from the division as private property of the owner.

A very important characteristics of the kindred's property is recorded in the same article. It states that until the brothers or other participants do not divide the property everything must be common "*good and bad, profit and harm, and debts which they are due or which are due to them*". After the division, everyone owns his part alone.[116]

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115 idem, pp. 171-172 (article 26).

116 M. Pera, op. cit., pp. 430-431 (article 33).

Besides these law codes I am dealing with, for this question a very important source is the explanation of the system of inheritance used by the noblemen of twelve kindreds of Croatian kingdom and explained by Michael Živković from Prozor, viceban of Dalmatia and Croatia, and iudices nobilium of the seat of Knin on the request of Venetian count of Zadar in 1459. In this document is explained that

> *omnes possessiones ... descendunt in prolem masculinam germanis propinquis de eorum prole descendentium de uno in aliud, que possessiones dictorum nobilium non sunt alienande extraneis in eorum preiudicio, neque pro anima testare, neque legare ultra tres gognaios. De possessionibus vero evititiis et acquisitis per antecesores nobilium sive per predecessores eorum, prout est descriptum et postmodum relicte eorum heredum, ipse possessiones transire debent per omnes descendentes ab illo a quo ipsa bona fuerunt acquisita simili modo et condicione, prout alia bona patrimonialia antiqua transeunt de prole in prole, ut suprascriptum est.*

The owner had complete right to alienate or divide the acquired possessions as he wish. Daughters do not have parts in the ancestral property, but only right to receive adequate dowry when they get married.[117]

This description basically corresponds to the above mentioned rules from the law codes of Novigrad and Poljica, as well as with data from the charters[118].

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117 F. Šišić, op. cit., vol. I/1, Zagreb 1914, pp. 494-495.

118 See for example case of count Našman and other members of kindred Karinjani. They have been accused by someone that they hold Karin without right, because of that that they are not direct descendants of Voniha, son-in-law of king Zvonimir, who received Karin from him. The case was brought before queen Elisabeth in 1360 and the final decision was that Karin belongs to the noblemen of Lapac *titulo iuris hereditarii ... tamquam ipsius Vnyche posteritates.* King

Although it is not quite clear whether they could be applied only to the members of the "twelve kindreds" or to the whole nobility organised in kindreds, similarities give me impression that the right solution is that second statement.

The illegitimate offspring was discriminated in the kindred. The law code of Novigrad excludes illegitimate brothers from the division of the estate with exception "*if he helped by his labour in acquiring of it*". In that case he has the right to it, but it can be commuted in the some other payment as for mercenary. Illegitimate sister also cannot have any part in property, but must be paid as a servant-girl or sufficiently equipped and married.[119]

One document issued by the chapter of Zadar in 1394 also mentiones this problem. The chapter of Zadar has been requested by the count of Ostrovica Nicholas of Paližna to examine whether Vitko from Radobudić from kindred Tugomirić

> *fuerit bastardus uel legiptimus illorum nobilium de Radobudich uel alique per dictos nobiles de Radobudich in vita sua reputatus ab ipsis uel proiectus fuerit tamquam bastardus uel si audiuerunt ipsum in vita sua fuisse legiptimos et inter dictos nobiles et parentes suos reputatum pro legiptimo et si partem sibi tangentem in dictis Radobudich cum aliis nobilibus et parentibus suis possederit prout et alii parentes sui in eodem gradu subcessionis per aliquam parentelam et eiusdem prosapie*

Louis confirmed after that in the same year to the count Našman and other noblemen of Lapac *terram Karin[n], ac villas et possessiones in eadem scitas (!) et constitutas ... pretactis nobilibus de Lapuch eorumque heredibus et posteritatibus vniuersis sub mere et sincere nobilitatis titulo...* (CD, vol. XIII, p. 69-70.).

119 M. Barada, op. cit., pp. 160 (article 4).

secum existente cum quibus dictas possessiones diuiserit nec vnquam sibi post dictam diuisionem de isto aliquo modo in vita sua per aliquem oppositum fuerit.[120]

This request shows the same pattern as before mentioned article, but gives us some more information about the way of defining that someone is illegitimate. Very interesting is part of this request which asks whether he was treated as illegitimate or not. It seems that illegitimate son could be declared as legitimate with the consent of kinsmen.

The very important element in proving someone's legitimity, as well as in some other investigation were the neighbours of the accused whose position I shall discuss in the following subchapter.

e) Position of the kindred in larger territorial units

Every nobleman was, except for his kindred, also a member of different communities and organisations and was identified in various ways. In the first place he could be identified as a neighbour or abutter (*vicinus* or *commetaneus,* in Croatian charters *susedi* or *mejaši*[121]) of some other nobleman. As such he also had some rights expressed in the customary law.

The law code of Novigrad states that if someone wants to sell the house he is first obliged to ask the neighbour whether he wants to buy it.[122] It slightly contradicts the right of kinsmen who have the same right in the transaction connected with

120 HAZD, SZN, Petrus de Sarçana, b. I, fasc. III, pp. 527-527', 27.10.1394.

121 Đ. Šurmin, op. cit., doc. 215, pp. 323-324.

122 M. Barada, op. cit., pp. 172 (article 28).

ancestral property. Maybe it can mean that neighbour has the same right after them, but this is not explicitly stated.

Neighbours and abutters played very important role during the seisin of some newly acquired property or at other inquiries connected with estates. They have been requested to be present to these actions and to give testimonies if required. They also had right to contradict to any change of proprietary relations if they knew that some donations were made without legal background.[123]

The second circle of the possible identification of some nobleman was based on his participation in some county (*comprovinciales*). Their role was similar to that of neighbours or abutters but also covered some other functions. Nobleman of some county held positions in its administration, although not always everyone of them in spite of the theoretical equality based on the Golden bull of king Louis from 1351.

Very good example for that feature can be found in one article of law code of Poljica dated in 1482. In it is described that the kindred Limić, one of the three constitutive kindreds of the county of Poljica, accepted in its membership all noblemen who didn't have part in local legislation to that moment during the session of the county court. Interesting is the statement that "*although some of them declined it, but the majority of them decided it*".[124]

In some way this act could be treated as adoption, because the kindred Limići accepted them in its membership. The accepted families have been members of the noble families settled in Poljica in the Angevin period, almost one hundred years ago, called with common name *Ugričići* (derived from Hungarians), while Limići

123 For further explanations see: J. M. Bak, P. Engel, J. R. Sweeney (ed.), *The Laws of the Medieval Kingdom of Hungary 1000-1526*, vol. 2, The Laws of Hungary, Ser. I, Salt Lake City 1992, pp. 249-259 (glossary).

124 M. Pera, op. cit., pp. 498-499 (article 96).

belonged to the older nobility of the county called with the common name *Didići* (derived from heirs). This two groups were in some kind of a struggle for influence on the local level, and it seems that this was the way to pacify the county.[125]

The change of the importance of the position of a kinsman to countryman was already mentioned in the first subchapter of this chapter. It seems as a general feature in the second half of the fifteenth century.

As the next, broader level of identity can be taken the status of the nobleman of Croatian kingdom. This expression is very commonly used since the fourteenth century, connected with the better organisation of local and royal administration which left us the increasing number of evidence.

"*Consilium nobilium et procerum Croacie*" is for example mentioned in the charter issued by ban Mladin II in 1318.[126] Nominally, the term is recorded even earlier in the charter of king Ladislas IV in 1273, but this charter is maybe forged or at least rewritten in 1361. But in this case it is still valuable for the situation in the fourteenth century, because it is confirmed by king Louis in 1361 and 1367.

In this charter king confirms to the members of kindred Glamočani for their merits in the war against Ottakar II possession Banjavac in the county of Luka. He also testifies that the members of the kindred belong "*ad numerum, cetum et consortium Croatorum nobilium*" and that they have right

125 Further informations about Didići and Ugričići and their conflicts see in: I. Božić, *Plemeniti ljudi Poljičani u XV veku* [Noblemen of Poljica in the fifteenth century], Glas SANU, vol. 280, Beograd 1971 and I. Pivčević, *O postanku Poljica* [Origin of Poljica], Split 1907.

126 F. Šišić, op. cit., p. 487.

illa et eadem gratulerentur (!) libertate, qua veri, primi et naturales regni Croatie nobiles perfruerentur.[127]

Similar expressions are very frequent in the charters. Their Croatian equivalent was the term "*plemeniti Hrvati (noble Croats)*", also frequently mentioned in the charters.[128]

The next level will be the loyalty to "*the Holly crown of the Hungarian kingdom*". This term is more frequent from the end of the thirteenth century in Hungary[129] and approximately in the same time is recorded in its Croatian equivalent.[130]

One example for that is recorded in 1390 in the charter issued by the rectors of Zadar. They grant to the count John II Nelipić of Cetina and to his mother Margaret citizenship of Zadar and among other propositions they say that they want

quod predicti domina Margarita et dominus Iohannes eius filius et sic successiue eorum filii et descendentes legitimi in perpetuum ***iurare debeant ac prestent*** *in manibus religiosi viri domini fratris Viti de Iadra ordinis fratrum minorum* ***fidelitatem serenissimis principibus et dominis nostris*** *domino Sigismundo et domine Marie eius consorti* ***Dei***

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127 idem, pp. 485-486.

128 e. g. sudci rotni plemenitih' H'rvat stola tninskoga (sworn judges of the noble Croats of the seat of Knin) (Đ. Šurmin, op. cit., pp. 193-196, doc. 113).

129 Pál Engel *The Age of Angevins* in: P. Sugar, P. Hanák, T. Frank, *A History of Hungary*, London-New York 1990, p. 34-37

130 vićnik svete krune Ug'rske (counsellor of the Holy Crown of Hungary) (Đ. Šurmin, op. cit., p. 74, doc. 7, 1288).

gratia illustribus regi et regine Vngarie et sacre corone Vngarie *et comuni ciuitatis Iadre predicte.*[131]

Except in this document a similar formulation can be found in a lot off different charters, specially from the periods of civil wars.

It is interesting to mention that beside the Holy Crown as a symbol of sacredness of the royalty, Croatian noblemen used as well the memory of king Zvonimir. This question has not been researched enough, but some elements show its importance. Maybe the cult of king Zvonimir, one of the archetypes of the Christian ruler, can be connected with the period of banship of bans from the kindred Šubić or with the already mentioned institution of "Twelve noble kindreds of Croatian kingdom". Specially in the middle of the fourteenth century king Zvonimir is a few times mentioned in the charters as a referent point for different noble families or ecclesiastical possessions.[132] His name is recorded on the inscription from the end of the thirteenth or the first half of the fourteenth century found in Ostrovica, one of the major seats of kindred Šubić.[133] The legend about his death is found in the end of the fifteenth century (probably written in the middle of the same century) in one manuscript which belonged to the kindred Kačić.[134]

This question is not possible even to describe properly here, but I think that it was important to mention it although in the very short form. Further searching of this

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131 MOL, DL 38497, 3.09.1390.

132 See for example aforementioned case of count Našman of Karin.

133 L. Marun, *Dvie nadpisne uspomene o hrvatskom kralju Zvonimiru* [Two inscriptions reffering to Croatian king Zvonimir], Starohrvatska prosvjeta, vol. III, Knin 1897, pp. 3-5.

134 M. Ančić, *Tko je bio autor legende o nasilnoj smrti kralja Zvonimira* [Who was the author of the legend about violent death of king Zvonimir], Zbornik simpozija "*Zvonimir kral' hrvatski*" (in preparation; referate is held on the symposion in 1989).

question maybe can reveal some features of development of medieval ideology of Croatian nobility and the place of royal sanctity in it.

Nobleman could, except in this more or less informally organised circles of identification, belong to some other specific organisations. The most famous of them now is already mentioned brotherhood of "*twelve noble kindreds of Croatian kingdom*".

This institution can be treated as proved, especially in the period of king's Louis's reign[135], but its function is not quite clear.

The first problem in defining that institution appears because we do not know any official document issued by the same institution or any administrative body which would lead it. The members of the institution were the members of twelve Croatian noble kindreds (*Kačić, Kukar, Šubić, Čudomirić, Svadčić, Mogorović, Gusić, Lapčani* (with special branch of counts of Karin[136]), *Poletčić, Lasničić, Jamomet and Tugomirić*. The majority of these noble kindreds held possessions and their seats on the territory of the county of Luka (Ostrovica)[137] and usually held

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135 The institution is mentioned last time in 1459 (S. Ljubić, op. cit., vol. X, p. 146). Before that it is mentioned in charters only during the Louis's reign (CD, vol. XI, Zagreb 1913, p. 631; vol. XIII, Zagreb 1915, p. 86, 88; vol. XIV, Zagreb 1916, p. 268).

136 For problem of relations of kindred Lapčani with family of counts of Karin see: M. Barada, *Lapčani*, Rad JAZU, vol. 300, Zagreb 1954, p. 473-535.

137 According to the survived registers of the chapter of Zadar from the second half of the 14th century the seat of *Šubić* kindred was *Bribir*, those of *Kačić Nadin, Bistrovina, Kačina Gorica and Blizinjani,* those of *Mogorović Grabrovčani and Mogorova Dubrava*, that of *Lapčani* in *Tičić* and *Karin* (special branch of counts), that of *Jamomet* in *Podlužani* and *Rosulje*, of *Kukar* in *Sušac* and of *Lasničić* in *Bičina* (see: D. Karbić, *Agrarni odnosi na području Lučke županije*

distinguished positions in local administration[138], but in these cases the documents are issued by them as holders of that position and not by the already mentioned institution.

It is worthy to mention that on the same territory not only members of this kindreds lived, but the others as well (e. g. *Virević, Stupić, Satojević* etc.) and that some of the members of this institution had no possessions in Luka, but in surrounding counties (e. g. *Gusić, Suadčić*). Some of the above mentioned kindreds had larger possessions and their seats in some other counties (e. g. *Gusić* in *Krbava*, *Tugomirić* in *Bužani*, *Mogorović* in *Lika*, *Kačić* in *Omiš*).

One fact which somehow escaped to the historians who dealt with this institution is that members of some of this kindreds are mentioned as noble retainers of bans from the Šubić kindred what can also be regarded as one reason for their distinguished position in the period of reestablishing of royal power, especially because several features of administrative organisation in Croatia get its almost final shape in Šubić's period.

Beside different members of Šubić kin[139] in the retinue of bans and counts are listed members of kins Gusić[140], Svadčić[141], Tugomirić[142], Virević[143] and Lasničić[144]

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krajem XIV. stoljeća [Possessionary relations in the county of Luka at the end of the fourteenth century], Historijski zbornik, vol. XLIII (1), Zagreb 1990, p. 20).

[138] Members of these families were usually judges of the noble court of Luka county in *Podgrađe* and other officials of the same county (pristalds etc.).

[139] On the court of count George in Klis is mentioned Stanislav *de Birberio* (CD VII, doc. 152, pp. 173-174); in Solin in the time of concluding of marriage contract between counts of Gorizia (Görz) and Šubićs (in 1300) are mentioned *domini Georgius, Marcus et Gregorius nobiles de Berberio* (CD VII, doc. 349, pp. 394-395); In Solin in 1312 as follower of ban Mladin II and his

and is possible on the account of names and places to suppose the existence of some other noble kins (e. g. Mogorović).

The other problem appears because we do not know any common act of the institution except for very doubtful negotiations of their representatives with the king Kálmán in the year 1102. This story is written in so called *Appendicula* (appendix) to the Chronicle of Thomas, archdeacon of Spalato, somewhere in the 14th century, i. e. in the time of real existence of the institution, in the literary circle of Split, but was

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brothers among *viris nobilibus* is mentioned *Georgio Jurisig de Berbirio* (CD VIII, doc. 256, pp. 308-310); in 1321 in Bribir is mentioned as *pristaldo Hrano filio condam Gradini de genere* ***Subigh*** (CD IX, doc. 16, pp. 21-24). Some of the other people mentioned in the sources can be as well determined as members of kin Šubić but they are listed in sources only by personal names and it will request more detailed prosopographical research what is not appropriate at this point.

[140] *cognatus noster comes Churiacus* (CD VII, doc. 279, pp. 322-323);
comite Budislavo Corbaviensi filio quondam Curiaci (CD VIII, doc. 72, pp. 76-77);
comite Budislavo Curiaci filio (CD VIII, doc. 256, pp. 308-310);
Jacobum comitem de Hatugha de generacione ***Gussigh*** (CD VIII, doc. 402, pp. 497-499);
Ladislauuo filio comitis Jacobi Volkouig de genere ***Gussigh*** (CD IX, doc. 42, pp. 52-53).

[141] *comite Neliptio filio quondam Georgii* (CD VIII, doc. 72, pp. 76-77);
Izano comite et Nelipchio voyuoda nostro fratribus filiis condam Georgii Izanig (CD VIII, doc. 402, pp. 497-499)

[142] *Cosma iuniore filio condam Michaelis de progenie* ***Tugomerigh*** (ibid.).

[143] *Tolenum filium Johannis de progenie* ***Vireuigh*** (ibid.).

[144] *Hlapcio filio condam zupani Tolse* ***Laznichig*** (CD IX, doc. 42, pp. 52-53).

never used in that period for any political or legal purpose[145]. Another appendix added to Chartulary of monastery of St. Peter in county of Poljica about the rules of appointing of ban in Croatia before the personal union with Hungary also belongs to the same period. It is worth mentioning that in both of these literary works the name of the institution is not written as *duodecim generationum* but as *duodecim tribus* which give us the idea that the writers were not very familiar with Latin terminology of this institution and legal acts at all, but that they translated already mentioned term *pleme* in Latin according to their knowledge of both languages[146].

On the other hand, it is possible to solve those two problems if we treat that institution only as some special right. As a proof for that we can quote different charters issued in that period in which some noble kindred with bigger or smaller success claim that it has the same rights as *noblemen of twelve kindreds of Croatian kingdom*. The most important of these cases is already mentioned case of the kindred *Virević* in the county of Luka which is in the same time the first mentioning of the institution itself.[147]

The less successful, but for our purpose very interesting, claim was that of kindred *Grubić* in the county of Cetina from 1360 put in front of the queen Elisabeth, king's mother, sent to Croatia and Dalmatia to reform the king's right in Croatia, in the town of Zadar. The *Grubić* kindred was in that time into dependant

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[145] For further information see: S. Antoljak, *Pacta...* and N. Klaić, *Povijest Hrvata u razvijenom srednjem vijeku* [History of Croats in the late Middle Ages], Zagreb 1976, p. 604-605.

[146] As I explained in the chapter about kindred's terminology translation of modern Croatian term *pleme* correspond to English word *tribe*, but in the legal acts in medieval Croatia it was always translated as *generatio* (*kindred*).

[147] See subchapter about the role of woman.

position to the count of Cetina John *Nelipić*, son of duke Nelipac, and tried in that way to escape that obligation. They claimed

> *quod ipsi in districtu de Chetyne ab auo et prothauo semper nobiles et omni eo nobilitatis titulo, quo nobiles duodecim generacionum Regni Croatie potirentur, vsi semper extitissent et hereditatem in dicto districtu Chetyne habuissent.*

The queen appointed commission of twenty two other noblemen to explore the case. The commission proved that Grubić kindred was always treated as a noble one, but that they didn't have *de nobilibus duodecim generationum regni Croatie ortum*, and because of that decided in the favour of count John.[148]

If we accept that the membership in the institution ment some special stratum of nobility there emerges a new problem. In the year 1351, after the campaign of Naples, king Louis confirmed the Golden Bull of king Andrew II from 1222 in a slightly changed form and gave to all noblemen in all his kingdoms *unam et eadem nobilitatem*[149]. In that way it looks a little bit strange that queen didn't know anything about that important law and made open differences between different strata of nobility. On the other hand, king's Louis policy towards the nobility, especially in Croatia, was very flexible and not always constant according to possibilities and circumstances.

The other, less known, but also very interesting organisation is recorded in 1430. The chapter of Knin testifies that in front of it came

> *viri magnifici domini Iohanes comes Cetine, Clissieque et cetera necnon regnorum Dalmacie et Croacie pridem banus, item domini Karulus et Thomas comites Corbauie in suis et aliorum fratrum suorum comitum*

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148 CD XIII, p. 86.

149 J. M. Bak, P. Engel, J. R. Sweeney, op. cit., p. 11.

Corbauie personis videlizet comitis Iwankonis, comitis Georgii, comitis Nicolai et comitis Frankonis necnon ceteri singuli et vniuersi nobiles, proceres et possessionati Coruati tocius regni Croacie et banatus signanter nobiles sedis et comitatus Tininii, Luke, Like, Busane, Corbauie, Lapacz, Pzet, Humilane, Zekolsky, Seerb, Policie et Vnacz in suis et aliorum vniuersorum cuiusuis status et condicionis nobilium predicti regni Crauacie et banatus personis, item Iwanko de Thurane in sua et vniuersorum fratrum et proximorum suorum personis ... ***vnanimiter et concorditer fecerunt et ordinauerunt talem concordiam et vnionem atque fraternitatem perfectam*** *inter se ipsos primo ad laudem omnipotentis Dei a quo rite totum bonum fundatur exordium et ad fidelissima seruicia serenissimi regis nostri Sigismundi (!) et per consequens sacre sancte (!) chorone (!) Hungarie, necnon ad laudabiles et antiquas consuetudines et libertates ac ... dicti regni nostri Croacie et sedium predictarum*

because of some problems they have with Wlachs and

ecciam (!) contra quospiam qui vellent sew nitereretur (!) libertates et consuetudines nostras siue predicti regni Croacie infringere eodem modo contra ipsos procedere teneantur semper obseruando fidelitatem domini nostri regis et sacre sancte (!) chorone (!) Hungarie et in nullo excedendo libertates et conwenciones (!) predicti regni Croacie et sedium predictarum. ***Insuper determinauerunt de qualibet predictorum comitatum uel sedium elegantur quatuor probi et nobiles viri qui semper annuatim semel debeant congregari et conuenire cum magnifico domino comite Iohanne predicto et magnificis viris comitibus Corbauie predictis, videlizet in festo Michaelis archangeli apud sanctum Bartholomeum sub Tininio*** *ac pluriens tociens quociens oportunum fuerit et quandocumque prefati magnifici domini uel aliqui*

ipsorum cum predictis electis probis et nobilibus viris eorum vnico consilio et pari determinatione disposuerint, ordinauerint, fecerint et determinaverint pro factis et libertatibus ac conswetudinibus (!) dicti regni Croacie et sedium predictarum. Hac totum regnum predictum, magnates et nobiles sedium predictarum ratum, gratum et firmum nullo discrepante inviolabiliter debeant obseruare ... Ecciam (!) volentes et determinantes quod illi quatuor probi nobiles viri de qualibet sede predicta electi semper annuatim in predicto festo sancti Michaelis archangeli possint confirmari uel alios probos viros loco ipsorum instituere sub eodem robore et firmitate.

They also prescribed very high fines of which one half

cedat in cameram regalem et alia medietas predicte fraternitati Croatorum.[150]

Special importance of this document lies in the fact that in it is recorded foundation and basic features of acting of one noble association. Very interesting is that founders' use of the term *fraternitas* for this organisation, close to the kinship terminology as well as to the contemporary ecclesiastical terminology. Another important moment is that the leading group (peers) and the administrative body to whome was entrusted administration of the association are carefully described, as well as the way of acting (annual and extraordinary meetings) and high fines against breakers of the common oath. Interesting is also the fact that king as guarantor is mentioned (through payment of the fines) for the observance of the alliance.

Unfortunately, the later history of the same confraternity is not known. Probably it didn't exist for a very long time and wasn't too important for further development. But, also in this case, so clearly described foundation of the

150 MOL, DL 38517, 26.07.1430.

organisation of this type is by itself very important and significant act which in some way testifies of the strengthening of the solidarity based on the wider range than it was the solidarity of a particular kindred.[151]

151 It is worth to mentioned that founders of the organisation stayed in the range of terminology used for relations between relatives (*fraternitas*).

The Structure of the kindred's property

The kindred's property consisted of ancient estate and of acquired property. Tripartitum describes very carefully features connected with ancient property and only accidentally touches the other types. It only refers to the estates "*bought on the money of the father or the mother*", those received as compensation and as *quarta filialis*.

The Croatian legal sources also shows a similar situation. The law code of Poljica gives much place to the questions connected with *plemenšćina* what is its term for ancient estate. The law code of Novigrad does not use any special distinctive term, but refers only on the possession in general, usually named with Italian word *possessione*. In spite of that, some features it is referring to are very similar to those of the law code of Poljica and of contemporary charters and because of it is possible to treat it as referring to ancient estate.

The law code of Poljica explicitly defines difference between the ancient estate and other, acquired property. The article called "*Chapter about inherited lands*"[152], I already mentioned in the subchapter speaking about paternal power, states that beside the ancient property exists the other property acquired by the individual by proper labour. This property can be freely disposed by the owner during his lifetime or it can be freely testamentary left to the anyone he wants.[153]

Another distinction between the types of property expressed in the law code of Poljica is distinction between movable goods and real estate. As real estate is

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152 Although the original title is "*Kapituj od bašćin*", article starts: "*Zakon od plemenšćin jest ovoj*" (The law about ancient property is this). It seems that terms *bašćina* and *plemenšćina* had more or less the same meaning.

153 M. Pera, op. cit., pp. 444-447 (article 49).

regarded anything that cannot "*move from some place*", i. e. "*land or house, palace with one or two floors, the firmly built hut in the village, or church or fort or firmly built stove*". In contrast to that a hut covered by wheat can be treated as movable. As immovable are also treated mills and natural watercourses and as movable the watercourses made by someone's labour.[154] This distinction between movable and immovable things was very important in the system of division of property, because the movable property was treated as something what is easy to divide in just way.[155]

The main characteristic of the ancient estate was that it was inheritable for all male members of the kindred and not only in the male descendancy of some particular owner. This rule was applied not only on the questions connected with the inheritance and division of the property, but on all transactions connected with it (selling and buying of the property, mortgage, confiscations etc.).

One of the very interesting features is that different rules are applied in the trials connected with the ancient and with the others estates. For example, if the trial was conducted about the other types of property a person who did not come to the court after the third received summon automatically lost the case and the sentence has been proclaimed in the favour of the other. But, in the cases connected with ancient estate it was not the case and the court had to find the way to force him to respond on the summon. Unfortunately, in the article referring on that situation is not stated the further procedure.[156]

This feature is recorded in the document issued by the duke Charles of Durazzo in 1370. The duke disregarded according to the Croatian customary law

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154 idem, pp. 446-449 (article 50).

155 This opinion is explicitly stated in the same law code in the article "About division" (idem, pp. 430-431, article 33).

156 idem, pp. 416-417 (article 5b).

sentence against Vukac and Ostoja Nenadić issued by the his court in Zadar. The duke testifies that the sentence was done

> *de conscilio certorum iurisperitorum et iudicum curie nostre Latinorum, qui consuetudines Crohacie tamquam inassueti in eis penitus innorabant*

and because the accused did not come to the court after the second summon the questioned property belonged to the other side, count John I Nelipić. Vukac and Ostoja alleged the protest against the sentence and trial was transferred to the judicial seat of Knin

> *ubi iura Crohatorum convenienter redduntur et clarius elucidantur, per homines antiquos Crohacie in talibus expertos*

and they explained that this sentence was in contradiction to the law.[157]

The difference between the trials for ancient and other property is also stated through the fact that none of the countrymen can help to the foreigner if the case is about ancient estate under the fine of 50 lira.[158] The equal fine was prescribed in some cases of mutilation (cutting of the ear or breaking of a tooth).

A procedure of the selling of the ancient estate is carefully described in the law code of Poljica. The first mentioned characteristic is that all transactions connected with it must be performed publicly and only after it had been offered to the relatives. Selling must be proclaimed three times on the three assemblies or in the presence of the count. Before the selling that estate must be estimated by "honest estimators".

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157 J. Kolanović, *Hrvatsko običajno pravo prema ispravama XIV. i XV. stoljeća* [The Croatian customary law according to the charters of the fourteenth and fifteenth century], Arhivski vjesnik, vol. 36, Zagreb 1993, pp. 95-97.

158 M. Pera, pp. 424-425 (article 27).

Very interesting feature is that person who sold ancient estate did not have the right to by it back. In contrast to that it is explicitly stated that his kinsfolk had the right to by it, but in the period of one year. If two kinsmen want to by it, the advantage has the one who is closer relative of the person who has sold it. If they are equally close to him, both have the right to buy it, but then they must to divide it as it would be inherited.[159]

This feature that person who sold the ancient property did not have the right to buy it back is not proved by the other sources. Very common feature in the registers of the Chapter of Zadar is buying back the property and sometimes even after a very long time.[160] It seems that the rule from the law code of Poljica expresses only local custom, which did not apply on the wider territory. The reason for such a rigid attitude is not stated, but it seems that the county did not want to stimulate the selling of the ancient estates.

The same procedure as for selling was used during the other transactions. For instance, when someone wanted to change the ancient estate with somebody, their kinsfolk had a right to force them to change it with them and not out of the kindred. But, if they succeed to change it and confirmed it by the charter or by pristalds before the relatives reacted, the relatives had the right to buy it back on the same manner as in the case of selling.[161]

The law code of Novigrad refers to this question very briefly, but its description is more or less the same as that of law code of Poljica. It also specifies

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159 idem, pp. 448-449 (article 51).

160 This feature is usually expressed through marginal notes upon the same document in which is recorded transaction. That document is than cancelled and in the note is written the reason, date and wittnesses of this act.

161 M. Pera, op. cit., pp. 450-451 (article 52).

that period for the announcing of the possible selling or mortgage is one month. As the possible opponents are, except relatives, mentioned also the creditors of the owner.[162]

This procedure is very well documented in the charters. A good example can be found in the Croatian charter issued by the judicial seat of Lapac in 1448. In this document the chatelaine of Rmanj Dragovola and noble judges of the county testifies that nobleman George, son of Charles from Stri`ići, asked their permission to sell or mortgage his ancient property because of necessity caused by the irruptions of Ottomans. They gave him permission, but only in the case that his "*brat'ja*" (brothers) from Stri`ići allow that to him. He was obliged to ask first them if they want to buy it, then if they not all other countryman from the Lapac county and if none of them want to buy it, he could sell it to the nobleman of the realm whom they allow. The whole procedure was lead by the pristalds of the same court.[163]

As distinctive feature of ancient property toward another types the law code of Poljica uses the fact that none could be expelled from it without trial, and if he held it for more than 30 years he could not be sued for it. The only who had a right to sue it were the kinsmen, but before the accusation they had to prove that they are closer relatives of the former proprietor of this land then the person who hold it. It seems that these cases could be raised even after the afore mentioned period.[164]

It is not quite clear why the law code treats it as a distinctive feature. Usually no property can be alienated without the decision of the court. It can probably be understood that the ancient estate cannot be confiscated or alienated from the kindred as the other property in the favour of county or foreigners.

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162 M. Barada, op. cit., p. 170 (article 22).

163 Đ. Šurmin, op. cit., pp. 175-178.

164 M. Pera, op. cit., pp. 462-463 (article 62).

According to the same law code lawsuits for the ancient property can be performed only in front of the count and the county judges. It seems that other cases can be solved by arbiters. Even in the case that accusation is put in front of the count, the accused could refuse to answer on it and he could insist to be called according the usual procedure. In that case he has right not to except three official summons and after that he can ask for delay for finding of the *procurator*, who should speak on his behalf. It seems that in the case of ancient estate he had a right on three such delays. After all that the court must order the investigation on the field lead by pristald, but even during this investigation the accused can ask for the new delay for the presenting of the proofs for his right on this piece of property.[165]

The procedure of proving that some property belong to someone was the following. The strongest credibility is given to the charters issued by some place of authentication or the court, as well as from the rulers and lords. If the charters did not exist, the right on this estate can be proved by taking of an oath with oathhelpers. If both sides has the charters, they must be carefully examined and if it is not possible to solve the problem on their basis rights can be proved by the taking of the oath too. As a proof for someone's right can be also taken the long and peaceful possession of some property.[166]

Already explained features connected with property also shows remarkable similarities with the system described in Tripartitum. The more exact evaluation will be possible, as I already mentioned speaking about other features only after very detailed and extensive research of all surviving material, what in some extent exceeds the limits of this work.

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165 idem, pp. 464-465 (article 63).

166 idem, pp. 476-477 (article 73a-73c).

Instead of conclusion

The system described in this my paper and in E. Fügedi's article shows a great level of similarity. Unfortunately, I succeeded to search only some of the features concerning structure of Croatian noble kindreds and that only over one limitid body of sources. Because of that these results may not show totaly precise picture of the organisation of the kindred.

Beside that, the nature of the main sources (customary law codes) does not allow me to take some of the results as granted for all Croatian kindreds, but it ruther seems that sometimes they recorded only particular customs of the relevant region. The other problem appears because they were writen for the different public (the law code of Poljica represents real customary law code of the county, but the law code of Novigrad can be ruther treated as memento for judges and other officials of the Venecian government not acquainted with the customary law of Croatia).

The major comparative material, received through E. Fügedi's study of structure the Hungarian kindred as described in the Tripartitum, put in front of me similar problems. First problem is whether the rules he recorded represented real customary law of all Kingdom of Hungary or they just acquired that position in the legal system exactly through his elaboration. The second problem is that a lot of Verböczy's elaboration represents not only record of the legal theory, but ruther author's view on some questions (for example explanations he mentioned during the describing of some feature).

In spite of that the general features in both customary law traditions can be treated as known and comparable. It seems that system represented in them was basicly the same, although different in the some particularities.

The most obvious difference is that connected with the question of dowry. The Croatian customary law codes treat it similarly to the institutions of Roman law (only

as the money received from the bride's family and never as *Morgengabe*). But, the treatment of this money as personal property of the bride, which cannot be alienated, is the common feature in both legal traditions.

It seems that father had slightly stronger position towards the offspring in the questions of inheritance as it is recorded in Croatian than in Hungarian customary law. On the other hand it seems that the position of the father in the everyday's life was stronger in the Tripartitum, than in Croatian law codes.

The very important features connected with questions of the property shows quite a strong resemblance. In spite of that only the further research and more detailed elaboration will show the exact picture of these features and enable their better comparision (as well as of many other features mentioned in this paper).

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