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EUROPEAN *BARBARICUM*? NON-SIMULTANEITY OF THE MIDDLE AGES: GERMANIC, SLAVIC AND BALTIC SOCIETIES

Despite their inner modalities, notions like *medieval Latin Christendom* or *feudalism* are useful or sometimes indispensable *social wholes* (*historical abstractions*) of historiographical work. And even if these etic concepts face the criticism, they remain (occasionally, with variations or epithets) as a requirement for organising the facts of historical reality. Obviously, there are differences in chronology, territory, intensity of different phenomena, their forms and content of medieval Latin Christendom¹ as *ipso facto* subject to region, there are modalities and inconsistencies of European feudalism. These problems are the matters of words, terms, concepts and their substance without which the understanding of history and, first of all, writing history would be impossible. Herewith, all these notions and concepts are also a part or even a foundation of narratives. Therefore, they sometimes seem to be steadfast: They belong to scholarly tradition and strengthen it. Nonetheless there is always a place for *new* or *old new* ideas.

Could Europe, before arrival of the Christianity, be interpreted as common space with structural similar customary forms of belief, tribal structure of the society and orality? Certainly, the Christianization of different European regions was non-simultaneous, but this process was merely a trigger of changes in particular region. It is suggested that Christianity clashed with the polytheistic, pantheistic societies in the north of the Alps in the period between 5th-14th centuries, and the differences between these societies should possibly be seen in degree than in absolute scale. Without a doubt, with gradual Christianization the social practices, which by the contemporaries were seen as *barbaric* and *heathen*, faded. But these forms of customary belief vanished slowly and the changes

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¹ J. Szűcs, *Les trois Europes*, L'Harmattan, Paris 1985, pp. 55-66; J. KŁOCZOWSKI, *Młodsza Europa: Europa Środkowo-Wschodnia w kręgu cywilizacji chrześcijańskiej średniowiecza*, Państwowy Instytut Wydawniczy, Warszawa 1994, pp. 23-57.

were not entire in all the fields of social reality. And even if one society experienced changes, the other was still *stuck* in its own present.

According Reinhard Koselleck's theory of *multiple temporalities* (*Zeitschichten*), the societies experience simultaneously phenomena and processes with different roots in time and duration. Thus, historian deals with stratigraphy of time (*plusieurs strates temporales*) and its multilayered phenomena². More complex picture could be observed juxtaposing non-simultaneous societies, if these could be understood as typologically close. This article should be interpreted not as an exact analysis of particular case or problem. It is rather a purposeful intellectual experiment to juxtapose in space and time distant Germanic, Slavic and Baltic societies and consider the question: May these non-simultaneous societies in tension between customary norms of belief and Christianity be interpreted *in corpore*? Possibilities and limits of thinking and understanding different societies from the point of historical anthropology will be outlined.

To begin with, the article will focus on presentation of the problem and possibility of what could be called European *barbaricum*. Specifically, is there a rationale to speak about European *barbaricum*? Herewith, some relevant concepts will be discussed. Then, some non-simultaneous historical realities that are interpreted as structural similarities will be juxtaposed. Could these be seen as analogous anthropological situations?

1. The Problem

The theoretical background of history as a modern discipline was laid in its scientific infancy in 19th century: History, as an empirical science, focuses on the historical individuality, its particularity, and development. It suggests that the task of historians is to uncover the exceptionality of particular historical phenomena. Indeed, historical science varies nowadays, but despite some exceptions it is still a main stream in historical

² R. KOSELLECK, «Über die Theoriebedürftigkeit der Geschichtswissenschaft», in ID., *Zeitschichten. Studien zur Historik*, Suhrkamp, Frankfurt am Main 2003, pp. 304-306. The critical analysis of Koselleck's theory: H. JORDHEIM, «Against Periodization: Koselleck's Theory of Multiple Temporalities», *History and Theory*, 51/2 (2012) 151-171. E. LE ROY LADURIE, «La civilisation rurale», in ID., *Le territoire de l'historien*, Gallimard, Paris 1973, pp. 141-142; ID., «Système de la coutume», in *ibid.*, pp. 223-224.

research. It is welcome because from 19th century until now all high qualified and ranked editions of historical sources were issued in the spirit of classical German source criticism and *Historismus*. However, the core of historiography is an interpretation, understanding (Johann Gustav Droysen).

More than forty years ago, German scholar Reinhard Wenskus criticized the research of so-called Germanic, Slavic, Celtic and Baltic *Altertumskunde*³ as selective, narrow, and based on the criteria of language⁴. Instead, he expressed an idea based on the ethno-sociological assumptions. In particular, he claimed that Germanic, Slavic, Celtic and Baltic societies, despite their different (individual) history, had similar tribal institutions. According to Wenskus, all phenomena and, primarily, historical sources about them should be interpreted in relation with each other, and outside the national and lingual segregation. However, his ideas did not become very popular and it is possible to mention some credible causes for this lack of acceptance. First, ethno-sociological assumptions differ from the classical rules of the game in historian's craft. Second, resulting directly from the first, is the enormous scope of the idea proposed by Wenskus and all the problems related: different languages and amount of information.

Presumably, the Polish medievalist Karol Modzelewski began to realize this conception in late nineties of the 20th century Modzelewski juxtaposed Germanic and Slavic social institutions which he discovered as structurally similar in respective historical sources⁵. Afterwards, he published his *opus magnum* in which Modzelewski restricted to Germanic

³ So called *Antiquity studies* include Early Medieval History, archeology, ethnology, linguistics, mythology: *Reallexikon der Germanischen Altertumskunde*, De Gruyter, Berlin 1973-2008, Bd. 1-35. In this article the analyze will be restricted to the Germanic, Slavic and Baltic societies.

⁴ R. WENSKUS, «Probleme der germanisch-deutschen Verfassungs- und Sozialgeschichte im Lichte der Ethnosoziologie», in H. BEUMANN (ed.), *Historische Forschungen für Walter Schlesinger*, Böhlau Verlag, Köln – Wien 1974, pp. 19-21; F. GRAUS, «Verfassungsgeschichte des Mittelalters», in H.-J. GILOMEN – P. MORAW – R. SCHWINGES (eds.), *Ausgewählte Aufsätze von František Graus*, Jan Thorbecke Verlag, Stuttgart 2002, pp. 249-251 (Vorträge und Forschungen, 55).

⁵ K. MODZELEWSKI, «Culte et justice: Lieux d'assemblée des tribus germaniques et slaves», *Annales. Histoire, Sciences Sociales*, 53/3 (1999) 615-636; ID., «Opole, centena, pagus. Versuch einer komparativen Auffassung der Landgemeinde und Territorialverwaltung», in T. WÜNSCH (ed.), *Das Reich und Polen*, Jan Thorbecke Verlag, Ostfildern 2003, pp. 119-127 (Vorträge und Forschungen, 59).

and Slavic societies comparing the most important *barbaric* communal structures (tribe, kin, family) of the first millennium A.D. The optics of Modzelewski's inquiry is not focused on these structures itself, but to unveil the forms of thinking and worldview. Tribe, kin and family are just clear visible structures which *croisée* interpretation could lead to a better understanding of pre-Christian Europe. Despite their distance in space and time, different Germanic and Slavic tribes are seen as experiencing similar cultural circumstances (analogous anthropological situation). Finally, contrary to Rémi Brague or Gerard Delanty, he explicated an inconvenient and, therefore, groundbreaking statement: The roots of European civilization lie not only in Roman law, Greek philosophy and science and Jewish-Semitic Christianity cultures, but in the European *barbarian* origins as well⁶.

Modzelewski's book, its idea about common *barbaric* space of Germanic and Slavic tribes (Celts and Balts were deliberately left aside) and non-simultaneous analogous anthropological situation of different societies was criticised by Stefano Gasparri and Patrick Geary. These prominent historians of Early Medieval Europe oppugned the existence of such a pan-Germanic society and the way how Modzelewski (re)constructed⁷ it. Paradoxically, the Polish historian never used the term pan-Germanic. Contrarily, the risky way chosen by him was grounded on the conception of *longue durée* and fundamental structural similarities (*mentalité*) which, in this case, could be generalized (reduced) as *barbaricum*.

Without trying to catch everyone's reaction, *pro et contra*, how could this debate be developed further, bringing together inconsistent positions and their arguments for the discussion? Certainly, it should not be underestimated both individualizing and generalizing points of view. In this place considering the possibilities of generalizations some relevant concepts must be discussed.

⁶ Id., *Barbarzyńska Europa*, Wydawnictwo Iskry, Warszawa 2004. The book was translated from polish into main European languages; english: Id., *Barbarian Europe*, Peter Lang, Berlin – New York – Wien 2014.

⁷ «Intervista a Karol Modzelewski a cura di Paola Guglielmotti e Gian Maria Varanini», *Estratto da Reti Medievali Rivista*, XI/1 (2010) 39-47.

2. Concepts

Historiography is full of concepts and despite their discrepancy are in use and, for the sake of frail clarity, most of them should function. The *Early Middle Ages* which is also just one of many concepts and has its own origins⁸, as a field of study and research from the 19th century generated plenty of notions which were (re)loaded with over-weighted content. Partially, these notions are used by the scholars nowadays, but a lot of them are criticized as incorrect. Considering the scope of the subject, some remarks should be made about some problematic concepts which were already or will be mentioned later.

Such wholes as Germanic, Slavic or Baltic societies never existed as homogenous formations⁹. These are just generalizations and simplifications that enable to cover a wide space. Under these collective terms lurk different groups which spoke different dialects or even languages, but lived in the neighbourhood¹⁰. Franks, Salian Franks, Allemani, Bavarians, Thuringii or Saxons, just the most prominent to mention, are understood as Germanic tribes. The Slavic tribes –without doing any distinction between east and west– such as Polans, Silesians, Masovians, Vistulans or Pomeranians and Dregovichs, Drevlyans, Krivichs or Severians are often mentioned in historical sources of the 10th-12th centuries. Whereas the Balts, for example, Prussians, Curonians, Latgalians, or Lithuanians, appear constantly from the 11th-12th centuries.

Is it reasonable to interpret these groups as tribal societies? Although the use of the term *tribe*, *tribal* in scholarly literature is contested due to the ideological overtones, it seems there is not yet such a term which could replace it in this context¹¹. In this article, three criteria describe tribal

⁸ I. N. WOOD, *The Modern Origins of the Early Middle Ages*, Oxford University Press, Oxford 2013.

⁹ J. JARNUT, «Germanisch. Plädoyer für die Abschaffung eines obsoleten Zentralbegriffes der Frühmittelalterforschung», in G. DILCHER – E.-M. DISTLER (eds.), *Leges – Gentes – Regna. Zur Rolle von germanischen Rechtsgewohnheiten und lateinischer Schriftradition bei der Ausbildung der frühmittelalterlichen Rechtskultur*, Erich Schmidt, Berlin 2006 69-78, here p. 77.

¹⁰ W. POHL, «Conceptions of Ethnicity in Early Medieval Studies», *Archaeologia Polona*, 29 (1991) 39-49, here pp. 40-41, pp. 47-48.

¹¹ Id., «Introduction», in W. POHL – C. GANTNER – R. PAYNE (eds.), *Visions of Community in the Post-Roman World: The West, Byzantium and the Islamic World, 300-1100*, Ashgate, Farnham 2012, pp. 10-12.

society: First, the social organization and the hierarchical structure were based on the kinship, blood relationship; second, almost all early written records date back when these societies had faced the Christianity; third, without a reference to *interpretatio Romana*, all mentioned societies were polytheistic or pantheistic¹² before Christianization.

Therein, it follows that all these and later on will be mentioned parallels could be reduced to the general understanding of *barbaricum*, which should denominate the long lasting period of European history somewhere from so-called *Völkerwanderung* and first Christianization missions till the Christianization of last European pagan polity Grand Duchy of Lithuania in the end of the 14th century. In other words, it was the period when different *gentes* were understood by the Romans as others (*barbari*), and this *otherness* was transported by Christians later. When the former *gentes* were Christianized, this conception was absorbed by them and transmitted further.

Obviously, the understanding of *barbaricum* as a space straight outside the Roman empire (beyond the *limes*) approximately between 3rd and 6th centuries¹³ dominates in historiography. In the European part it is discussed about *gentes germanorum*. Thus, the problem is that a great number of *gentes*, which were more remote from civilization centre and, therefore, mentioned in later centuries, remain outside the understanding *in corpore* what was the transalpine Europe and its tribes between Late Antiquity and first attempts of Christianization which chronologically extremely varies. It is evident that the time gap between these two phenomena (processes) in some of the mentioned societies lasted half a millennium or even more. Despite these challenges, some not numerous examples of the last year show the open-minded re-discovery of *neglected barbarians* and propose few interpretations of how such a research situation has been achieved¹⁴.

¹² H. ŁOWMIAŃSKI, *Religia słowian i jej upadek*, Państwowe Wydawnictwo Naukowe, Warszawa 1986; R. BARLETT, «From Paganism to Christianity in Medieval Europe», in N. BEREND (ed.), *Christianization and the Rise of Christian Monarchy: Scandinavia, Central Europe and Rus' c. 900-1200*, Cambridge University Press, Cambridge 2007, pp. 47-72.

¹³ P. COSME, «Barbaricum», in B. DUMÉZIL (ed.), *Les Barbares*, PUF, Paris 2016, pp. 291-296.

¹⁴ F. CURTA, «Introduction», in F. CURTA (ed.), *Neglected Barbarians*, Brepols, Turnhout 2010, pp. 2-5 (Studies in the Early Middle Ages, 32). Already in the twenties of the 19th century Leopold von Ranke declared that Slavic, Lettisch [Baltic] and

Supposedly, *neglected barbarians* and the *old ones* should be seen and interpreted together.

Without a doubt, the interpretation proposed here is complicated. It contravenes the main principles of periodization (e.g. the simultaneity of the phenomenon in particular historical space). But as mentioned above, the leading theoretical axis of this article is based on the conception of different duration of similar phenomena and the possibility of their synchronization. It follows that this analysis should be grounded on the structural similarities during the *barbaricum* whose duration in different societies varied. Under the structural similarities fundamental super-individual, cross-period relative stable phenomena of long duration are understood. It is suggested that despite particular changes these phenomena may remain without substantial transformations.

According to the idea which in this article is proposed, Germanic, Slavic and Baltic societies were structured on the tribal organization and belonged to the heterogeneous European *barbaricum* which in Europe lasted till the last societies were Christianized.

3. Analogous Anthropological Situation?

The historical period between the 4th-9th centuries in German historiography is called a historical *Zeitfenster* (time slot)¹⁵ encompassing several processes and phenomena: 1. Migration period, 2. Contacts of Germanic tribes with Romans, 3. Building of early Germanic realms (*Reichsgründungen*). Unfortunately, this *time slot* was not characteristic for Slavic and Baltic societies by both its chronology and content. The space between the Baltic and Black seas inhabited by Slavs and Balts had contacts with Roman empire, but these were poorly recorded by written

Magyar tribes (!) had a peculiar nature: L. VON RANKE, *Geschichten der romanischen und germanischen Völker von 1494 bis 1514*, Verlag von Duncker & Humblot, Leipzig 1885 (1824), p. V.

¹⁵ G. DILCHER, «Leges – Gentes – Regna. Zur Rolle normativer Traditionen germanischer Völkerschaften bei der Ausbildung der mittelalterlichen Rechtskultur: Fragen und Probleme», in G. DILCHER – E.-M. DISTLER (eds.), *Leges – Gentes – Regna. Zur Rolle von germanischen Rechtsgewohnheiten und lateinischer Schrifttradition bei der Ausbildung der frühmittelalterlichen Rechtskultur*, Erich Schmidt, Berlin 2006, pp. 37-38.

sources. The archaeology gives much more information about Roman period in these regions. However, it is fair to admit that the Roman impact on Slavic and Baltic societies could not be measured as substantial. Herewith, the formation of early polities in these European regions was much later and dates back to the 10th century. Finally, the fourth not mentioned phenomenon – *leges barbarorum* – will be elaborated later.

In recognition of all differences, Christianity was that fundamental phenomenon that all these societies of customary forms of belief encountered. In this anthropological situation at the same time were recorded *ancient* and *new* realities and practices. In that tension, new social order and new values crystallized, but the past could not disappear traceless immediately. It faded slowly leaving sediments of the past all the time. Hereinafter, some parallels, or in the words of this article, structural similarities, will be developed.

When the culmination of Medieval Europe is seen in the 12th-13th centuries and is associated with the Christianity in its organizational, ideological and intellectual internal and external expansion, it implicates that Christianity is an axis of the scholarly understanding what makes Europe to Europe in the Middle Ages. Considering that, the factor of religion or forms of belief is no less important interpreting what Europe was before or during the Christianization as *longue durée*.

At the ultimate phase of Saxon Wars at the end of 8th century, the burning of human remains beside the others customary pagan practice was interdicted by Charlemagne (*Capitulatio de partibus Saxoniae*)¹⁶. This rite was practiced by the Slavs and Balts and vanished in the Eastern Baltic sea region just in 14th century. During the expansion of the Teutonic Order and the Christianization to the no-man's-land in the eastern Baltic region some remarks were made about local customs. In 1249, in the Treaty of Christburg between Teutonic Order and Prussian nobility the later-mentioned had to undertake not to burn human remains anymore¹⁷. More than one century later, this *ritus gentilium*, as called in the sources, was recorded in Lithuania. The chronicler of Teutonic Order Hermann von

¹⁶ *Capitularia Regnum Francorum*, ed. A. BORETIUS, Impensis Bibliopolii Hahniani, Hannoverae 1881, p. 69 (Monumenta Germaniae Historica, I, 1): «[...] Si quis corpus defuncti hominis secundum ritum paganorum flamma consumi fecerit et ossa eius ad cinerem redierit, capite punietur [...]».

¹⁷ *Preußisches Urkundenbuch*, Hartungsche Verlagsdruckerei, Königsberg 1882, p. 161, Bd. 1.

Wartberge stated that in 1377 the remains of grand duke Algirdas were burned up together with his horses, armour and other stuff¹⁸.

There are some social institutions (e.g. retinue) understood as being characteristic in common to European tribal societies. The inheritance practice, succession order in different levels was one of them. This phenomenon began to change with the arrival of Christianity, however, the transformation was slow. The *agnatic primogeniture* which could be interpreted as a product of Christianization anchored during the 11th-12th centuries in Western Europe and some centuries later eastern of the river Elbe. But before it became an ordinary practice, in general, the societies discussed in this article had different understandings how the question of inheritance (patrimony) should be solved.

In 806 aforementioned Charlemagne left the document known as *Divisio Regnorum*, whereby, the Frankish realm after his death should be divided between his three sons¹⁹. But two of them died before their father. In turn, in the year 817 the *Ordinatio Imperii* was written down by the initiative of his left legitimate son Louis the Pious. Traditional Germanic inheritance right of all legitimate sons of the monarch and the preservation of realm's integrity were tried to combine by this document. Thus, the eldest son Lothar I was proclaimed co-emperor. Accordingly, two younger sons Pepin I and Louis the German have got western (Aquitaine) and eastern (Bavaria) parts of the realm²⁰. Finally, in 843 the three grandsons of Charlemagne divided the Frankish empire by the Treaty of Verdun. The line of hereditary succession was not subordinated to the principle of primogeniture (yet).

Structural similar examples could be observed in other societies. According the *Russian Primary Chronicle (Povest vremennich let)*, the grand duke Yaroslav the Wise after his death in 1054 left Kievan Rus to his sons²¹. Actually, Iziaslav I, as the eldest son (agnatic seniority), got

¹⁸ Hermanni de Wartberge, *Chronicon Livoniae*, ed. E. STREHLKE, Verlag von S. Hirzel, Leipzig 1863, p. 113 (*Scriptores rerum Prussicarum*, 2).

¹⁹ *Capitularia Regnum Francorum*, I, 1, p. 127.

²⁰ *Capitularia Regnum Francorum*, I, 1, pp. 270-271.

²¹ *Povest' vremennyh let*, Izdatel'stvo Akademii Nauk SSSR, Leningrad 1926, p. 161 (*Polnoe Sobranie Russkikh Letopisej*, 1): «[...] se zhe poruchaju v sobe mesto stol' stareishemu synu moemu i bratu vashemu Izjaslavu K''iev'' a Svjatoslavu daju Chernigov'' a Vsevolodu Perejaslavl' [a Igorju Volodimer'] a Vjacheslavu Smolensk'' i tako razdeli im'' grad''i [...]».

the centre of the realm with Kiev. The other parts of the polity went to the younger four sons. In the following centuries, the eastern Slavic lands were the place of never-ending disputes between the widespread kin of Rurik.

From the 10th century the Kingdom of Poland was ruled by the Piast dynasty. The bishop of Kraków Wincenty Kadłubek wrote in his chronicle that the king Bolesław the Wrymouth left a *testament* after his death, whereby, the realm was divided for his four sons²². The central part of the realm with Kraków went to the eldest son Władysław II the Exile. The younger three sons have got their portions of the realm and as in cases of Frankish empire and Kievan Rus had to recognize the supremacy of the eldest. From this moment, the Kingdom of Poland became a playground of hostility among different members of Piast kin for two hundred years.

The written references about the Balts are late and more numerous informative historical sources were found far later. In 1341, the grand duke of Lithuania Gediminas left the last pagan realm in Europe to his seven sons²³. Different principalities of the Grand Duchy went to the sons of Gediminas but contrary to Germanic and Slavic cases, the core of the realm went not to the eldest son Jaunutis which after several years was replaced by his elder brother. The main point in this historical situation is contemporaneous understanding about the nature of the realm and what kind of roles the members of ruling family (*stirps regia*) play.

What kind of remarks could be done observing in time and space distant historical situations despite the fact that in Western European historiography the *agnatic seniority*²⁴ is interpreted just as the phenomenon

²² *Kronika Mistrza Wincentego*, ed. A. BIEŁOWSKI, Drukarnia imienia Ossolińskich, Lwów 1872, pp. 363-364 (Monumenta Poloniae Historica, 2): «[...] testamentales mandat concribi codicillos. In quibus et avitarum vices virtutum et regni successionem quatuor filiis legat, certos tetrarchiarum limites disterminans aetenus [...]».

²³ *Origo regis Jagyelo et Wytholdi ducum Lithuaniae*, ed. N. ULASHNIK, Nauka, Moskva 1980, p. 115 (Polnoe Sobranie Russkih Letopisej, 35); S. C. ROWELL, *Lithuania Ascending: A Pagan Empire within East-Central Europe, 1295-1345*, Cambridge University Press, Cambridge 1994, pp. 263-288.

²⁴ Considering throne (patrimony) succession problem, *agnatic seniority* is understood as an order of succession when the brother(s) but not the son(s) of the decedent have anteriority to the inheritance. Interesting situations in Frankish realm: W. SICKEL, «Zum karolingischen Thronrecht», in E. HLAWITSCHKA (ed.), *Königswahl und Thronfolge in fränkisch-karolingischer Zeit*, Wissenschaftliche Buchgesellschaft, Darmstadt 1975, pp. 68-71 (Wege der Forschung, 247). About the non-existence of primogeniture principle in Merovingian and Carolingian realm:

of eastern European principalities contrary to the Western Europe? These non-simultaneous societies were built upon horizontal structured kinship, grounded on personal relations among very close blood linked members of the family or kin. The notion of the realm as a territorial whole either did not exist yet or was just in its infancy. Herewith, the principle of *primogeniture* was just in its formation and understanding that all sons of the monarch have the right to get their part in the realm was in common. It could be even suggested that this principle of inheritance was in use in other levels of the society.

The phenomenon of burning human remains was widespread among the polytheistic societies and in this place there is nothing to be excited about. This phenomenon and the regard to it, even it was peripheral, are a symptom of particular historical reality – a tension between customary forms of believe and Christianity – which these societies faced. As may be seen, all mentioned historical realities trace back to the societies which were either *pagan* or some centuries ago officially christianised. Finally, they all faced Christianity and one phenomenon they possessed in common was the collections of law. What kind of historical reality do we find analyzing so-called collections of law?

Thus, we are approaching the fourth member of Germanic *time slot* – *leges barbarorum*. There are a lot of contestable questions in the European historiography what the ancient Germanic law and its sources were about? Three of them have an exceptional value. First, what was the purpose of all these collections of law? Second, what was their efficiency in reality²⁵? And what do they express? The same questions could be raised dealing with the problems of Slavic and Baltic collections of law. Even if they did not work in practice or if they were nothing more than just *verbum regis*²⁶, they remain historical sources. Eventually, these collections of law are not the subject of this research by itself. These sources are important as a sign of a particular anthropological situation. In this article, collections of law

H. K. SCHULZE, *Grundstrukturen der Verfassung im Mittelalter. Das Königtum*, Verlag W. Kohlhammer, Stuttgart 2011, p. 77, Bd. 4.

²⁵ H. NEHLEN, «Zur Aktualität und Effektivität germanischer Rechtsaufzeichnungen», in P. CLASSEN (ed.), *Recht und Schrift im Mittelalter*, Jan Thorbecke Verlag, Sigmaringen 1977, pp. 449-502 (Vorträge und Forschungen, 23).

²⁶ P. WORMALD, «*Lex Scripta* and *Verbum Regis*: Legislation and Germanic Kingships from Euric to Cnut», in P. H. SAWYER – I. N. WOOD (eds.), *Early Medieval Kingship*, University of Leeds, Leeds 1977, pp. 105-108.

are interpreted not as an expression of legal norms or some abstract legal systems, but as relicts of thinking between orality and writing culture, as something that couldn't be done earlier but should be done now. In this case, it is not very important if these sentences sounded new as *verbum regis* or something what was an ancient customary order. This juxtaposition grounded on the Germanic, Slavic and Baltic legal codes aims to show just the most visible structural patterns which should justify the possibility to speak about these societies *in corpore*.

The early collections of Germanic law (*leges barbarorum*) were recorded between 5th and 9th centuries. Chronologically it coincided with the Christianization of particular tribes or differed not significantly. Facing Christianity as writing culture, Slavic and Baltic societies left first collections of law. Officially, Kievan Rus' was Christianized 988 and the Rus' Justice (*Russkaja Prawda*) was written between 11th and 12th centuries²⁷. The first so-called Polish old customs (*Księga Elbląska*, Book of Elbląg) were written down at the end of 13th century²⁸. At the beginning of the 13th century, the Livonian Brothers of the Sword settled in Livonia and thus began to Christianize the local tribes²⁹. Later, the so-called Peasant law (*bur recht*) in *mittelniederdeutsch* was written. In the middle of the 14th century, after more than a century lasting mutual violence between Teutonic Order and Prussian tribes *Iura prutenorum* was recorded³⁰.

Trying to juxtapose these collections of law, there are some difficulties which rise not only from their origin in time but also from differences of influences. On the contrary to Germanic, Slavic and Baltic collections of law were recorded in vernacular³¹. Germanic tribes, probably even Saxons, Thuringians and Frysians that were far beyond the *limes*, experienced

²⁷ *Pravda Russkae*, ed. B. D. Grekov, Izdatel'stvo Akademii Nauk SSSR, Moskva – Leningrad 1947, T. 2.

²⁸ It is clear that at the time when this source was recorded the historical circumstances were loaded by the relations between Teutonic Order and Polish principalities. *Starodawne Prawa Polskiego Pomniki*, ed. A. Z. HELCEL, Drukarnia Czas, Kraków 1870, T. 2.

²⁹ «Die altlivländischen Bauerrechte», ed. L. Arbusow, *Mitteilungen aus der livländischen Geschichte*, Nicolai Kymmels Buchhandlung, Riga 1924-1926, Bd. 23.

³⁰ *Pomezanija: Pomezanskaja Pravda*, ed. V. PASHUTO, Izdatel'stvo Akademii Nauk SSSR, Moskva 1955.

³¹ Rules of Anglo-Saxon law were written in local vernacular as well: *Die Gesetze der Angelsachsen*, ed. F. LIEBERMANN, Max Niemeyer, Halle 1903-1916, 3 vols.

direct influence of the Roman empire (e.g., law, social and military institutions). Without a dispute, the influence of Roman and Roman vulgar law, or according to Detlef Liebs, Germanic Roman law³², may be seen in different Germanic collections of law. On the other hand, Byzantine Empire influenced the Rus' Justice. The other difference is associated with the influence of Germanic law on Slavic (Polish) and Baltic collections of law. The initial Slavic (Polish) and Baltic legal collections were recorded by Teutonic order in different German dialects. According to some scholars, there are a plenty of Germanic legal institutions in all these collections³³. Both Roman and Germanic influences (and differences as well) could be interpreted as obstacles for claiming that these societies are typological similar. However, not everything could be explained by influences and reception. How could be interpreted and explained the phenomena, in this article understood as structural similarities?

Obviously, societies could not be interpreted exclusively on the strength of what is usually called legal sources (P. Gasparri). But this time the ideas about burning human remains and inheritance practice will be supplemented by Germanic, Slavic and Baltic collections of law. Few characteristic principles, patterns of social reality which may be analysed as structural similarities of Germanic, Slavic and Baltic societies will be observed. These patterns –*wergeld*, *ethnicity*, *gender*– could be interpreted as grounded on contrasts within social organizations.

Wergeld (*compensation*) is a well-known and probably the most discussed phenomenon in historiography of European tribal societies. The amount of *wergeld* (price of man) was conditional, according to the social rank of the victim. In societies where the central power was too weak or was just in formation period, no territorial and long-lasting institutional framework existed at all. Thus, *wergeld* may be understood

³² D. LIEBS, «Roman Vulgar Law in Late Antiquity», in B. SIRKS (ed.), *Aspects of Law in Late Antiquity: Dedicated to A. M. Honoré on the Occasion of the Sixtieth year of His Teaching in Oxford*, Oxford University, Oxford 2008, pp. 35-53.

³³ F. Ebel, «Von der Elbe zur Düna – Sachsenrecht in Livland, einer Gemengelage europäischer Rechtsordnungen», in E. EICHNER – H. LÜCK (eds.), *Rechts- und Sprachtransfer in Mittel- und Osteuropa. Sachsenspiegel und Magdeburger Recht*, De Gruyter, Berlin 2008, pp. 37-43, Bd. 1. There is another position which argues that Livonian collections of law contain a local practice or not all practices were imported by the Livonian Brothers of the Sword: *Drevnejshie gosudarstva na territorii SSSR*, ed. V. PASHUTO, Nauka, Moskva 1980, pp. 46, 49, 53, 91, 104.

as an instrument to avoid the *blood feud (faida)*, violence among different families and their members and to keep a provisory order. It is suggested that all these societies had more or less similar conditions and chances to seek for justice and implement it. Obviously, the step-by-step formation of central power, monarch institution (Merovingians, Carolingians, Piasts, Rurik) or other power structures (Teutonic Order, Livonian Brothers of the Sword) played a crucial role in the coming of new social and political order. But this process, with all its implicated institutional infrastructure, was slow and the old practices could not be disrooted.

Even if *wergild* was not mentioned in some collections of law, definitely, as a certain institution, it remained implicit and was a kind of strategy of solving quarrels in Germanic, Slavic and Baltic societies. Generally, characteristic to Germanic collections of law was an indication of particular price depending upon social rank of the person and the degree of mischief. That was followed by formula *solidos componat, solidos ... iuret*, and sometimes was used a form of the term *wergild* to express a particular man payment³⁴. In Rus' Justice the phenomenon of *wergild* was known as *vira, virnoje (виря, вирное)* which was also understood as the price of man and similarly varied subject to the particular cases which, like in Germanic sources, were extensively casuistic³⁵. Keeping in mind, the Baltic collections of law written in *mittelniederdeutsch* and *mittelhochdeutsch* were loaded with *wergild* casuistic. Respectively, in *Livonian Bur recht* the word *straf* was used chiefly, and in *Iura prutenorum* such expressions as *er sal yn gelden, man gildet yn, wirt seyn wergelt, wunden bezahlen* were in use³⁶. Even if *wergild* in Baltic societies was something new, *institution* was introduced and, thus, changed an *old* but similar phenomenon (ransom)³⁷, supposedly, this historical reality could help to explain the general phenomenon of *inventions*, new social practices

³⁴ *Lex Salica*, ed. K. A. ECKHARDT, Impensis Bibliopolii Hahniani, Hannoverae 1969, *passim* (Monumenta Germaniae Historica, IV, 2); *Leges Saxonum et Leges Thuringorum*, ed. C. FREIHERR VON SCHWERIN, Hahnsche Buchhandlung, Hannoverae et Lipsae 1918, pp. 18-20, 57-59 (Fontes iuris Germanici in usum scholarum).

³⁵ *Pravda Russkae*, pp. 255, 275, 282, 287 (extended edition).

³⁶ «Die altlivländischen Bauerrechte», p. 51; *Pomezanija: Pomezanskaja Pravda*, pp. 118, 120, 152, 158.

³⁷ G. BIAŁUNSKI, «Zemsta matką sprawiedliwości. Wergeld (głównszczyzna) w Prusach Krzyżackich i Prusach Książęcych», *Czasopismo prawnohistoryczne*, 67/2 (2015) 11-29.

which, without a doubt, were made in times of fundamental social transformations.

Finally, it is interesting to provide an example that indicates the society in change. This example refers to the long duration phenomenon which could be interpreted as the rising of new personal and institutional power structures. The first article of Rus' Justice mentions the possibility of choosing between the *wergild* and *blood feud* as a lawful practice of that time for solving conflict³⁸. This recorded historical situation reflects the society in transition when both ways of justice's restoration were *legal*, despite the fact that *wergild* was an instrument to limit or stop persistent violence among families and their members³⁹. In such conflicts crystallized the distinctions –*who is who* in society which was stratified not only by social ancestry, but also divided by *ethnicity*⁴⁰. This factor was also relevant to the size of *wergild*.

The *ethnicity* is seen here more from the point of those by whom these collections of law were written down and from the viewpoint of insiders to whom these texts concerned. Briefly two major dimensions of this phenomenon may be differentiated. On the one part, these texts were directed to *gentes*, on the other part, the ethnicity may be interpreted as a crucial category of distinction within these societies.

The addressee of all Germanic collections of law were tribes (*gentes*): Salians, Alemanni, Bavarians, Saxons, Thuringians⁴¹. It is not only an indication about the addressee, it also reflects broader characteristic of thinking and the nature or condition of tribal organization. The reference to *ethnicity* is an interesting expression of the historical situation when all these sources were recorded. The collections were not grounded on definite place or made for territory with well-defined limits, but were directed to the particular tribes which, undoubtedly were heterogeneous.

³⁸ *Pravda Russkae*, p. 241: «[...] Azhe ubiet' muzh' muzha, to m'stiti bratu brata, ljubo otcju, li synu, ljubo bratuchado, li bratnju synovi; ashhe li ne budet' kto ego m'stja, to polozhiti za golovu 80 griven [...]» (extended edition); p. 245: [...] «i otlozhisha ubienie za golovu, no kunati sja vykupati [...]» (extended edition).

³⁹ WORMALD, «*Lex Scripta and Verbum Regis*», pp. 111-112.

⁴⁰ About the methodological and other problems using term *ethnicity* see: W. POHL, «Introduction – Strategies of Identification: A Methodological Profile», in W. POHL – G. HEYDEMANN (eds.), *Strategies of Identification: Ethnicity and Religion in Early Medieval Europe*, Brepols Publishers, Turnhout 2013, pp. 1-64.

⁴¹ *Leges Saxonum et Leges Thuringorum*, pp. 21, 43.

And this heterogeneity is well seen in the distinction between members of the particular tribe and the *other* (e.g. Salian versus Roman)⁴².

The similar patterns may be observed in the Slavic and Baltic societies. First of all, these texts were directed to Semigallians, Curonians, and Pomesanians⁴³. Second, there is a clear distinction between particular groups in all these collections of law. The importance of *ethnicity* may be observed in regulation of conflict between agents of different origins. Thus, *ethnicity* could take a shape of social character. Admittedly, it is not always evident what was meant under the reference to *ethnicity*, but the different sources show that it was in use. Rus' Justice knew the term *rusin* (русин) which over time could have denoted the hierarchically high standing person or a group and this group was confronted with wider society –*slav* (словенин)⁴⁴. The clear distinction between Polish law, the individuals under its supremacy and the *Germans* was made as well⁴⁵. The *Iura prutenorum* offers similar opposition: local tribes *vs.* *German*. The everyday encounter of individuals with different origins had to be regulated⁴⁶.

Germanic, Slavic and Baltic societies all had their *others* and were the *others* themselves. Belonging to particular tribal group was, first of all, belonging to the shifting group of constantly changeable *Rechtsgewohnheiten*. The distinction of *ethnicity* within tribal societies could be understood as universal thinking category⁴⁷, but certainly not

⁴² *Lex Ribuaria*, ed. R. SOHM, Anton Hiersemann Verlag, Stuttgart – Vaduz 1965, pp. 336-337 (Monumenta Germaniae Historica, V): «[...] Nullus Romanus barbara cuiuslibet gentes uxorem habere presumat, nec barbarum Romana sibi in coniugium accipere presumat [...]».

⁴³ «Die altlivländischen Bauerrechte», p. 43: «[...] Alle frye Seeländer, Cuhren, Semmgaller sallen ähr recht hebben gliekh den andern buhren [...]»; *Pomezanija: Pomezanskaja Pravda*, p. 124: «[...] deutscher bleibt [...] in seinem deutschen rechte [...]»; p. 150: «[...] Stirbt ein man, der pomezenisch recht hot [...]»; p. 162: «[...] Das Preusch Recht [...] under den preuszen gehalten wirdt [...]» (later edition).

⁴⁴ *Pravda Russkae*, p. 15, pp. 41-42, p. 241.

⁴⁵ *Starodawne Prawa Polskiego Pomniki*, pp. 15, 33.

⁴⁶ *Pomezanija: Pomezanskaja Pravda*, p. 120: «[...] Ist das ein Preusse einen ledigen deutschen todsllett [...]»; p. 124: «[...] Ein iglicher deutscher bleibt und sal gericht werden in seinem deutschen rechte [...]»; p. 150: «[...] Stirbt ein man, der pomezenisch recht hot [...]».

⁴⁷ G. VON OLBERG, «Aspekte der rechtlich-sozialen Stellung der Frauen in den frühmittelalterlichen Leges», in W. AFFELDT (ed.), *Frauen in Spätantike und Frühmittelalter*, Thorbecke, Sigmaringen 1990, p. 223.

the only of that time. In this context, one more distinction should be discussed.

Aside from the distinctions based on social status, ancestry and their unambiguous expressions in *wergild*, *gender*, to be precise, an image and understanding of women in society, may be seen as a common place in Germanic, Slavic and Baltic collections of law. Considering this phenomenon, there is one feature to be mentioned. Generally the limitation of female offspring's inheritance right of immovable property in advantage of male's may be observed.

German legal historian Karl Kroeschell pointed out that generally in question of immovable property, the Germanic law provided the advantage of brother's inheritance right in relation to sister's⁴⁸ and the well-known article of *Lex Salica (terra salica)* was used by the historians as generalization and simplification of complicated social reality of that time. On the other hand, it is not clear if such a practice functioned in Germanic societies before the collections of law were recorded. Presumably, in that period the situation of *barbaric* practices of inheritance were in slowly change which, next to another influences, was triggered by Christianity. Therefore, the juxtaposition of Germanic and Baltic collections of law could be a fruitful for comprehensive analysis. The Slavic and Baltic inheritance practice of patrimony was also directed to male offspring but under particular conditions there was a possibility of female heir's inheritance right⁴⁹.

In summary, some general statements about the societies in question may be done. When collections of law were recorded, these societies were in tension between an old *modus vivendi* and *a new one*. It may be presupposed that in the case of restricted women's inheritance right, the influence of the Christianity on tribal societies could be noticed. Observing retrospectively, it is negotiable that a chronologically later principle

⁴⁸ K. KROESCHELL, «Söhne und Töchter im germanischen Erbrecht», in Id., *Studien zum frühen und mittelalterlichen deutschen Recht*, Duncker und Humblot, Berlin 1995, pp. 35-64 (Freiburger rechtsgeschichtliche Abhandlungen, 20); R. LE JAN, *Famille et puouvoir dans le monde franc (VII^e-X^e siècle): Essai d'anthropologie sociale*, Publications de la Sorbonne, Paris 1995, pp. 233-237.

⁴⁹ *Pravda Russkae*, p. 626: «[...] Azhe v bojareh ljubo v družine, to za knjazja zadnicja ne idet'; no ozhe ne budet' synov, a dcheri vozmut' [...]»; *Pomezanija: Pomezanskaja Pravda*, pp. 120, 140, 150, 152; «Die altlivländischen Bauerrechte», pp. 36, 46: «[...] Sint dar overst kiene söhns so fällt dat gantze gohd der mohder tho met den döchtern [...]».

of agnatic primogeniture was a product of restriction of female inheritance right in advantage of male heirs. Possibly Christianity was just a catalyst in this long-lasting process of *masculinization* of patrimony inheritance.

4. Generalization

This *à la* impressionistic text seeks to bring up a discussion between different historiographies and their fields of research. Although the idea of European *barbaricum* may appear speculative or the argumentation of proposed structural similarities too weak, the suggested ideas may broaden the understanding of the phenomenon in Western historiography known as Early Middle Ages, the European societies in the early phase of Christianization and the *barbaricum* as a credible common background of Europe before Greek science (philosophy), Semitic Christianity and Roman law.

The explanation of structural similarities due to reception from one society or culture to another is possible. Even if this assumption is correct, the problem does not vanish into thin air. Every similarity and difference should be analyzed individually, but not in isolation.

It is proposed that the interpretation of Germanic, Slavic and Baltic societies as typologically close (similar) in mentioned chronological framework is a perspective task. Especially when European historiography is looking for more integral points of view. However, it is not claimed that these societies were identical. There were a lot of differences, especially on the political, intellectual and ideological levels. But one of the tasks of science is to show the scale of difference. If we will find out what kind of institutions were similar in these in time and space distant societies, then, the following tasks will be to clarify: How did they varied? What factors caused variations? Is it a reception? What practices were more receptive than others? Consequently, the question of difference between these societies and the phenomena we are juxtaposing is also the (question of) degree of difference (in particular, layers of social reality).

Following the strategy of juxtaposition, falsification/verification of isolated statements which were made by historians working in different historiographies and fields is possible. Such kind of juxtaposition of different societies may lead to better understanding of how the power was understood, what kind of provisory universal tools for extending the power

were implemented, what kind of strategies functioned and, even if we accept that the most part of similar institution in Slavic and Baltic societies were the product of reception, it is a good possibility to think about the nature of reception and the *old* institutions which were planted in the new soil. Even if proposed juxtaposition of societies will be interpreted as no more than kill-time speculation, nonetheless it could become an impulse for a new reevaluation and understanding of *leges barbarorum*, their nature, purpose, and relation between ideality and reality.

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