Festschrift für Thomas Simon zum 65. Geburtstag

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Vorwort

Diese Festschrift zum 65. Geburtstag von Thomas Simon, unserem verehrten Kollegen und ehemaligen Institutsvorstand am Institut für Rechts- und Verfassungsgeschichte der Universität Wien, wäre nicht ohne vielfältige Hilfe zustande gekommen. Daher ist hier mehrfacher Dank auszusprechen:

Die Rechtswissenschaftliche Fakultät der Universität Wien hat das Erscheinen dieses Buches durch einen namhaften Förderungsbetrag finanziell unterstützt. Dafür gilt unser herzlichster Dank insbesondere Paul Oberhammer, der zu dieser Zeit als Dekan dafür verantwortlich zeichnete.

Zu danken ist dem Verlag Österreich für seine stete Kooperationsbereitschaft und für die Aufgeschlossenheit gegenüber unseren Ideen, etwa nach Abdruck eines farbigen Porträts von Thomas Simon. Wir freuen uns, dass wir diesen Wunsch daher in vollem Umfang realisieren konnten. Der bei allen Buchprojekten prekäre Zeitplan, der im Hinblick auf die termingerechte Überreichung des Buches am 12. November 2020, dem 65. Geburtstag unseres Jubilars, besonders ernsthaft einzuhalten war, wurde in vorbildlicher Weise unterstützt.

Frau Ass. Mag. iur. Sarah Stutzenstein hat das Publikationsverzeichnis von Thomas Simon zusammengetragen, redigiert und die Daten vor Drucklegung immer wieder aktualisiert. Frau Mia Krieghofer und Frau Simela Papatheophilou, Studienassistentinnen am Institut für Rechts- und Verfassungsgeschichte, haben Manuskripte aller mitwirkenden Autorinnen und Autoren gründlich gelesen, redigiert und wichtige redaktionelle Anpassungen vorgenommen. Ihnen allen danken wir sehr.

Herr Mag. mult. Ramon Pils, DipTrans, hat die englischsprachigen Manuskripte aufmerksam gelesen und mit großer sprachlicher und sachlicher Kompetenz hilfreiche Verbesserungen vorgenommen, wofür wir ihm sehr dankbar sind.

Schließlich und vor allem danken wir aber allen Autorinnen und Autoren für ihre schönen und fristgerecht abgelieferten Texte.

Wien, im Sommer 2020

Gerald Kohl – Christian Neschwara – Thomas Olechowski –
Josef Pauser – Ilse Reiter-Zatloukal – Miloš Vec

The ABGB and the House-Community in the Croatian Legal System: Legal Irritant and Normative Plurality

Dalibor Čepulo

I. Introduction

The introduction of the ABGB in the Kingdom of Croatia and Slavonia in 1853 has been praised by Croatian civil lawyers as an instrument for the definite transition of the Croatian legal system to modernity, and its complete cut with the archaic tradition. Yet, the full story is more complex. The norms and spirit of the ABGB that provided for the central role of the individual concerning private ownership and the simple (nuclear) family as the only forms of ownership and family, clashed with customs and legal culture of the rural society, grounded in the indivisible collective ownership of house-communities. Contrary to the traditional positivist view that saw the introduction of the ABGB in Croatia and Slavonia as a moment of radical change, its implementation seen from a more realistic point of view appears as a complex and controversial modernisation process of *longue durée*. That process was based upon two competing normative models and their plural outcomes in social reality. In such a complex environment, the civil-law paradigm of state regulation, with the ABGB as its forerunner, was only gradually gaining definite prevalence and final victory over the collectivistic paradigm. The study of such a complex process requires equally complex research with adequate methodological tools.

Following such determinations, my principal intention in this article is to describe and analyse the transfer of law (of the ABGB) to a considerably different normative and social environment, and to examine its role in the process of legal and social change, affected by the clash of two contradictory normative paradigms. My other intention is to examine the applicability of the concept of legal irritants and various concepts of normative pluralism in such research. Related to both is my interest to discuss what legal history should be focused on – I believe that the answer is legal reality, but the question then arises what legal

reality is. And finally, it is worthwhile to remind of the forgotten institution of the house-community that attracted considerable attention of comparatively oriented legal historians and legal sociologists in the 19th century due to its research potentials compatible to some recent methodological interests.

Since parts of the subject are not well known in contemporary international legal historical literature, I will first give some basic information on the main features of the analysis. I will first point to the presence of the ABGB in the Croatian legal system, then I will summarize the main features of the concepts of legal irritants and normative pluralism relevant to this research, and then provide a summarized explanation of the house-community. I will proceed with a review of legislation on the house-community in the Kingdom of Croatia and Slavonia, and continue with an analysis of its outcomes in legal practice, legal doctrine and social reality as well as in legal education. I will end with a discourse on the co-evolutive process of modernisation and summarize the main ideas of the research in conclusion.[1]

II. The ABGB in the Croatian legal system (1852–1945)

The ABGB was introduced in Croatia-Slavonia by imperial decree in 1852, and put in force on May 1st 1853 under the Croatian name *Opći građanski zakonik* (OGZ), i. e. the General Civil Code.[2] The introduction of the ABGB (OGZ) was part of the process of unification and modernisation of law in the Austrian Monarchy undertaken by the central government in Vienna. Before and after the period of false constitutionalism and absolutism (1849–1860) the Kingdom of Croatia and Slavonia enjoyed the status of an autonomous land within the Kingdom of Hungary, with its own government, diet, judiciary and legal system that until 1853 considerably differed from the legal framework of the Austrian part of the empire. Numerous reforms in private and public law introduced throughout the 1850s substantially modified the profile of the archaic Croatian-Slavonian legal system, with the OGZ replacing the Hungarian Tripartite, which since the 16th century had been the backbone of the private law system. The reforms were imposed through the absolutist framework but since 1860 tacitly accepted as part of the autonomous legal system. The laws of the 1850s became a permanent

[1] The basis of this study is my published research on the implementation of the ABGB in Croatia-Slavonia that has been amended, revised, and conceptually upgraded. Comp. Čepulo, Tradicija i modernizacija.

[2] I will consequently use the abbreviation OGZ to denominate the official Croatian translation of the ABGB that had been in force in Croatia since 1853, in order to distinguish it from the "proper" ABGB in force in *Cisleithania*. Unlike the ABGB, the Croatian OGZ was not been revised.

part of the Croatian-Slavonian legal system or at least seriously affected it even after the definite settlement of Croatian-Slavonian autonomy in 1868.[3]

The OGZ was the only important piece of regulation from that period that continuously remained in force until 1945. It survived the dissolution of Austria-Hungary and the formation of the Yugoslav state as part of the "Croatian-Slavonian legal area" that consisted of the inherited regulations in private law, criminal law and the organisation of the judicial system, then continued to be in force in the large autonomous province of Banat of Croatia (1939–1941) as well as in the puppet Independent State of Croatia (1941–1945). The OGZ survived even the communist abolishment of all preceding regulations in 1945 and 1946, serving as a supplementary source of law, and some of its rules were applied by Croatian courts until recent times.[4] The enforcement of the OGZ was complemented by its introduction into the legal education at the Faculty of Law in Zagreb and since that time the OGZ extensively affected Croatian legislation and judicial practice and continued to do so long after it was abolished.

Yet, as already noted, the OGZ in Croatia-Slavonia principally clashed with a system of rules and legal views of the house-community. The clash shaped the plural normative matrix consisting of the OGZ and legal norms around it, the customary order of the house-community, and "hybrid" state legislation between them, with norms of various origins "mingling" in the same social frameworks.

III. Legal transfer, legal irritants and normative pluralism

Even though the ABGB (OGZ) was enforced in Croatia-Slavonia by a decree of the imperial government, its destiny in the long run appeared more as that of a transfer of law than as an internal reform imposed by central authorities. The judicial and administrative autonomy of Croatia-Slavonia since 1860 justifies this approach.

In spite of the long endurance of the laws of the 1850s, the radical modernisation and normative re-paradigmatisation of the Croatian-Slavonian legal system, including the introduction of the ABGB, had its price. Soon after its transfer, the OGZ clashed with different legal traditions and customs and induced a series of changes and re-compositions in the Croatian-Slavonian legal system and society, suffering a turbulent setback. The OGZ remained in force in a com-

[3] Čepulo, Building 56–60.

[4] The Yugoslav law of 1946 provided that "legal provisions" in force on 6 April 1941 could be applied as individual "legal rules" in case of legal lacunas. This possibility was in force in Croatia until the enforcement of the Code of Obligations in 2006. On the abolishment of previous laws in 1945 and 1946 see Čepulo, Hrvatska pravna povijest 303–304. Also see: Zakon o nevažnosti pravnih propisa.

plex and dynamic normative and social environment, which for a long time limited its influence in reality, but could not prevent its definite victory. The story of the OGZ (ABGB) as part of the Croatian legal system is thus a story of changing the broader normative framework and legal culture in a complex normative and social environment in a long period of time.

This brief sketch itself already indicates that, contrary to the conventional positivist approach, dealing with the "reception" of the ABGB in Croatia-Slavonia is a complex task. It requires methodological tools that will provide a framework for a critical reconstruction and analysis of the processes of its transfer and implementation in the complex environment. From our perspective, such a tool is provided by Gunther Teubner's theory of legal irritants that appears as a suitable interpretative framework for an analysis of the transfer of law and the consequences of its "domestication". Since the implementation of the OGZ was carried out in a plural normative and social environment, such analysis shall be accomplished with a reference to the ideas of normative pluralism correspondent to the 19th and 20th century Croatian society. Therefore, I will first interpret the part of Teubner's theory relevant to the research and then point to the relevant attitudes in the debate on legal or normative pluralism.

I see the essence of Teubner's theory on legal irritants in his allegory of the Janus-like, double-faced character of law's binding arrangements and consequent co-evolutionary development. The legal and economic (i. e. social) spheres exist in their own environments with their own functional and developmental logic. Yet the two spheres are structurally coupled, with their necessary compatibility established through a process of co-evolution. In this process parallel and interconnected changes occur on each of the separate sides, gradually re-constructing their compatibility and the stability of the whole system. When foreign legal norms are transferred into such a matrix, they first irritate the domestic legal system, its normative structures, and the minds and emotions of lawyers adapted to a traditional model. The transfer triggers the reconstruction of existing arrangements on the legal side that end with the repulsion or integration of the new norm. The integration is performed through the process of its contextualisation, as mutual adaptation of the imported norm and legal system, in which all particles in the game change their previous meanings and functions. Changes on the legal side irritate the arrangement with the social side upon which the compatibility of the two sides rests. Structures and actions on the social side follow their own logic, yet taking in consideration arrangements on the legal side in order to optimize the fulfilment of its own interests: The economic purpose of setting up a contract is not found in the respect for the formal conditions of the rule of law, but in the achievement of profit. Yet the internal matrix and conduct of the parties are set in a way that also takes into account the requirements of the legal side, i. e. the rule

of law, and vice versa. Thus, re-composition on the legal side disturbs the compatibility of the two spheres and instigates perturbation on the social side. It triggers the re-composition of the social system according to its internal logic and in its own language. The re-composition of the social system then irritates the legal side in return, provoking a circular co-evolutionary dynamic that after a series of irritations and reconstructions stabilizes both sides in a new equilibrium.[5] This process was even more complex in Croatia-Slavonia since it took place in a plural normative environment, in which the house-community lived in its own world of traditional customs, mixed with individualistic values, yet still different from the rules and substantial principles of the OGZ and civil law.

Because of that, the idea of a plurality of normative orders in society is of principal importance in the analysis of the transfer of the OGZ to the Croatian legal system. Among many approaches under the cover of legal pluralism (Teubner himself set up his own theory[6]) one of the most appreciated was probably Sally Falk Moore's theory. She spoke of "semi-autonomous social fields" that were not determined by their organisation but by a processual characteristic of "generating" norms and rules that achieved effective compliance to them.[7] Contrary to the mainstream of early legal pluralists who confronted "state law" and "people's law", Masaji Chiba spoke about "official law" and "unofficial law", with Western societies being more oriented to the former,[8] while Boaventura de Sousa Santos introduced the term "interlegality", i. e. the polycentricity of overlapping legal orders.[9] Contrary to more essentialist and analytic discourses, Brian Tamanaha opted for a "non-descriptive" approach by which the law is "evidenced by its self-affirmation or, rather, by its identification as such by people".[10] In this regard "lived norms are qualitatively different from norms recognised and applied by legal institutions because the latter involves 'positivizing' the norms, that is, the norms become 'legal' once they are recognised as such by legal actors".[11] Building upon this heritage Badouin Dupret focused on "how the people make sense of, orient to, and practice their daily world" suggesting that "instead of elevating law to a rank of an analytical instrument" we should "go back to the observation of social practices and to consider, in the broad field of the many normativities, that law is what people refer to as law".[12] More recently Thomas Duve discussed the need to "de-Germanise" legal history (from Savigny's dogmatic influence), as

5 On legal irritants see in: Teubner, Legal Irritants 27–28 (in particular).
6 Dupret, Legal Pluralism 9, 13.
7 Dupret, Legal Pluralism 5–6.
8 Dupret, Legal Pluralism 7–8.
9 Dupret, Legal Pluralism 8–9.
10 Dupret, Legal Pluralism 11–12, 16–20. Tamanaha, Non-Essentialist Version 314.
11 Tamanaha, The Folly 208.
12 Dupret, Legal Pluralism 16–19, 20–25 (citations at 16 and 24).

well as the need to re-actualise the heritage of normative pluralism. He discussed "multinormativity" as a conceptual tool for "understanding law in environment of other *modes* of normativity not structured by our idea of law", and communication about law as a process of "cultural translation" that should be searched for in the analysis of legal practice, in particular in the analysis of conflict.[13]

All these theories are highly abstract yet they all shed more light on the need to re-consider the interplay between various legal and other normative orders in everyday life and offer a rough methodological and interpretative framework for such researches. Even though they might not look directly applicable, these theories sound incentive in a discussion about the transfer or "cultural translation" of the ABGB and its clash with house-community in the everyday life of rural communities in Croatia-Slavonia.

IV. House-community (kućna zadruga)

The house-community was a relic of the clan-society but in the 19th and 20th centuries it was still widespread among South Slavic peoples and Albanians in the territory of today's Croatia, Bosnia and Herzegovina, Montenegro, Serbia, Kosovo, Albania, Macedonia and Bulgaria. The house-community was first registered in Dalmatia (1776) and Slavonia (1783),[14] but it was only since the mid-19th century that it became widely researched and discussed in ethnographical and historical literature. Legal doctrine in Croatia paid special attention to the concept of the house-community when it appeared as an important legal and social challenge, i. e. from the mid-19th to the mid-20th century. The "discovery" of the house-community provoked considerable interest of some of the most prominent scholars of the West, mostly due to research by Baltazar Bogišić, undertaken and sponsored by the Academy of Sciences in Zagreb in the 1870s.[15]

Definitions and even denominations of the house-community as well as interpretations of its origins, nature and function, territorial and ethnic distribution etc., varied not only due to different scholarly approaches but due to the variety of its forms as well.[16] Yet, since the 19th century the term *kućna zadruga*

[13] Duve, European Legal History 58–60.

[14] Filipović, Zadruga 269.

[15] Čepulo, West to East 83–85, 92ff.; Demelic, Le droit coutumier 253ff.; Simon, Nationale Wiedergeburt 222–227.

[16] In the 19th century the zadruga was seen as a specific Slavic institution; another explanation saw it as a functional answer to the taxation introduced by Byzantium, the Ottoman Empire and Croatian feudal landlords, but later theories saw it as a phase in general demographic development. Čapo Žmegač, Konstrukcija 191; Kaser, The Balkan Joint Family 116ff.; Leutar, Kućna zadruga 95; Moseley, The Peasant Family 20; Novaković, Teorije 106ff.; Pavličević, Hrvatske kućne zadruge 1, 54–63; Sicard, Razmišljanja 36ff.

(shortened *zadruga*) has become the almost universally accepted denomination for various forms of extended households in the Balkans.[17] As regards the definition, common ownership has been conventionally accepted as the essential feature of the *zadruga*, especially in legal treatises. A particular problem concerning the legal definition of common ownership and consequently of the *zadruga* is the inadequacy of civil law concepts and terminology derived from Roman law tradition that did not correspond to rural tradition and *zadruga*'s customs.

Here I will lapidary and tentatively define the concept of the house-community in Croatia-Slavonia as a solidary community of life and production of members that acted as a single entity under the authority of an elected househead (*kućegospodar* – "house-lord") with common ownership of immovable property and means of productions. In a more descriptive way, the house-community was a kind of joint family that consisted of two or more simple (nuclear) families that usually lived in the same house, or in a cluster of houses, divided the labour and organized everyday life under the patronage and disciplinary authority of the househead. The main advantage of the *zadruga* in comparison to a nuclear family was the granting of security and protection of every member against poverty and even hunger in a precarious environment, particularly in medieval times. Recent research estimates the average size of a *zadruga* to seven members, and reports from the end of the 19th century spoke of individual examples exceeding 60 members.[18] Members of a *zadruga* by definition were all its affiliates regardless of gender and kinship, but in practice, it was community of relatives.[19] The househead was elected (and replaced) by the council consisting of all adult males (above 18 years of age) and married males under that age. The househead was

[17] In fact, *kućna zadruga* was new term coined by Serbian ethnographer Vuk Stefanović Karadžić in 1818, and then gradually accepted in legislation, theory and the general public. The international denomination of that phenomenon is diverse, and depends upon the approach of the researchers, and apart from "house-community" it also includes "joint-family", "joint communal family", "joint family household", "extended family", etc. Here, we opted for the term "house-community" not just because it appeared very early as *Hauskommunion*, and has probably been most used in the Central European literature, but because it complies to our understanding of that unit that exceeds the pure family dimension. Filipović, Zadruga 269; Moseley, The Peasant Family 22; Pavličević, Hrvatske kućne zadruge 1, 51.

[18] On numbers see Pavličević, Hrvatske kućne zadruge 1, 80–83ff., and Čapo Žmegač, New evidences 382. On family in Croatia as a mixture of Mediterranean and East-European types see Čapo Žmegač, Konstrukcija 189–190.

[19] The Serbian Civil Code of 1844 provided for kinship as a compulsory element of *zadruga*, yet *zadrugas* with non-related families were rather common in Serbia, and the law instigated the practice of artificial "brotherhoods" in part of such *zadrugas*. Unlike in Catholic and Moslem's *zadrugas*, marriage in Serbian Orthodox *zadrugas* was strictly forbidden, irrespective of closeness or distance in blood relationship. Filipović, Zadruga 271; Pavković, Studije i ogledi 316.

usually the oldest male member but if there was no competent male candidate, women could be elected too. The househead enjoyed great authority but not *patria potestas*; he was the first among equals that managed all common affairs, organised everyday life and represented the *zadruga* towards third parties and public authorities. Yet, the principal source of power was the council that had the exclusive right to dispose of the *zadruga*'s real estates and other property in common ownership and make other more important decisions.

Women were fully subjected to men but the househead's wife or other women rather autonomously ran "women's affairs" (cooking, cleaning, childcare, etc.) and took care of the relations between women. Members of the *zadruga* were related by strong solidary ties, they took care of each other and shared goods in common ownership. Yet, they also enjoyed private ownership of acquired goods and goods intended for personal use that could be inherited (jewellery, clothes, beds, even smaller pieces of land at later time)[20]. Common property was indivisible, individual shares of members were not determined, and the *zadruga's* property could not be inherited but remained in the *zadruga* as long as it existed. A *zadruga* ceased to exist by the disappearance of its members or by its division upon decision of the majority of votes of the council – in both cases the *zadruga*'s property was transferred from the regime of common ownership to a regime of individual private ownership. The traditional way of dividing of common property in such cases was the division "by heads" (*per capita*) that corresponded to the nature of the *zadruga* as a community of members that individually contributed to the common welfare and common property. The civil law principle of division "by lineage" (*per linea*) that corresponded to the city-type nuclear family of blood-relatives contradicted the very nature of the *zadruga* as well as its related customs. If demanded, it was the obligation of the whole *zadruga* to provide a dowry for a daughter married outside of the *zadruga*, who in turn lost all her claims to the common property. As long as there was a single male member in a *zadruga*, no female member or former member was entitled to the *zadruga*'s property.[21] Yet, legislation on the *zadruga* in Croatia-Slavonia since the 1850s provided for inheritance by lineage in regard to immovable property, including the right of women to their share.[22]

[20] Filipović, Zadruga 272.

[21] Moseley, Adaptation 41–42. The serbian legal theoretician Radomir P. Lukić interpreted denial of inheritance to women as a rational prevention of particularisation of the *zadruga's* land. Pavković thought that the principal reason for this provision was the patriarchal basis of the zadruga with a system that was consistently grounded upon the principal role of men. Pavković, Studije i ogledi 273–274.

[22] On the *zadruga*'s institutional features in general and in the Croatian areas see: Čapo Žmegač, New Evidences 378–379; Filipović, Zadruga 270–274; Moseley, The Peasant Family 23–25; Pavličević, Hrvatske kućne zadruge 1, 19–25, 83–85; Puljiz, Porodične zadruge 149–150; Rihtman-Auguštin, Struktura tradicijskog mišljenja 25–26, 165ff.; Sicard, Razmišljanja 29–36.

The *zadruga* was of particular importance in the Military Frontier region, formerly the part of Croatia-Slavonia bordering the Ottoman Empire that was turned into an Austrian military area in the 16th century and was gradually annexed back to Croatia-Slavonia by 1882.[23] Due to such specificities, the *zadruga* and legislation on the *zadruga* in the Military Frontier developed on a different ground than in the "civil" parts of Croatia-Slavonia. What was special about the *zadruga* in the Military Frontier was its function in this militarized society in which all adult males (16–60 years) were military conscripts for life, with tenancy of a *zadruga* as a reward for their military service. These peasant-soldiers and members of their families were freemen. The *zadruga* was turned into the compulsory form of life as a social basis of the army and one of the central institutions of the legal order of the Military Frontier. Yet, in spite of such importance it was only in 1807 that the Fundamental Order of the Military Frontier regulated the *zadruga* – that was the first law concerning the *zadruga* anywhere. Contrary to its later counterparts in Croatia-Slavonia the law was based upon customs and its aim was to preserve the *zadruga*.[24] It provided peasant-soldiers with an eternal right of tenancy of the Emperor's land, provided that they fulfil their duties. Division of a *zadruga* was allowed only if it was not at the charge of the military service, common property was divided strictly by (male) heads, and the law determined the minimum of land for each divided new *zadruga* or new family. Women that left the *zadruga* for any reason were explicitly deprived of any rights to the common property of their original *zadruga*[25]. Thus, a *zadruga* in the Military Frontier differed from a *zadruga* in Croatia-Slavonia particularly in regard to its social function, importance, principle conditions for division, and inheritance (difference concerning the rights of women) but the main institutional features were basically the same.

The *zadruga* in the whole of Croatia-Slavonia, including the annexed Military Frontier, was present among Croats and ethnic Serbs alike,[26] but there were

[23] Parts of the Military Frontier had been annexed to Croatia-Slavonia since the 18th century; the last two parts were annexed in 1871 and 1882.

[24] One may speak about three types of state regulation of the *zadruga*: the laws in the Military Frontier (1807, 1850) and the General Property Code of Montenegro (1888) were custom-based, the Serbian Civil Code (1844) was compromisal, yet civil law based (ABGB), and the in a long period of time special legislation on the *zadruga* was hybrid in content, ranging from predominantly liberal and civil law based (1870, 1874) to balanced, slightly more conservative (1889).

[25] On *zadrugas* in the Military Frontier see: Smrekar, O seljačkih zadrugah 8–9; Pavličević, Hrvatske kućne zadruge 1, 79–81, 131–134, 259–272.

[26] Moseley, Distribution 67. Ethnic Serbs in Croatia-Slavonia predominantly settled in the Military Frontier, and other minorities mostly lived in small enclaves in the Slavonian plain.

also *zadrugas* among German, Hungarian, Czech, Slovak, Polish, and Ukrainian immigrants who adopted that institution after living in such an environment for a long time.[27]

The semi-rudimentary and custom-based legal regulation of the *zadruga* in the Military Frontier did not considerably ease the position of the legislators in Croatia-Slavonia faced with a lack of doctrines and theoreties on the *zadruga*, as well as of a useful legislative model.

V. The OGZ and legislation on the house-community

A. House-communities before 1853

In spite of its wide distribution in feudal Croatia-Slavonia, the *zadruga* was regulated only by customs and it was the Tripartite's open concept of ownership that provided the legal framework and "niche" for such regulations. The Tripartite did not provide for any institutional form similar to the *zadruga* but it also was not based upon a closed circle of real estate rights. That in turn opened the space for various types of divided ownerships in practice, including common ownership of the *zadruga*. The laws of the Diet of Hungary 1836–1840 that attempted to instigate division and individualisation of "common" village possessions at feudal estates in the whole of the Kingdom of Hungary, remained a "dead letter" in Croatia-Slavonia where they directly confronted the customs.[28] Until 1848, rather small numbers of *zadrugas* in Croatia-Slavonia were divided and formally ceased to exist in spite of a growing tendency of individualisation. Yet, a number of *zadrugas* were divided in "secret divisions". Without formal registration, the dissolution of *zadrugas* that formally continued to exist in their "external" form was agreed upon by their members.[29] Most of these divisions could probably still be attributed to the inherent process of sub-division of the units, as different from dissolutions triggered by some external cause.[30]

Matković, Hrvatska i Slavonija 39–40, 44; Kraljevski zemaljski statistički ured, Popis žiteljstva 47.

27 Moseley, The Peasant Family 23–25; Pavličević, Hrvatske kućne/obiteljske zadruge 2, 145; Tončić, Vrhovne 244.

28 Gross, Počeci 157, 200, 209; Kalčić, Kućne zadruge 1; Smrekar, O seljačkih zadrugah 1–2. For a review of the Croatian-Slavonian legislation on *zadruga* in regard to division by lineage and by heads see: Krešić, Hrvatske kućne zadruge.

29 In such cases the land and the goods were divided among members who exploited parts of the land as their individual property, yet preserved the external form of *zadruga* and continued to jointly fill the *zadruga's* duties. Pavličević, Hrvatske kućne zadruge 1, 77.

30 Moseley, The Peasant Family 28.

A serious challenge to the *zadruga* in Croatia-Slavonia occurred in 1848 when Ban Josip Jelačić, head of the Croatian-Slavonian executive, and then the Croatian-Slavonian Diet, proclaimed the liberation of serfs and their private ownership of urbarial lands. The proclamation resulted in unexperienced peasants rushing to divide their *zadrugas*. Yet in the absence of a regulation on the new relations this provoked numerous disputes among members, who turned to courts that soon became buried with litigations.[31] The lack of adequate regulations as well as adjudication by judges unacquainted with the *zadruga's* customs resulted in a chaotic judicial practice and legal uncertainty. Due to that, a considerable part of the disputes ended in "secret" divisions rather than in costly litigations with uncertain an outcome that again contributed to legal uncertainty.[32]

The dissolutions resulted in the fragmentation of already small and poor farmlands, and it was a "threat of proletarisation" that in April 1850 prompted Ban Jelačić to ban further divisions until more detailed regulations were enacted.[33] The decree stopped legal proceedings but encouraged "secret divisions" that contributed to the legal mess and impeded economic and social development – factual but not legally registered individual owners were not able to take loans that were necessary to improve the market-oriented production at their properties. Croatian provincial authorities then allowed divisions, this time upon the condition of a minimum of land. That slowed down the process of the destruction of *zadrugas* but did not solve the problem in principle.[34] Thus, the introduction of the principle of equality before the law and private ownership of land at its very first "blow" triggered an interactive series of irritations that were temporarily neutralised with provisional and *ad hoc* solutions.

At the same time *zadrugas* in the Military Frontier remained essentially untouched in spite of the fact that the new Fundamental Order of the Military Frontier of 1850 abolished the right to tenancy, and converted it into full ownership of the *zadruga*, provided that members fulfil their duties.[35] Thus, the social function of the *zadruga* in this still militarised society remained unchallenged.

The turbulences in Croatia-Slavonia continued through the 1850s with a series of *ad hoc* ordinances proclaimed as reactions to a danger of serious social consequences – but the ordinances aimed at reducing the fire and not extinguishing it. A serious challenge to the *zadruga* from the legal side that in the end paved the way towards its stable regulation, was the imperial decree on the introduction of the land cadastre and land register in 1850. It stipulated that the

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31 Smrekar, O seljačkih zadrugah 3.

32 Gross, Počeci 209.

33 Gross, Počeci 211; Smrekar, O seljačkih zadrugah 4.

34 Smrekar, O seljačkih zadrugah 4.

35 Marković, Podjela 224.

land of *zadrugas* should be registered as co-ownership of members with their individual shares determined before registration.[36] Since such a decree threatened to definitely destroy the *zadruga* and lead to social chaos, the Croatian-Slavonian provincial authorities protested against it before the minister of justice Karl Krauss. He himself thought that the *zadruga* should be abandoned as contrary to the OGZ, but followed the advice of the Croatian judges and passed a new decree in 1853. It adopted a conservative solution for the Military Frontier and provided for the registration of the *zadruga's* real estates as indivisible communal ownership of "*kućna zadruga*", together with a list of the members' surnames.[37] That provision became an important piece in the definite solution of the problem and the operational definition of the *zadruga* until its formal abolishment in 1956. Up to that point in time, the *zadruga* was strictly considered a single legal personality that was registered as "*kućna zadruga*" in the land registry, with real estates in indivisible common ownership and undetermined shares of the members. Any real estate and the respective community not registered as "*kućna zadruga*" was not considered a *zadruga* at all, and it was subjected to the OGZ instead of the special legislation on the house-communities.[38]

B. House-communities from 1853 to 1870

The systemic and permanent challenge to the *zadruga* was the OGZ. Unlike the Tripartite, the OGZ was based on the principle of a strictly closed form of ownership with private ownership as the fundamental form and co-ownership as a divisible and determined set of shares of individual co-owners. Apart from that, the OGZ recognized the nuclear family as the only form of family, with inheritance by lineage and equality of male and female descendants. These provisions did not leave much space for the *zadruga's* customs.

Soon, Croatian-Slavonian courts began to apply the OGZ, which provoked an intensification of the divisions of *zadrugas* that were now initiated from outside and without the real control of authorities. The problem appeared in two forms. It first appeared in cases of intestate succession. In such cases the courts determined the share of the deceased member of the *zadruga* in the common property and divided it by lineage between their descendants, including women married outside of the *zadruga*. The Ban's Table (Croatian-Slavonian High Court) complained against this practice and the ministry of justice in 1857 sus-

[36] Strohal, Razvitak 84–85.
[37] Gross, Počeci 21, 212; Strohal, Razvitak 86.
[38] Kalčić, Kućne zadruge 19; Pavličević, Hrvatske kućne zadruge 1, 126; Strohal, Razvitak 86.

pended the application of the OGZ in regard to the inheritance of a *zadruga's* property, except when it was based on a consensus of the members.[39]

Even greater problems emerged with executions aigainst the *zadruga's* property related to unpaid debts of individual members, taken in their name and on their account. The courts again determined the share of the debtor in the common property and ordered executions in respect to his share – but apart from affecting the *zadruga's* sense of justice, these decisions in most cases triggered the division of the *zadruga* as well. The Ban's Table annulled such decisions in appeal procedures, but in 1857 the Supreme Court in Vienna reversed two of the Ban's Table's decisions and allowed the executions. The Ban's Table warned of the legal and social consequences of this attitude and demanded the abolishment of further executions against members of a *zadruga* whose individual property was not individualised in the land registry. It argued that the *zadruga* was a specific institute between private and public law and therefore not regulated by the OGZ. The Croatian court demanded that the *zadruga's* common property remain indivisible until the enactment of adequate special regulations. The ministry of justice accepted these arguments, but the Supreme Court continued to deny the specificity of the *zadruga*. The Supreme Court insisted on an interpretation of the *zadruga* as a large family with a big number of relatives and warned of the backwardness, economic inferiority and social dysfunctionality of *zadrugas*, whose abolishment would eliminate laziness and instigate the peasants' qualities.[40] The obviously absurd interpretation of the *zadruga* as a large family by judges unfamiliar with the Croatian phenomenon well illustrates the abyss between the new private law system and Croatian reality. It also demonstrated the inability of that system to find the answer to the most important social problem in Croatia-Slavonia.

The Croatian-Slavonian first-degree courts continued to order executions against the *zadruga's* property in accordance with the opinion of the Supreme Court while the Ban's Table continued to block them. However, the new minister of justice Ferenc Nádasdy, who feared social crises in Croatia-Slavonia and received the report of an enquiry committee in favour of *zadrugas*, warned the judges of the Supreme Court that the *zadruga* was a specific and traditional entity not regulated by law. He asked the judges to change their attitude, warning them that he would otherwise plead with the Emperor for help, and the majority of the judges accepted to suspend further executions against the *zadruga's* property until a proper legislative solution should be found. The new imperial decree of 5 March 1860 soon banned such executions and postponed the danger of a social crisis. But the other side of the medal was that it also prevented banks

[39] Gross, Počeci 213.
[40] Gross, Počeci 214–215.

from giving credits to *zadrugas* due to the lack of instruments for their execution. That halted the *zadrugas'* market-oriented restructuration and provoked problems that again motivated their dissolutions.[41]

The clash between the civil law concepts of private ownership and the complementary form of the nuclear family with the *zadruga*'s customary order and organisation was so severe that it became obvious that the regulatory dimension was only the tip of the iceberg. The clash disturbed the foundations of the traditional social matrix, and instigated the confrontation of two different traditions that involved different values, social structures, types of regulation, institutional models and modes of orientation, as well as meanings of the concepts.

The OGZ's breakthrough to the sphere of customs, rooted in the Croatian tradition, produced severe consecutive irritations on the legal and social sides. The irritations disturbed the compatibility of the two sides that could not be re-established by some simple "unilateral" solution such as a quick disappearance of *zadrugas*, or a legal positivisation of the *zadruga*'s customary order. It was becoming clear that special legislation should be instituted.

The problems with the *zadruga* reflected the advantages and limits of the modernisation initiated and controlled by the enlightened yet distant centre of the complex structure of the Habsburg Monarchy. It was the enlightened centre that moved the underdeveloped periphery towards modernisation but could not adequately control the process once it confronted local challenges. Local attempts to solve the problem were inefficient since local forces did not have any decisive influence on the process that was run from the centre. Still, following an initiative of the central government, the Croatian-Slavonian provincial authorities prepared a conservative-liberal draft-law on the *zadruga*. The law failed to be accepted in the Croatian-Slavonian Diet of 1861 due to its premature dissolution,[42] and similar occurrences took place in the next Diet of 1865.[43] Both Diets were dissolved by King's decrees and against the will of the local political forces.

Failures in legislative politics instigated serious professional and political discussion in Croatia-Slavonia on the strategy and operational ways of resolving the problem of the *zadruga*. The discussion crystalized three main approaches to the problem: one that advocated the maintenance of the *zadruga* and its support by the government, one that advocated supplementary regulation and the gradual disappearance of the *zadruga* and one that spoke in favour of the unconditional abolition of *zadrugas*.[44] Yet, even early experiences indicated that an abolishment of the *zadruga* was not a realistic solution and that it was not likely that

41 Gross, Počeci 216–219; Pavličević, Hrvatske kućne zadruge 1, 127–129.
42 Pavličević, Hrvatske kućne zadruge 1, 169–184.
43 Pavličević, Hrvatske kućne zadruge 1, 206–207.
44 Gross, Počeci 220-227; Pavličević, Hrvatske kućne zadruge 1, 185.

the problem could be solved purely in the frame of civil law. Apart from that, the experiences with the Supreme Court and the dissolutions of the Croatian-Slavonian Diets showed that special legislation on the *zadrugas* should be passed and enforced within the framework of the Croatian-Slavonian autonomous system. Thus, it was clear that the pre-condition for the principal solution of the problem was to set up a stable framework of Croatian-Slavonian autonomy, as a ground for consistent modernisation carried out by internal forces. These were the coordinates that framed the search for a solution in the next decades.

C. House-communities from 1870 to 1889

Only the Croatian-Hungarian Compromise of 1868 introduced a stable institutional framework of Croatian-Slavonian autonomy.[45] It was also no coincidence that the first law on house-communities of 1870 was passed two years after the Croatian-Slavonian autonomous government had been constituted. Up to 1870 the problems had multiplied and the new law was confronted with an even more complex situation in society. The decrees on house-communities in the 1850s provisionally halted official divisions of the *zadruga*, but the general tendency of individualisation that could not be stopped increased number of "secret" divisions.[46] They resulted in a large number of new individual households that "floated" bellow the fictive cover of the *zadruga* in a *de facto* unregulated sphere beyond the control of the authorities.

Yet, the first law on the *zadruga* passed in the Croatian-Slavonian Diet by the liberal Unionist Party was all but successful, even though it set the standard form of the *zadruga*'s legal status and definition.[47] By 1870, liberal ideas in society fully prevailed and the law was drafted upon the liberal attitude that the disappearance of the *zadruga* should be accelerated by facilitating conditions for its division that would set the preconditions for the economic and social progress of society, particularly in villages. The law confirmed the basic traditional structure of the *zadruga* but it also incorporated civil law principles that contradicted some of the basic tenets of the *zadruga*'s order. Thus, each member of the *zadruga* was entitled to encumber his ideal share of the *zadruga* and undertake tran-

45 On the structure of the Croatian-Slavonian autonomous institutions since 1868 see: Čepulo, Entwicklung 4ff.
46 Gross, Szabo, Prema hrvatskom 387–388.
47 "More families or members that live in one home and under one househead, and run economy together, that is, cultivate undivided real estates and enjoy together their fruitages, make that patriarchal community called zadruga" § 1 Zakonski članak IV:1870. ob uredjenju zadrugah. All later laws omitted a definition of the *zadruga*, but legal practice was anyway oriented towards the definition from the law of 1870. Pavličević, Hrvatske kućne zadruge 1, 206–210.

sactions *inter vivos* and *mortis causa*, under provisions of the OGZ. Each independent adult member of the *zadruga* (24 years and above) could demand the division of the *zadruga*, including women married outside of the *zadruga* if their parents were not alive. The division was to be executed by the municipal government and confirmed by the county court, and the concrete partition was to be carried out by local arbiters, without the possibility to appeal against their decisions. In case of a disagreement between members, the *zadruga*'s immovable property was to be divided by lineage and movable property by heads.[48]

Some of the important provisions of the law, based on principles of the OGZ, went even further. The right of a member of a *zadruga* to dispose of his ideal share of the common property contradicted the idea of the *zadruga* and brought the *zadruga*'s ownership closer to the concept of ordinary co-ownership (*communio pro indiviso*).[49] The fact that a *zadruga* could be divided upon the request of any member, at any time and without any substantive restrictions had the same effect. Such provisions in fact provided for the dissolution of the *zadruga* to be easier than the dissolution of a co-ownership, which according to the OGZ could not be demanded at an inappropriate time or at the charge of other co-owners.[50] The right of women married outside of the *zadruga* contradicted the essence of life in the *zadruga* since the *zadruga* as a whole provided these women with a dowry, and they no longer contributed to their original *zadruga* but to another or to a family. Due to their education, women accepted the "natural" exclusivity of their brother's inheritance of the land, and when they demanded their share of land they were in fact demanding it not for themselves but for their husbands and their *zadrugas*.[51]

The new law induced an explosion of claims for divisions of common property that were not based on an agreement of members. The main problem were numerous demands by women married outside of the *zadruga*, not limited by any time limit. Another problem was the crucial role of local arbiters in the concrete division of property – instead of granting competent and correct procedures, they became a synonym for corruption and arbitrariness.[52]

In fact, the law of 1870 created conditions so chaotic that it soon became necessary to pass another law in 1872 that banned further divisions of *zadrugas* (except consensual ones) and individual disposals of members at charge of the *zadruga*'s property.[53] Yet, this *ad hoc* ban could not stop secret divisions and

48 Zakonski članak IV:1870 ob uredjenju zadrugah.

49 Kalčić, Kućne zadruge 21.

50 Prišlin-Krbavski, Vlasničko-pravno uređenje 314.

51 See Pavković, Studije i ogledi 274.

52 Gross, Szabo, Prema hrvatskom 388; Pavličević, Hrvatske kućne zadruge 1, 222.

53 See: Zakonski članak o pravostaji. The reason for this urgent suspension of the law of 1870 was a mass starvation in villages that followed the cold winter of 1871 and failed crop in the

other problems that were multiplying, so a new and comprehensive law was passed in a very short procedure in 1874.[54] The new law again rested on the idea of the *zadruga* as an archaic institution destined to disappear – yet in a rather painless manner.[55]

The law forbade the formation of new *zadrugas*, demonstrating the legislators' principal attitude. A minimum of land per party was again not granted, and the division of a *zadruga*'s property was based on the principle of lineage concerning immovable property, and by heads concerning movable property. The law again allowed the individual member to take out loans and demand separation of his ideal share of the *zadruga*'s property in case of debt, but this provision was soon abolished.[56] The law banned retroactive inheritance claims of women outside of the *zadruga*, but did not challenge such claims in principle. An important improvement was the removal of local arbiters, who were replaced with county officials whose decisions could be appealed before the Croatian-Slavonian Government.[57]

The legislation on the *zadruga* was soon affected by the annexation of the last part of the Military Frontier to Croatia-Slavonia in 1882, together with its regulation on *zadrugas* based on different principles and in favour of the existence of *zadrugas*. In fact, the situation was even more diverse, since the unification of the parts of the Military Frontier in 1871 was followed by special legislation for that area, passed in 1871 and 1876. In addition, the corresponding law for the remaining part of the Military Frontier, which only had to be annexed, was passed in 1880.[58] The aim of these transitory laws was to "bridge" differences with the Croatian-Slavonian legislation. Yet, the collateral result was that six laws on the *zadruga* were in force on the Croatian territory in 1882. This reason alone was enough to instigate the drafting of a single and comprehensive new law but another substantial reason also spoke in favour of the neutralisation of this increased diversity. The annexation of the Military Frontier increased the

summer. The main reason for that was seen in the particularisation of the already small land-property of *zadrugas* and in the disappearance of *zadrugas* that could take care of the weakest members solidarily. Pavličević, Hrvatske kućne zadruge 1, 228.

54 Zakon od 3. ožujka 1874. o zadrugah; Gross, Szabo, Prema hrvatskom 389; Pavličević, Hrvatske kućne zadruge 1, 228–230.

55 Smrekar, O seljačkih zadrugah 7.

56 The provision that was abolished suffered from conceptual and practical problems. The anticipated ideal share of a member did not necessarily correspond to his share at the moment of the division of the *zadruga*, due to possible changes in the number of members as well as in the size of the common property. Pavličević, Hrvatske kućne zadruge 1, 233. See: Zakon od 8. prosinca 1877.

57 Zakon od 3. ožujka 1874. o zadrugah.

58 Kalčić, Kućne zadruge 21–28; Pavličević, Hrvatske kućne zadruge 1, 237–249; Smrekar, O seljačkih zadrugah 8–9.

number, density and share of *zadrugas* in the enlarged territory of Croatia-Slavonia and population. It also increased the orientation towards traditional values and rules, considering the predominantly more conservative mentality in *zadrugas* in the former militarised area. Thus, the changes in the enlarged Croatian-Slavonian society were not only quantitative but also qualitative, and contributed to the increase of social and normative diversity in general.

Another influence on the new law also came from the structural changes in Croatia-Slavonia. A large number of *zadrugas* had been dissolved in the meantime, and their share in society diminished. In fact, the experience with the liberal legislation of 1870 and 1874 proved dissatisfactory, since it obviously produced problems instead of the projected social progress. Changed conditions in society affected the prevailing political attitude that now became favourable to the maintenance of *zadrugas*. The *zadruga* was now seen not only as a link to the national heritage, complementary to the nation-building orientation of the time, but it was also perceived as an institution that provided for social stability and contributed to society in its own way.[59]

In such a context, the new and the last law on the *zadruga* was passed in 1889.[60] Contrary to its liberal predecessors, the new law stood at the intersection of conservative and liberal commitments. Unlike previous regulations, it was grounded on the idea that the *zadruga* did not correspond to the principles of modern society, but that it was a traditional Croatian institution that preserved traditional values and contributed to preservation of social stability, and therefore should be maintained. The law provided for the protection of existing *zadrugas*, in particular through stricter preconditions for their divisions. Divisions still could be initiated by any member of a *zadruga*, but only upon the consent of the majority of adult independent members. The law banned the disposition of ideal shares of *zadrugas'* property by individual members, or their obligation. Contrary to previous laws, the new law provided for a minimum of land as a pre-condition for division, different in various regions (3–8 acres). Yet, the law "inherited" the principle of division of immovable common property by lineage on the territory of the former civil Croatia-Slavonia and division by heads now "according to the number of male and female members" in the former Military Frontier.[61] In fact, the Croatian-Slavonian Government was in favour of traditional divisions *per capita* as a general principle, but estimated that

[59] Tončić's realistic estimations counted almost 48,000 existing *zadrugas* and 70,000 secretly divided *zadrugas* in 1890, but their number increased on the account of the expansion of single-family *zadrugas*, and in 1925 112,000 *zadrugas* were counted in total. Pavličević, Hrvatske kućne zadruge 1, 258–260; Pavličević, Hrvatske kućne/obiteljske zadruge 2, 142; Smrekar, O seljačkih zadrugah 11; Tončić, Vrhovne 240ff.

[60] Zakon od 9. svibnja 1889. o zadrugah.

[61] Pavličević, Hrvatske kućne/obiteljske zadruge 2, 41.

such a revision would be counter-productive after the "imported" principle *per linea* had been in force for so many years. The law for the first time regulated the *zadrugas* of petty nobility that traditionally allowed more extensive individual dispositions by members.[62]

The greatest novelty in the law, contrary to the provisions and spirit of previous laws, was that it allowed the formation of new *zadrugas* after the division of old ones, thus permitting the spontaneous disappearance as well as maintenance of *zadrugas*. The law allowed that a group of members of the divided *zadruga* register themselves as the new *zadruga* on the remaining property of the old *zadruga*. If only one single family remained after the division, it could opt to register itself as a *zadruga* or as a (nuclear) family. In the latter case, a representative of the family could register himself as a single owner of the family property. This provision emphasized the will of the individual in charge of the community (family) and created considerable problems in practice since in most cases the father was registered as a single owner.[63] This solution contradicted the collective spirit of the *zadruga* shared by family members. They continued to perceive family property as a common property, that anyway belonged to all members, considering its disposition as well as inheritance.[64] The problem was so immense that in 1902 an amending law was passed that provided for the consent of all members of the family as a pre-condition for a registration of single ownership.[65] This law finalised the legislative activity on the *zadruga* that further on lived steadily in a co-evolutionary equilibrium of the legal and social sides. The regulation of the *zadruga* remained stable and unchanged for the next four decades. This paved the way for original case law and ambitious doctrinal and theoretical treatises.

These two laws on the *zadruga* of 1889 and 1902 had great importance in the Croatian legal system. Their main merits were to balance a liberal and a conservative orientation and the more pronounced "hybrid" character that successfully combined principles of civil law and traditional customs. Due to such attributes, the two laws rather well corresponded to the current as well as to the anticipated social and legal processes.[66] This was the main reason why these laws were not seriously challenged but remained in force until 1945 and then continued to be a supplementary source of "legal rules".

[62] The disposition of land in the nobility's *zadrugas* was always free, it was based on the principle of lineage, women that left such a *zadruga* did not lose inheritance rights, the obligation of dowry primarily burdened the family of the bride. Zakon od 9. svibnja 1889. o zadrugah, § 59; Pavličević Hrvatske kućne/obiteljske zadruge 2, 59.

[63] Pavličević, Hrvatske kućne/obiteljske zadruge 2, 116: Tončić, Vrhovne 245.

[64] Krbek, Pravna konstrukcija 3.

[65] Zakon od 30. travnja 1902, § 5; Pavličević, Hrvatske kućne/obiteljske zadruge 2, 121.

[66] Vrbanić, Rad 231–232.

The fact that the *zadruga* survived in spite of aggressive attacks from various sides indicates that it was not an institute essentially modelled on the Croatian-Slavonian feudal manors since it would then have disappeard under the impact of the legal regulation during the 19th century, just as it happened with some other institutes.[67] The *zadruga* was an institution deeply rooted in tradition, the social fabric and mental structures that persisted for an extended period and influenced social processes. The *zadruga*'s relics in society as well as its legal form survived the communist revolution as well.[68] The *zadruga*'s fictive legal euthanasia occurred in 1956 with the decision of the Supreme Court of Croatia to remove *zadrugas* from the land registers and pre-register former lands of *zadrugas* as civil law ownership. Yet a number of *zadrugas* were not removed due to the problems of identifying the owners or determining their shares. Incidental procedural and material problems related to that still appear in legal practice, and require reference to the former *zadruga*'s regulations.[69]

D. The OGZ and the House-Community in Social and Legal Practice

Contrary to idyllic descriptions of life in the *zadruga* as a democratic community based on pure solidarity, mutual understanding and help, reality was often burdened with an authoritarian or careless administration of the househead, alcoholism, women's quarrels, laziness and irresponsibility, low productivity, patriarchy and a degrading position of women.[70] A *zadruga* in the 19th century was not a world of pure collective spirit but a blend of collective and individual values and norms that affected the inner social dynamic and participated in the process of the *zadrugas'* dissolutions.[71] *Zadrugas* were "mixed" social and normative units that lived side by side with simple families instead of isolated enclaves at the margin of society. Baltazar Bogišić spoke about three forms of family: *zadruga*, *inokoština* (*inokosna*) as a nuclear-type family that shared values and principles of the organisation of life with the *zadruga*, including common ownership, and the city-type family that was based on individualistic values. According to Bogišić the first two forms of family belonged to the same type of household, and they

67 Karaman, Hrvatska 175.

68 Comp. Sicard, Razmišljanja 47–51, and Šuvar, Kritičke opaske 91ff. On the deeper and more enduring influences of the *zadruga*'s mindset see Rihtman-Augutin, Struktura tradicijskog mišljenja 188.

69 Crnić, Postupak brisanja 76–77ff.; Žuvela, Upute 323.

70 Pavličević, Hrvatske kućne zadruge 1, 213; Rihtman-Auguštin, Struktura tradicijskog mišljenja 35–43.

71 There is still no agreement on this issue yet the most convincing seems to be a pluri-causal explanation of dissolutions with an important role of economic and fiscal dimensions. Bićanić, Agrarna reforma 25–26; Pavličević, Hrvatske kućne zadruge 1, 264–266; Rihtman-Auguštin, Struktura tradicijskog mišljenja 174, 178.

were not distinguished by the common people except in regard to size. The size was spontaneously or deliberately chosen as the most adequate form in regard to the circumstances, and therefore subject to change.[72] Thus, *zadrugas* were part of the conventional and "normal" social environment in villages, without any social distance towards simple families and vice versa.[73] Even though the peasant nuclear family in the Croatian-Slavonian legislation and doctrine was taken as a counterpart to the *zadruga*, reality was different. Peasant families in fact shared values and customs with the *zadruga* from which they differed only concerning their nuclear form.[74] A large number of single family *zadrugas* that appeared as a result of intensified divisions of *zadrugas* did not differ much from their civil-law counterparts in villages, who in fact shared the same values (*inokoštinas*).

Yet, the *zadruga*'s type of life and mind mainly followed a traditional normative basis, that is, values and stabilized counterfactual patterns of behaviour based upon customary norms. That made the *zadruga*'s world distinct from the world ideally described in the OGZ, as well as from the "conventional" social reality that roughly corresponded to the OGZ.

Disputes in *zadrugas* were resolved through internal instruments and according to the internal understanding of justice and equity, by authority or by mediation,[75] except when the problem was transferred to, or taken over by external institutions that reformulated and solved it in their own language.

The introduction of state regulation on the *zadruga* in the form of special "hybrid" legislation could not eliminate the *zadruga*'s particular mind and way of life that continued to be based on customs, internalised by individuals and incorporated in the rural society that only gradually adapted to the principles of the OGZ and special legislation. More than that, the orientation based on traditional values and rules continued to be present after the division of *zadrugas*, in independent families that preserved the traditional legal mind and models of behaviour. In reality, there existed a large number of so-called "divided *zadrugas*". They were neither *de iure* nor *de facto* real *zadrugas*, but clusters of smaller *zadrugas* or individual families, who after the division of the original *zadruga* remained connected with strong ties like joint housing, joint cultivation of the land with division of fruitage according to contribution, sometimes even with a

72 The custom-based law in the Military Frontier of 1807 did not distinguish between these two forms of family, as it later happened with the "lawyers' law" in the Serbian Civil Code of 1844 and the Croatian-Slavonian legislation on *zadrugas* since 1870. See, Bogišić, De la forme ditte Inokosna 8ff.

73 Moseley, The Peasant Family, 22–23.

74 Bogišić, De la forme ditte Inokosna 8ff; Moseley, The peasant family 22, 27; Rihtman-Auguštin, Struktura tradicijskog mišljenja 18.

75 Rihtman-Auguštin, Struktura tradicijskog mišljenja 174.

joint head.[76] In both cases, continuity of the orientation based on traditional values and customary norms was the main reason for the clash with civil-law regulation, compulsory for these communities, which they largely did not understand. Some of these "inter-normative" disputes were resolved according to traditional customary principles inside the communities. Others ended at the courts where they were adjudicated according to probably different principles than the ones that the parties followed in their lives.

This description suggests that in reality two different yet interwoven ideal-type normative systems co-existed and affected life in various types of communities, often in a "blended" form. The formal view from the perspective of positive law and professional legal practitioners pretended that life in general complied to the schemes of state regulation, but the reality in *zadrugas* and *inokoštinas* was probably more oriented towards customary norms. The majority of cases concerning *zadrugas* at the courts were probably manifestations of the clash of two normative orders, rather than a result of contradictory interpretations of the state law. The orientation towards customs in everyday life as well as in conflicts was only gradually and in a long term replaced by an orientation towards principles consistent with legal norms.

The sturdiness of the principles of the *zadruga* as well as changes that presented a gradual individualisation are indicated by the presence of the *zadruga* in the overall population. Attorney Emil Tanay, a specialist on the *zadruga* who was familiar with the relevant statistics, estimated that in 1850 almost all of the Croatian-Slavonian peasant population lived in *zadrugas*, one third in 1912, and one quarter of the total Croatian-Slavonian population might still have lived in *zadrugas* in 1930,[77] yet the numbers and shares of single-family *zadrugas* far prevailed since the beginning of the 20th century.[78]

Even though this data is not completely reliable and some recent studies warn that much higher shares of individual families were hidden behind the *zadruga*'s façade,[79] they still indicate a strong presence of a traditional orientation among the population. Even though it seems that the main motive for the registration of single families as new *zadrugas* was avoiding procedural and financial burdens,[80] choosing to stay in the safe zone of the *zadruga's* framework still indicates a traditional mindset.

76 Pavličević, Hrvatske kućne zadruge 1, 77–78; Tončić, Vrhovne 246.

77 Pavličević, Hrvatske kućne/obiteljske zadruge 2, 196–197. More detailed statistics also see in Tončić, Vrhovne 242, 243.

78 Pavličević, Hrvatske kućne zadruge 1, 256. In 1912 there were still 582 noble's *zadrugas*, and 943 *zadrugas* in the cities, for example 40 in Zagreb, 448 in Karlovac, and 136 in Vinkovci. Tončić, Vrhovne 263–264.

79 Čapo Žmegač, Konstrukcija 190.

80 Stahuljak, Individualizam i kolektivizam 177.

Yet, on the other side, the breaking of larger *zadrugas* into these small single-celled *zadrugas* is indicating the process of individualisation. This tendency and the way in which the OGZ and social interaction affected change of some typical institutes of the *zadruga* can be seen in the conversion of function and nature of a dowry.[81] As already stated, a dowry was a matter of the whole *zadruga*, and women who left the *zadruga* lost all formal relations to their original *zadruga*, including inheritance rights.[82] However, after daughters who had left the *zadruga* started to use their right granted by the new legislation and successfully demanded their share of inheritance in courts, a tendency to treat the common property of the *zadruga* as if it was individual property developed and the function of the dowry partly changed.[83] The dowry gradually turned into an anticipated compensation for the daughters' rights to inherit family property and unlike before included pieces of land or higher sums of money.[84] Due to this increase in value of a dowry, the heads of families sometimes went to the USA for work after a daughter was born, in order to provide money for such a dowry and avoid the threat of the division of the *zadruga* and its land.[85]

Changes in the framework of families can be seen through the "hybridisation" of the two systems of norms. Family property was transferred according to the traditional roles of sexes, and the traditional understanding of the contribution of members, i. e. according to the *zadruga's* principle of equity, and not according to the OGZ's principle of equality of members. Thus, family property was ceded to a daughter when she married, and if it was given later, then it was less than the share given to a son.[86] The endurance of the principles of the *zadruga* can be seen in the case of brothers who after their father's death inherited and divided the "common" land, but kept its integrity in the form of common possession and continued to live together in spite of establishing independent families.[87] On the other side, a clash of traditional culture with new rules was clearly visible in problems with testamentary inheritance since descendants were com-

81 Tončić explicitly accredited the change in function of the dowry to the influence of the OGZ. Tončić, Vrhovne 263.

82 Moseley, Adaptation 41–42.

83 Moseley, The Peasant Family 25.

84 Moseley, The Peasant Family 25. Case studies on dowry in the *Varžić zadruga* see in: Moseley, Adaptation 42–44. Up to 1890 giving land as a dowry was seen as "unnatural" since it would imply that the daughter who married into another *zadruga* was a member of both the old and the new *zadruga*. Pavličević, Hrvatske kućne zadruge 1, 207; Pavković, Studije i ogledi 274.

85 Tončić, Vrhovne 264.

86 Stahuljak, Individualizam i kolektivizam 176–177; Tončić, Vrhovne 263–264.

87 Stahuljak, Individualizam i kolektivizam 177.

pletely unfamiliar and unexperienced with such dispositions of *de iure* personal property that they still perceived as "common" property with their shares.[88]

The main problem in legal practice was the incapability of members of the *zadruga* to distinguish between ownership and possession. Not only that such distinction was not known in their experience, but it did not fit at all into their legal mindset. Apart from that, great problems were cases related to inheritance, particularly with regard to inheritance claims of daughters married outside of the *zadruga* and problems relating to the registration of ownership of new *zadrugas* as single ownership of the father.[89] These numerous cases were presented in case law and here I will briefly describe a typical case that illustrates the clash between different normative orders and correspondent legal cultures.

The case in this matter was an inheritance litigation conducted after the division of one *zadruga* in the territory of the former Military Frontier on initiative of a woman married outside of the *zadruga* of her origin. She was provided with a dowry and severance pay when she married and left the *zadruga*. After the division of her original *zadruga*, the family from which the married daughter descended received the former *zadruga*'s land according to the number of family members at the time of the division of the *zadruga* (division by heads in the former Military Frontier). The family share did not include the married daughter's share, since she was not a member of the *zadruga* at the time. The property allotted to the family was registered as ownership of the father of the family as a single owner. The father died without leaving a last will and the court conducted the inheritance proceeding, applied the OGZ principles on intestate succession and divided the deceased's property equally between the only son and the married daughter. The son did not accept such a decision as he thought that his sister could not have any rights to the family property. Yet, the sister succeeded with the dissolution of the co-ownership.[90]

This typical case illustrates the clash of the *zadruga*'s legal mindset with the OGZ principles. It was beyond the son's understanding that his sister had the right to a property to which she did not have any functional connection except for an irrelevant blood relation with the ascendant. That she had left the *zadruga* to which she no longer contributed and was compensated for her share in the inheritance through a dowry and severance pay, were reasons that, in the mind of the brother, disqualified her for any share of the common family property, which purely formally was registered as their father's ownership. In fact, contradictory was that the division of the *zadruga* by heads was carried without counting the absent sister and that the related "family" share (factual cluster of *de iure*

[88] Stahuljak, Individualizam i kolektivizam 177.
[89] Sokolić, Potreba 322; Stahuljak, Individualizam i kolektivizam 177; Tončić, Vrhovne 245.
[90] Ćimić, Zadružni i opći 545–551.

individual shares, formally single ownership of the father) was determined without counting her "head", yet with her potential inheritance claim in the background. The sister's claim, in the understanding of the brother, did not have any ground, be it concerning her inexistent contribution to the property or concerning the determination of the size of the property calculated without her.

Both father and son lived in a family that retained the perception of the family property as a common ownership of the *zadruga* type and not individual ownership of a single person, as it was registered. The registration of ownership was perceived as an irrelevant technical detail that could not prevail over the right of an adult member of the community (family in this case) that superseded claims of the (inexistent) rights of those who were not members of the community. Similar problems appeared in many cases that followed the law on the *zadruga* of 1899 mostly due to the fact that administrative clerks routinely registered property of a *zadruga* allotted to a family as single ownership of a father, without any of the members being aware of the meaning of this let alone its consequences. This practice provoked an increased number of disputes in newly formed families. It affected further divisions that ended with almost unequivocal demands of new families to be registered as single-family *zadrugas*.[91]

This factual answer to the irritation provoked another legal adaptation in the form of the already mentioned amendments in 1902 that treated a new family as a community that was empowered to decide about property rights assigned to the community. Yet, even though this legislative reform as well as rich case law suggest that it was civil law that became the principal orientation in families created after the division of *zadrugas*, we again presume that reality was different. It is very likely that a number of similar cases never appeared before the courts, but was resolved in the family that became the new formal framework for the old or modified *zadruga*'s rules. It was the *zadruga*'s customs that affected not only everyday conduct but internal conflict-resolution in such families. "Escapes" of new, "post-*zadruga*" families that rather chose to establish new single-family *zadrugas*, and stay in the safety of the *zadruga*'s framework, from which they had formally walked out, probably confirm this suggestion.

The case law of state courts, the practice developed in post-*zadruga* families as well as in already existing rural families (*inokoštinas*) and the communitarian mindset of both point to the existence of a grey zone that lay between traditional customs and the legal mindset typical for a *zadruga*, and the state law with its core in the OGZ. Principles of the OGZ in that zone were adapted to the traditional *zadruga*'s way of life, but numerous unresolved disputes still ended in the court. The transfer from the *zadruga*'s framework to a considerably different regime of the OGZ did not mean an automatic reset of the mindset and patterns

[91] Tončić, Vrhovne 245.

of behaviour of the former members of the *zadruga*. In the entirely new context, they took, or omitted to take, certain legal actions without being aware of the consequences of such behaviour. A number of indications points to a discrepancy between the legal mindset of actors, both in *zadrugas* and in simple families, and the compulsory norms to which they were subjected to, but did not understand. That number was big enough to motivate the Croatian-Slavonian Government to conduct a large survey of *zadrugas* and *inokoštinas* as well as of city-type families in 1912, in order to prepare a revision of the legislation.[92]

In spite of likely methodological deficiencies, the results of the survey clearly showed that most of the peasants were still more in favor of the *zadruga* with only a minority opposing it.[93] The survey showed an almost universal discontent of the peasants with the OGZ, the basic objection being that it did not correspond to the legal mindset or economic needs of the people as a *zadruga* (still) did.[94] Thus, sixty years after the introduction of the principle of equality before the law and private ownership as the only provided type of ownership, the OGZ was still not completely accepted as a principal normative framework in the everyday life of peasants.

This general attitude was present in a number of peasants' complaints and proposals that reflected the strong influence of the communitarian mind. It was probably most clearly expressed in the peasants' demands for the institutionalisation of the formation of new *zadrugas* as a general principle,[95] as well as in the demands for the introduction of a traditional principle of division by heads in the former "civil" part of Croatia-Slavonia. Yet, a number of proposals looked at adapting old principles to the logic of private property.[96]

A large part of the complaints considered the regulation of (new) families, particularly in regard to too extensive entitlements pertinent to private ownership. The complaints clearly indicated that the orientation in new families was still based upon the traditional principles and customs of the *zadruga* and not upon civil law regulation. The transfer from the *zadruga* to the formal framework of the family did not imply a transfer of the members' mentality to the compulsory framework of the civil law regime – which they deliberately chose. Peasants particularly lamented excessive freedom of single owners to dispose of

92 Tončić, Vrhovne 248–249.
93 Tončić, Vrhovne 256.
94 Tončić, Vrhovne 250.
95 Tončić, Vrhovne 253–254.
96 The main proposals considered strengthening the authority of the househead, the grants of care for old people, the introduction of municipal "peasant courts" competent for internal *zadruga*-related disputes, the mitigation of credit conditions, the removal of the land-minimum, and the introduction of a severance pay for individuals that wanted to leave a *zadruga*. Tončić, Vrhovne 253, 256ff.

"family" property, fragmentation of land property and discordance between peasant possessions and registered land ownership.[97] In order to neutralise such injustices the majority of peasants proposed that the principles and customs of the *zadruga* should be extended to families.[98] A minority of peasants proposed hybrid forms of regulation, concerning the limits to single ownership and to the inheritance of married women.[99]

The enquiry indicated that the grey zone subjected to civil law regulation, in which members of new families lived, was burdened with a number of dysfunctionalities that were largely related to a misunderstanding of single ownership and the distinction between ownership and possession. As a result, proposals were made to pass a completely new law ("peasant code") for peasants who lived in individual families, but in practice continued to live by the *zadruga*'s customs.[100] The peasant legislation was to be based on restrictions of the rights of ownership, and it should fill that grey zone between the OGZ principles and traditional legal mindsets. It would represent the other part of the game played on the civil law ground – namely, the penetration of the traditional principles of the *zadruga* into the civil law area. Thus, if special "hybrid" legislation on the *zadruga* represented the penetration of the principles of civil law into the sphere of the *zadruga*, then the "peasant code" should have represented the opposite, that is, the penetration of customary principles into the civil law sphere.

Even though it was not easy to imagine that such a regulation could be introduced, the idea of passing a "peasant code" persisted for a long time.[101] The enduring presence of this idea indicates how deep the gap between the two traditions and two mindsets was and how slowly it was disappearing.

VI. Legal education and legal doctrine

Part of the answer on how and why the house-community was operated in a certain mode lies in the role of legal professionals and legal culture. That leads to a discussion on the role of legal education. In the case of Croatia such analysis is inevitably focused to the Faculty of Law in Zagreb as the only graduate institution of legal education and the almost monopolylike source of the production of

97 Tončić, Vrhovne 250–251.
98 Tončić, Vrhovne 251–252.
99 Tončić, Vrhovne 251–253.
100 The projected legislation should include special status law, property law, obligations, inheritance law, the law of associations, procedural law and the law on execution. Tončić, Vrhovne 251.
101 Badaj, Agrarnopravno iverje 244–236, 308; Sokolić, Potreba, 322–323, 327; Stahuljak, Individualizam i kolektivizam 176.

legal professionals in the broader Croatian and South Slavic areas from 1776 to the mid-20th century.[102] The analysis of the presence of the ABGB, the OGZ and the *zadruga* in the curricula of legal studies in Zagreb can help in painting a more colourful picture of the role of the OGZ in the Croatian legal system, and of the ways in which the *zadruga* was perceived and dealt with in that system.

The core subject in private law at the *Facultas Iuridica* of the Royal Academy of Sciences in Zagreb (1776–1850) was the "*zadruga*-friendly" Tripartite while neither the ABGB nor Roman law were part of the studies.[103] The *zadruga* could hardly be mentioned at the time when it was first registered in literature, even though some law students might have come from this environment or its vicinity.[104] The *Facultas Iuridica* was replaced by the Royal Academy of Legal Sciences, founded in 1850 as a part of the Thun-Hohensteinsche's reforms,[105] with courses on the ABGB and Roman law (1852). The Academy served as a basis for the establishment of the Faculty of Law at the University of Zagreb, founded in 1874, whose curricula indicated the growing importance of the OGZ and Roman law,[106] while the Tripartite was turned into a legal historical course by the end of the century, but remained a compulsory part of the curriculum until 1945.[107]

In spite of its obvious social importance, it took some time until moderate forms of teaching about the *zadruga* were introduced. The *zadruga* probably first appeared as part of the course on legal history in 1874 and it might have appeared as a marginal part of teachings of civil law since 1892.[108] Considerably more attention to *zadruga* was paid in teachings of administrative law where lectures and theoretical discourses published since 1910 confirm a profound interest in this subject.[109]

Yet, such late and only moderate forms of education on *zadrugas* provoked constant complaints about professors and lawyers in practice as being "committed" to Roman legal ideas and not acquainted with the domestic legal tradition.[110] The matter in question was whether the legislative answers to the challenges of the *zadruga* were proper ones and whether practising lawyers were educated to successfully deal with such issues in practice.

Answers to that question are not simple and cannot be one-dimensional. Croatian-Slavonian legislation on the *zadruga* was a lot more developed than the legislation in the neighbouring lands in which the *zadruga* was far more important (Serbia, Montenegro, and Bosnia and Herzegovina),[111] and the "Pandectary" approach that dominated until the late 1880s was basically a question of political and not professional orientation. Apart from that, practical and doctrinal discourses on the *zadruga* in Croatia-Slavonia appeared rather early, especially considering the novelty of the problem, and the *zadruga* was probably more present in education than current research indicates. Thus, the picture is perhaps not as grey as contemporary critics suggested.

Yet, it is hard to overlook the dominant role of the OGZ and the Pandectist approach in legal education, especially in post-1874 curricula. It is also hard to avoid the impression that legislative discourses on the *zadruga* were not only determined by the political orientation of actors but by their inadequate legal knowledge in this important matter as well.

But then again, one should note that the law of 1889, even though imperfect and incomplete, was a good piece of work in both the concept and performance. The law paved the way for the original and elaborated practice of the courts that had already been cutting their own way beyond inapplicable practical and theoretical models and referred to their own "legal mindset and erudition".[112] Judges dealt impassionately and independently with the problem that in the meantime was cleared of the political attitudes and developed sophisticated case law that became the ground for a new doctrine and new branch of law (*zadružno pravo*).

The *zadruga* was by no means a theoretical and practical challenge to Croatian lawyers, whose theoretical discourses point to the essential features of the *zadruga* and well-illustrate problems of dealing with it.[113] Theoretical construc-

[102] New faculties of law in Croatia were established in 1961 in Split, and in 1973 in Rijeka and Osijek. In the neighbouring area faculties of law were founded in Belgrade in 1841, and in Ljubljana in 1920.

[103] Šidak, Opći pogled 84.

[104] Students of the *Facultas Iuridica* in the 18th century were mainly nobles, a small number was of civil origin but few students were of peasant origin. Šidak, Regia scientiarum academia 74.

[105] Čepulo, Legal Education 114ff.; On the Thun-Hohensteinsche's reforms see: Simon, Die Thun-Hohensteinsche Universitätsreform.

[106] Čepulo, Legal Education 128.

[107] Čepulo, Legal Education 134.

[108] Čepulo, Legal Education 132; Čepulo, Opća pravna povijest 875–876, 881ff. The history of the chair of civil law at the Faculty of Law in Zagreb does not mention any content on the *zadruga*. Stipković, O nastavi 281–287. Attorney Sokolić complained in 1928 that no particular course on the *zadruga* had been established. Sokolić, Potreba 323.

[109] Krbek, Pravna konstrukcija; Krišković, Zemljištne zajednice; Krišković, Hrvatsko pravo; Vrbanić, Rad.

[110] Gross, Počeci 226ff.; Krišković, Hrvatsko pravo 56, 117; Pavličević, Hrvatske kućne zadruge 1, 40, 182–183, 227ff.; Pavličević, Hrvatske kućne/obiteljske zadruge 2, 41; Riht-man-Auguštin, Struktura tradicijskog mišljenja 60ff.; Sokolić, Potreba 323. Still in 1944, an anonymous legal writer tried to exculpate Croatian lawyers from these objections by pointing to a rich doctrinal production on the *zadruga*, and arguing that the dissolution of the *zadruga* was a process that developed without any regard to legislation. Anonymous, Jesu li, 417–420.

[111] Comp. Tončić, Vrhovne 267; Zekić, Kućna zadruga. Also see: Simon, Nationale Wiedergeburt 20–21.

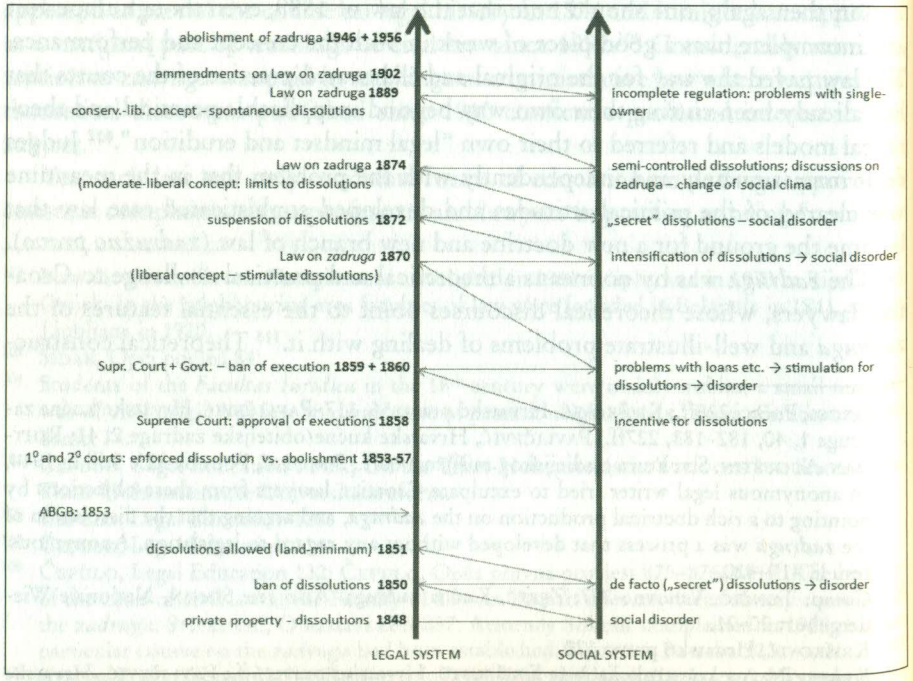
[112] Krišković, Hrvatsko pravo 120.

[113] Krbek, Pravna konstrukcija 3–6; Krišković, Hrvatsko pravo 6ff.; Pavličević, Hrvatske kućne/obiteljske zadruge 2, 47; Spevec, O juridičkoj 1ff.; Strohal, Razvitak 1–2.

tions of the *zadruga* indicated the fundamental conflict between the Pandectary principles of the OGZ and the *zadruga*'s customary ground. The system of the *zadruga*'s customary regulation, rooted in the particular tradition that emerged in a living environment, could not be translated into the concepts and way of thinking determined by Pandectary schematics and the logic of individualism. The theoretical elaboration of living forms of house-communities that were crystallized in customs necessarily implied a search for alternative approaches beyond the existing theoretical schemes.

VII. The transfer of law and co-evolution in the plural normative environment

The development of private law in Croatia-Slavonia indicates that the introduction of the principle of equality before the law in 1848 and the exclusive form of private ownership in 1853 did not result in a radical and quick modernisation but rather marked the beginning of the process of a co-evolutionary development of the legal and social systems. It was carried out in a plural normative context and plural social environment.



ABGB in the Croatian legal system: Co-evolutionary trajectory

The reality of life in *zadrugas* and rural families was oriented towards communal values and was characterised by an overlapping of different, and even opposing normative orders. The multinormative regulative frame testified to the penetration of individualistic values and norms into traditional collectivistic house-community's social fabric. Similar to that, the multinormativity in the traditional rural families indicated a vitality of the collectivistic customary order in the "individualistic" ambience. Judicial and legislative practice that deep into the 20th century still had to deal with house-community issues manifested the persistent orientation towards collectivistic customs of the house-community type. Yet, even though the reality of life in both forms of rural families was characterised by a multinormative mix of norms of different character and value-orientation, this "mixture" further points to the existence of different archetypes in their basis, which could be abstracted from the competing normative forms of the living law.

Thus, we can say that in the Croatian-Slavonian reality two parallel, competitive yet entangled normative orders existed that corresponded to two *models* of social reality, intertwined in practice. The legal order of private law (the OGZ) was based on private property, individual family and inheritance *per linea*; it was built upon individualistic values and complied to the city-style life and its correspondent cultural tradition. The other was the customary order of the house-community with common ownership, communal joint households, the absence of inheritance and the division of all property *per capita*; this model was built upon collectivistic values and corresponded to the traditional *zadruga* life-style.

The private law order appeared in the form of positive law that was imposed and backed by the state, it was rational and far more developed as a normative system, considerably more visible, supported by the legal education and complementary to the modern way of life, and because of all of that far more successful and expansive. Yet, in the reality of life, as already described, the radical breakthrough of the new paradigm was followed by its enforced step back, and only then this invasive new legal order gradually "conquered" broader normative and social spaces. The customary order, the "unofficial law", was only loosely structured as a normative system, it lacked support by institutions and was in a way suppressed by the positive law; it was poorly visible from the point of view of the dominant elite culture which it did not complement, and it was defensive. However, it was deeply rooted in tradition, in the individual and collective mind and corresponded to the material and social conditions of rural life. Due to that, it resisted various challenges and for a long time remained important to the Croatian rural society. Perhaps this customary order could be described as a "semi-autonomous social-field", yet since the 19th century it had not been re-generating its normative basis, and compliance to its norms was diminishing.

The re-paradigmatisation of the Croatian private law system, particularly with regard to the status of common and private ownership, as well as of the house-community and nuclear family, was a complex process that took four decades before it reached a stable form. Yet, it was more effective and complete than the correlated process of social change that took considerably more time for the related transformation of the social matrix. Signs that kept on appearing after the balanced law of 1889 indicated that the overall process of normative and social transformation of the rural society was still not finished. It was demonstrated in the demands for the "peasants' code" at the beginning of the 20th century and later, in continuity of the legislation on house-communities up to 1956, in the presence of formal remnants of house-communities in legal practice up to the 21st century and particularly in the presence of the last factual forms of house-community deep into the 20th century. It is particularly the last indication that suggests that this widespread and endurable phenomenon probably had a broader and deeper influence in the whole society, and not just in its rural part.

Complex changes in the legal system and society that were catalysed, accelerated and deepened with the introduction of the ABGB (OGZ), went underway as a series of interactive normative and social changes. They eventually resulted in essential changes of the normative and social system and affected the deep mental structures, with corresponding influence on value orientation and the orientation of social conduct of actors. We have not reconstructed this process but its outlines are deductible from the research. The combined normative and social changes based on civil law principles affected the external and particularly the internal multinormative environment of the house-community and gradually influenced the mind of people. We can imagine large "fields" of *zadrugas* and their individual enclaves, spread throughout the "official" civil law ground, with gradual "melting" and assimilation of the enclaves into the "ordinary" environment, as well as similar processes of shrinking and disappearing of social "fields" of *zadrugas*.

The combined penetration of modern structures and norms resulted in the disappearance of the house-communities, which have not left direct traces in the further development of the institutions and social structures in Croatia. Due to such an absence of institutional continuity and to the fundamental discordance with the "principal line" of development of institutions and society, the concept of the house-community has not attracted the serious interest of Croatian legal historians, and was gradually set at the margins of interest of the "mainstream" historians, as an obsolete phenomenon that does not require deeper analysis. Yet, it was not that way.

VIII. Conclusion

The introduction of the ABGB in Croatia-Slavonia had an overreaching importance for the development of the Croatian legal system and society that was achieved through the long and complex process of "cultural translation" and "domestication" of the principles and norms transferred to a different legal and social environment. After the initial disturbance of the equilibrium between the legal and the social system, the development continued as *longue durée* co-evolution shaped by mutual irritations by the legal and the social side. The clash between opposing types of normative orders of state based civil law and collectivistic customs of the house-community took place in a multinormative setting of rural households. Rules based on private ownership and the related model of family gradually dominated the multinormative clusters and the related communities of rural society, influencing the deep mental structures of the population and definitely shaping the legal culture.

In the realities of small communities as well as in their broader social context, it was not a single rule, single code or single model but an interplay of plural normative and social factors that determined the final outcome. The implementation of new institutes relies, among other things, on the concordance of the state of mind in a particular social unit or on the acceptance of its principles and main institutes in the individual and collective legal mind with the outcome in the behaviour of actors in legal procedures and their conduct in everyday life.

The ways through which the "text" or other types of norms gain a certain meaning, become a norm of adjudication in courts and participate in the multinormative content that influence the behaviour in everyday life, seem to be the principal reality of law. But one of the questions that arises from such determination is how extensive our examination of these complex phenomena should be. This and other similar questions provoke to further discourses.

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