

## THE EGALITARIAN PRINCIPLES OF THE OLD BOHEMIAN STATEHOOD AND THE LEGAL SYSTEM

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### Abstract

**Purpose:** The article is devoted to the study of egalitarian principles of medieval Czech statehood and the legal system.

**Methods:** The authors pay special attention to the peculiarities of family self-government of the Czech communities, the institution of hazing in land law and the mechanism of reconciliation as an alternative to the death penalty.

**Findings:** The paper proves that tribal remnants of the customary law of the ancient Czech people in the medieval era contributed to the preservation of egalitarian democratic principles of public administration and justice.

**Keywords:** *legal slavistica, egalitarianism, the medieval Czech Kingdom, Czech, the legal system, blood feuds, customary law, the Slavs.*

### INTRODUCTION

In the framework of the legal theory of Slavic studies, the study of state and law of medieval statehood and legal system of the Czech nation, evolved from vassal-Liege orders dynastic monarchy to republicanism to the Sejm (1.p. 285–289), which in the XXI century is the identification of the marker behind the origins of Czech parliamentarism and the concept of the rule of law ([Abuzjarova M.I. 2018](#)). The origins of the legal way of life of the medieval Czech Republic should be sought in the ancient Slavic customary law.

The primary element of the Slavic tribal Union (squads of zadruga) was the family that established the principle of equality of all its members in relation to the total family welfare. Land ownership, where the family settled, was the joint property of the family, who were equally entitled to use it. Managing to bully was the father of (Bishop, elder). The Lord of the family performed the priestly functions in the family, and also represented the interests of the household at community meetings – the diet. After the death of the head of the family chose a new boss or with the consent of all members of the family Union divided the property into new family units ([Ashmarov I.A. 2018](#); [Aminova D. K., & Tsakhaeva, A. A. 2018](#); [Borisov V.I. 2018](#)).

From the old Slavonic legal principle – that the estate on the death of the Lord should pass into his family, which then owns it or in an undivided form, or divides it into equal parts – there was what was considered necessary to divide the land between the male members of the Royal house. The rank of Grand Duke was associated with the symbol of Supreme power in the country, with the stone throne, on which the new sovereign was erected in a solemn way.

In this regard, it should be noted that the fundamental difference between the social organization of the Germans from the Slavic community, was that the German Institute of tribal power stimulated the increase of power and military glory of the tribe – the main purpose of the Slavic unions was the welfare of all members of the genus. Therefore, the poor became, as a rule, outcasts, deprived of their ancestral roots. The contrast between the German and Slavic societies was most evident in the principles on which the two societies were founded: the members of the Slavic family had the same rights, the same duties, the same benefits derived from common ownership; the members bound by blood Union were United by sincere love, which had in mind the general welfare ([Gadzaov A.F., Dzerzhinskaya M.R. 2018](#)).

### METHOD

The methodological basis of this study is the dialectical method of cognition of social and legal phenomena and concepts in their development and interdependence. In the process, general-purpose and scientific methods of scientific knowledge are used as well, historical and legal, systemic, structural-functional, comparative-legal, statistical, sociological, specifically the formal-logical, logical-legal and others. The legal framework and information base includes the research of international legal instruments, scientific sources, investigative and judicial practices to ensure the rights and lawful interests of individuals in the pre-trial proceedings.

## RESULTS

Family relations of the ancient Romans largely coincided with the German order. So, kviritskoe family headed by the pater families (the father). He owned absolute power over movable and immovable property and overall domain name: wife, children, slaves, etc. a classic civil right smoothed these harsh archaic customs, after the difference between the free members of the family, and slaves. The sons could go out and the power of the father through the rite of emancipation (three times sold into slavery, and three of the gifts of freedom).

"The severity, appearing in family relations Roman, zoopagales with the severity of yuridicheskikh of young institutions of the Roman state aimed primarily to strengthen and increase the power of the Roman state", – noted J. E. Vocel ([Gadzhieva U.B. 2018](#); [Gnatyuk S.N., Pekert N.A. 2018](#); [Kryuchkova K.S. 2018](#)).

The ancient Slavic society, based on spiritual, moral, humanistic principles, "on the Holy truth that all family members have the same right to use temporary benefits, differed significantly from the nature of Roman and German society." So, the Slavs respected and worshipped the weaker sex-women. Despite the Christianization, legal monuments of the late middle ages contained norms guaranteeing material and social protection of widows and sisters.

## DISCUSSION

To understand the legal understanding of the idea of personality in ancient Czech law, it is advisable to compare it with the opposite principles of medieval Scandinavian legislation, which, according to the fair observation of N. D. Ivanisheva, "there is the purest German element". Legal relations of the Normans due to the special geographical position of the long-standing obstacle to the penetration into the Northern lands of Roman law and Christian morality were mainly regulated by the sacred and poetic rules of the pagan era. Similar facts can be cited about Czech Bohemia, separated by impassable forests of the Carpathian Mountains from the Roman Empire and the German world. In the right-cultural perspective, the world of the "Northern barbarians" (Celts, Slavs, and Germans) was fundamentally different from the Greco-Roman and ancient Eastern civilizations. This is particularly evident in the legal status of women ([Burkhardt, J. \(2016\)](#)).

The population of the ancient Czech Republic had a special class of people enjoying additional social benefits. Chronicles tell of the lords, Leah, and Cmath. Each petty officer of a sort was considered as the Lord and this title extended also to the Grand Duke who was not only the Lord of a ruling sort but also all Czech people. Leh – (Leh = field from him is derived the word Schlecht - gentry) was the foreman of a family that owns a large land property. Lehi, respectively, were present at the Seimas as the main representatives of their countrymen. Gradually, instead of the word Leh began to use the term pan.

Kmety, Lehi and the Lord were represented by the people in the meetings of the Sejm and the courts designed to administer justice "according to the law of the saints". This "elite" had a completely different nature than the feudal nobility of the German barbarian kingdoms. She was part of the tribal unions, unlike barons, grafov, Dukes, etc. who served their Lord for the land grant (fief or flax), which was attached to the serfs.

To preserve the internal order in the country, ancient Slavic law used the institution of mutual responsibility, according to which members of the genus or community were obliged to be responsible for the lawlessness committed in the territory of their residence. Joint responsibility of all members of the genus led to careful observance of public order by relatives. This institution as an alternative to the police authorities of specially authorized persons.

The murder case was in fact dealt with under the rules of civil procedure. The payment for the head was considered exclusively civil satisfaction for the harm caused to relatives of the killed and was never paid in favor of the state, as a penalty for violation of the law. At the same time, Bohemian legislation does not assess human life in accordance with the social situation, sex, and age of the victim, adopted by the German medieval laws. The class position influenced the nature of the proof.

## CONCLUSION

In accordance with the ancient customs of Bohemian Slavs, the right to revenge and the right to receive payment for the head belonged to the nearest heir of the dead man, who was not obliged to share with other distant relatives, as envisaged in the German legislation. Revenged or sued for murder only grandfather: son, grandson, great-grandson, etc.; as well as brothers, uncles and their children, but only inseparable. Therefore the right of blood revenge and the payment for murder passed, as on a strict rule of inheritance to the next of kin and if there were several, the payment was divided equally. Consequently, women and minor children were entitled to payment for the head if they were the legitimate heirs of the victim.

In addition, in comparison, the old Russian law enforcement practice, the times of Yaroslav the Wise, there is a General Slavic tendency to limit the range of legal Avengers. Thus, article 1 a Brief version of the Russian Pravda reads: "Ubiety husband(b) her husband, to avenge his brother, or synovi father, any father, son, or batucada, a pleasure synovi's actually my sister's ..." ([Kuznetsov A.A., Ignatyeva T.A., Kuznetsov A.O. 2018](#)).

In the analysis of the Slavic Institute of blood place, special attention should be paid to the fact that " in the ancient monuments of Bohemian law revenge is not a means to satisfaction for the offense and not a wild instinct to pay evil for

evil, but it is a religious obligation, the performance of which is necessary for the peace and bliss of the soul. So, Christianity was trying to displace any people's faith from the life of people occupying the place.

Ancient Slavic customs allowed the possibility of forgiveness of the murderer, but in this case, the offender had to undergo a symbolic death, known as the medieval Czech Republic Pokora (pokora vražedlinika).

In accordance with Bohemian customs, if the vigilante refused to forgive the murderer, did not resort to trial and was decided to start the feud, according to the law he was obliged to inform the murderer about the beginning of vengeance, the Ambassador sent to the home of the offender. It is noteworthy but can begin three days after the day until sunset the message was sent about the beginning of revenge. These rules are imbued with the spirit of nobility and mercy inherent in a society that respects the honor and dignity of man. The killer, usually within three days prior to the beginning of revenge, tried to appease the relatives of the deceased, offering them a ransom (Altman, A., & Wellman, C. H. (2009)).

Thus, it is possible to draw the following interim conclusions about distinctive features of the Institute of blood feud and fees for the head of the Bohemians and Moravian in the medieval era:

1. Revenge Avslutt a religious obligation that is required to soothe the soul of the deceased, and not as a means of retribution to the murderer and his family on the principle of "bloody Talion" – death – for death.
2. Unlike the German Vira, all payment for the head went in favor of the injured party, emphasizing its private beginnings.
3. The quantitative content penalty for the murder of Czechs and Bohemian relegated to the relatives of the victim.
4. In the early medieval Bohemian legislation, there was no comparative unit for the evaluation of human life, as in the Germans, determined by the price of a free man, there was also no evaluation of life in parts and there was no statutory fee for the murder of animals.
5. In the late middle ages, Czech law began to determine the fee for the murder of a person, but its size did not depend on the state of the killed, as in the German tribes, but on the social status of the killed.
6. Revenge was always about the killer's identity, not his relatives, so it is logical that the head never fell on the whole race of the killer, as it was practiced at germanskih people, because only the killer has paid the penalty amount.
7. If the killer was in hiding, the community paid for the blood instead.
8. The right to revenge and to receive payment for the head belonged only to the next heir of the killed.

To protect personal possessions, the Slavs used a special Institute of forensic investigation – the vault, which was that if anyone found someone stolen item, he called the owner of the thing, which was supposed to indicate the person from whom he acquired it; if the seller stated to another person, which he, in turn, had purchased the thing, then this action was repeated until there were people who could not specify from whom he received the stolen item (Blokker, P. (2013).).

One of the earliest monuments of the feudal law of the Czech Republic was "the Statutes of Konrad Otto", referring to the end of XII – beginning of XIII centuries, the Statutes represented the entry of conventional, mostly procedural rights, intended for the rulers of the regions of the Dukes, who had also judicial competence. However, historical sources provide additional information on some of the legal customs of family and criminal law. Subsequently, all the most significant collections of feudal Czech rights were private compilations. The set of laws of Charles I, compiled in Latin, for most nobles was not available (Skalník, P., & Šavelková, L. (2009).).

The lawyer was full of scholastic scholar's arguments; domestic law has been reflected in it in full. Therefore, in the laws of the medieval Czech Republic Slavic law was preserved to a greater extent than in the legal practice of other Slavic peoples. In the Czech Kingdom, the legislative power belonged to the Zemstvo court, in which the panstvo had its own Advisory body (polaz), which issued the pans decisions (nález), which constituted the only written form of ancient Czech legislation. Under the chairmanship of the king, in the court of the land was part of the Prague Burgrave, the highest komornik, a senior judge and senior clerk, 12 lords and eight bishops. Representatives of all noble families of the Czech Republic were called upon to consider cases on the welfare of the whole earth. Cases were decided by a majority vote, and if the opinions were divided into two equal parts, the opinion of the king was considered a priority. Decisions court of the land could not be reversed by any bodies or officials.

The gentry court decision, recorded in the judicial Board (dsky), which amounted to the XVI century huge code. Among the early private codifications stands out "the Book of the old sir of rožmberk". This extensive legal collection, which appeared at the turn of the XIII-XIV centuries and was written in Czech, owes its name to the fact that it was created or at least operated in the possessions of the Pansky family of rožmberks. The book deals mainly with procedural and private law. From the disorderly location of the articles we can conclude that this monument is not made by one person and not at the same time.

In the same XIV century was created on the basis of the Lawman Carl first legal textbook in Latin, "Ordo iudicii terrae", which contains primarily procedural law. At the end of the 14th century, Czech lawyers revised this manual to comply with

the current legal customs and all their changes that have taken place in Czech law. As a result, the Czech "series of Zemstvo Law" containing such archaic institutions as water and iron testing (articles 53 and 66), the court of the abduction of a woman (articles 84, 85), the court of cattle (articles 89), ograb (articles 84) was created. 59), the content of which was already unknown to contemporaries.

A further stage in the development of legal thought was the "Presentation of Czech Zemstvo law" by pan Andrei of Duba (circa 1400), who was one of the best experts in medieval Czech law and for a long time was the highest Zemstvo judge. This practical guide to Zemstvo law contains in addition to the rules of procedural law, many provisions of private law (family, hereditary), as well as criminal and state law.

The most complete codification of Czech private law belongs to the Quiz Cornelius from Visegrad, called "Nine books on the rights of the Czech lands" (end of XV century).

In 1500 came the code of laws of the landlord class, called "Municipal Code of the Bohemian crown", approved by the Czech Parliament. This first official codification came into effect during the reign of King Vladislav and was called the "Vladislav Zemstvo code", which contained private, procedural, criminal and state law.

At the very beginning of the XVI century between the nobility and the Royal cities, there was a dispute over this set of laws, as the burghers were infringed on their rights. In 1517, between the nobility and the urban elite were signed Svatovaclavska contract sladewski contradictions between the classes.

Around 1300, on the instructions of kornel Wenceslas II, the first in the history of law specialized code of mountain laws "law of mountain regalia" (Jus regale montanorum) was drawn up. Among the important sources of law should be attributed to the Zemstvo books ("Zemstvo boards"), which recorded the decisions of the Zemstvo court in criminal and civil cases. These decisions had the force of precedent.

For the medieval Czech Kingdom was characterized by another way of peaceful end of the conflict, which can cause blood feud - is the institution of obedience (peace). "Kovacevska book" is the source of the XV century.

In the XVII-XVIII centuries there is a process of transformation of the court into official, state institution owing to what feudal judges with their unlimited discretion were replaced by the professional judges guided mainly by Royal legal documents. At the same time, appellate instances appear in the judicial system. In 1781 appears in Civil law statutes for all of the Austrian lands and in 1788 a penal Statute. In the criminal process began to dominate the inquisitorial features and the principle of publicity (formality) the prosecution, while in civil proceedings conclusively establishes the principle of adversarial proceedings, which are to end the dispute with a compromise agreement.

Thus, it can be concluded that tribal remnants of the customary law of the ancient Czech people in the Middle Ages contributed to the preservation of egalitarian democratic principles of public administration and justice.

## CONFLICT OF INTEREST

The author confirms that the data do not contain any conflict of interest.

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