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RE-EMERGENCE OF THE DOWRY AMONGST SERBS*

The dowry (miraz) was not originally a Slavic custom. It has entered the medieval Serbian law primarily through Byzantine influences, under the name prikija. At approximately the same time, it has entered the Croatian law through Byzantine, Venetian and Hungarian channels, and its Roman roots were reflected in its name, dote. While the Turkish conquest of Serbia has caused the disappearance of dowry, it has been preserved in Croatia.

Dowry re emerged in the XIX century Serbia from two sources. The first one was customary law, which adopted the Turkish term for inheritance, miras. The other source was the Serbian Civil Code of 1844, which was modeled after Austrian influence, thus transplanting the Austrian concept of dowry (based upon Roman law) to Serbian soil. Nevertheless, Serbian and Austrian Civil Codes were slightly different regarding the character of dowry. The coexistence of customary and legislative concept of dowry continued their lives in the Kingdom of Serbs, Croats and Slovenes formed after World War I, as well as later on in the Kingdom of Yugoslavia.

Although the communist regime abolished dowry after the World War II by legislation, yet it survived in the rural areas. This particular conflict of legislation and customary law serves as an example of the mutual influence of facts and norms, wherein the facts could often develop contrary to the norms, which has to be resolved by the legislative reform.

Key words: Dowry. Legal Transplants. Customary Law.

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1. INTRODUCTION OF DOWRY IN THE MEDIEVAL LAW OF SERBS AND OTHER SOUTHERN SLAVS

The ancient Slavs did not originally use the dowry. It was critically observed by famous XIX century legal historian Valtazar Bogišić: “What was used by the other peoples would be good for Slavs to use it, too”.¹ Besides the primitive abduction as a means to find women, the marriage by bride purchase was a generally accepted way to accomplish marriage, followed with the bride price which was called *veno*.² One of remarkable linguistical traces of such a practice in medieval Russia is that a girl old enough for marriage was called *kunka*, by the term which derived from Russian expression for marten – *kuna*, as the bride price was habitually paid in marten fur.³ In those circumstances there was not much place for the dowry.

However, at some point in time, the part of the received bride price was starting to be used by the girl’s father in order to support his daughters marriage, as with Velikorussians.⁴ In that way, a part of the money that was given by the groom and his family for the bride, or the whole sum, was being returned to the groom through the value which was brought by the bride to her new home, as a consequence of the above-mentioned desire to facilitate her new life in marriage. That practice, although well attested only by Velikorussians, might be considered as an authentic root of dowry among the Slav tribes.

Only later, with the introduction of Christianity, the marriage with dowry has started to be used more widely.⁵ Therefore, there has never been a specific Slavic term for dowry, which signifies in addition that dowry has not originally been a Slavic custom. Simply, the new marital giving, regardless of its source on the side of the bride and not of the groom, has been referred to as *veno* – the old Slavic term for the bride

¹ V. Bogišić, *Pravni običaji u Slovena* [Legal Customs amongst Slavs], Zagreb 1867, 118.

² The term might have its origin in the Latin *vendere* to sell (M. Kovalevski, *Pervobitnoe pravo*, Moskva 1886, 145). The term *veno* has signified the bride price, and was later replaced with the Ancient Slavic term *ruho* or *rucho*, which remained until to day.

³ E. Westermarc, *The History of Human Marriage*, London 1921, 413; W. J. Fielding, *Strange Customs of Courthship and Marriage*, London 1961, 262.

⁴ Š. Kulišić, “Nekoliko podataka o običaju miraza u Boki Kotorskoj” [Minutes on Custom of Dowry in Boka kotorska], *Glasnik Etnografskog muzeja u Beogradu* [Gazette of the Ethnographic Museum in Belgrade] 20/1956, 55; M. Kowalevsky, *Coutume contemporaine et loi ancienne droit coutoumier ossetien*, Paris 1893, 166.

⁵ K. Kadlec, *Prvobitno slovensko pravo pre X veka* [Ancient Slavic Law before the X Century], Beograd 1924, 80.

price.⁶ Even St. Sava mentions this old term in his *Nomokanon* in the XIII century, but he identified it with the term *prikija* – Serbian term used for dowry.⁷ The perplexity of different institutions was complete.

The first written law was brought to Slavs by the missionary priests as they, by spreading the Christianity, not only eradicated the Slavic paganism, but also educated the Slavs, and were introducing, among other novelties, changes in their legal practice. This new, in a way imposed law, was embodied in mixed sets of civil (*nomoi*, laws) and church (*kanoni*) regulations – the *nomokanons*.⁸ That was the case in Serbia, as well, and in that way, along with the Byzantine law, the dowry entered in Serbia. Some provisions regulating to the dowry, as prescribed in one of the most important Byzantine law codifications – *Procheiron* (*Zakon gradski* [City Code] – as it was called in Serbia), were introduced firstly through the XIII century *Nomokanon of St. Sava*, and later on through the shortened version of *Syntagmate of Matthew Blastares* and the s.c. *Law of the Emperor Justinian* in the time of tzar Dushan.⁹ However, the most important Serbian medieval legal source, *Code of Emperor Dushan* (*Dushanov zakonik*) from the middle of the XIV century, did not define dowry neither paid a particular attention to it.¹⁰ Many authors explain it by the fact that the two contemporary aforementioned legal collections (shortened *Syntagmate* and s.c. *Laws of Justinian*) form altogether an integral parts of the legislation of Emperor Dushan (1331–1355), s.c. *codex tripartitus*, and that therefore no need existed for the *Code* itself to regulate the dowry in details, as well as it was the case with pledge, will, inheritance, etc.¹¹ Before the legislative reception, the expansion of Serbian state, especially

⁶ P. Skok, *Etimološki rječnik hrvatskoga ili srpskoga jezika* [Etymological Dictionary of Croatian or Serbian Language], IV, Zagreb 1974, 587: “*Vieno* n. *veno*, n. *dote*, is not a word used in everyday speech. Ancient Slavic and Proto Slavic word (Czech *veno*, Polish *wiano*, Russian *veno*, Slavic *veniti*, ‘to sell’) is interesting from the semantic aspect. It has meant: 1. Brautkaufpreis, 2. Morgengabe, 3. Mitgift, 4. Bezahlung. The first meaning was ‘the purchase of the bride before she is brought home’. There is no unique etymology”.

⁷ S. V. Troicki, *Kako treba izdati Svetosavsku Krmčiju (Nomokanon sa tumačenjima)* [How Should *Krmčija* of St. Sava Should be Published (*Nomokanon* with Interpretations)], Beograd 1952, 47.

⁸ About that practice see particularly Ch. Papastathis, *To nomothetikon ergon tis kyrillomethodianis ierapostolis en megalí Moravia*, Thessaloniki 1978.

⁹ *Nomokanon* regulates the dowry in Section 55.8–9, while *Syntagmate* mentions dowry in Articles 160–1, 170, 172, 183–7, 207 and 214.

¹⁰ Dowry is mentioned only in two articles of the Code: Art. 44 prescribes a ban to provide dowry by granting slaves, while Art. 174 explicitly allows free peasants to give as a dowry the land that they own as private property (*bastina*).

¹¹ E. g. D. Janković, *Istorija države i prava feudalne Srbije* [History of State and Law of Feudal Serbia], Beograd 1953, 7–8.

as early as during the reign of King Milutin and later on of Emperor Dushan, has resulted in the takeover of numerous territories that were under Byzantine rule and law for centuries, where the marriage with dowry was used. In that way, a wider penetration of marriage with dowry into Serbian law was prepared, eased and in a way fostered.

It seems that the wealthiest medieval Serbian families were amongst the first to accept this novelty in Slavic marital law.¹² According to many sources, king Milutin has rightfully retained all the territories which were taken over from Byzantium as a dowry of the young, five years old princess Simonida, born as Simonis Palaiologina, daughter of Byzantine Emperor Andronikos II, who gave her in marriage to the Serbian ruler (despite her age and the objections of the Church, as it was king Milutin's fifth marriage). Therefore, the first Serbian medieval Charter mentioning the term dowry, the Charter of the King Milutin to the Church of St. George in Skopje, dating back to 1300, brings no surprise.¹³ Dowry is mentioned latter on in other Serbian medieval charters (*hrisovulje*) under the name *prkija* or *prćija* (deriving from ancient Greek *proix* – dowry).¹⁴

However, it seems that, regardless of the provision in Tzar *Dushan's Code* allowing particular sort of inhabitants – *meropsi* (free peasants) to use immovables as dowry, the dowry was relatively unpopular in medieval Serbia, and that it was mainly a prerogative of higher classes.¹⁵ Famous Serbian medievalist Alexander Solovjev, regarding the provisions of the *Syntagma of Matthew Blastares* that regulate the dowry, concludes: “These provisions of the family law are very much remote from the Slavic customs, based on which the girl either does not get the dowry

¹² The similar happened with Hungarians. At first, upon the conquest of the Panonian Plain, they accepted the marriage by buying the bride. Persian writer Gardizi in 9th century informs that Hungarians still pay hefty *kalim*, the bride price. However, the dowry, which is mentioned in the *Golden Bull* of Andras II from 1222, has been widely used by the Hungarian ruling families during 13th century. See A. Csizmadia, D. Alajos, S. E. Filo, *Etudes sur l'histoire du droit de mariage de Hongrie*, Pecs, 1979, 5 and 14; V. Honemann, “A Medieval Queen and Her Stepdaughter: Agnes and Elizabeth of Hungary”, in Duggan A. (ed.), *Queens and Queenship in Medieval Europe*, Woodbridge 1997, 110 and 114.

¹³ A. V. Solovjev, *Zakonodavstvo Stefana Dušana, cara Srba i Grka* [Legislation of Stefan Dušan, Emperor of Greeks and Serbs], Skopje 1928, 131.

¹⁴ E.g. in the Emperor Dushan Charter granted to the Monastery of St. Archangels in Prizren. See T. Taranovski, *Istorija srpskog prava u nemanjičkoj državi, III deo: istorija građanskog prava* [History of Serbian Law in Nemanjić State: History of Civil Law], Beograd 1935, 49–51.

¹⁵ Art. 174 of the Tzar Dushan's Code. In her will, Lady Jelena, daughter of the Duke Lazar, determines: “My girls that are present at the time of my death, should be given the appropriate dowry, in order to find a new home...”, *Pisah i potpisah* [Signed and Sealed], Beograd 1996, 209.

at all, or gets only some clothes and jewels”.¹⁶ Indirectly, it could be seen in a will which dates back to 1470. The son of certain Junije Bunić from Dubrovnik, Marin, has left 700 *perpers* to his non-married matrimonial sister in Serbia, if she decides to be married in Dubrovnik, specifying that, if she stays in Serbia, that amount of money will be used for the marriage of the noble girl from Dubrovnik. This arrangement would imply that “the dowry, as commonly used in Dubrovnik and other coastal communes, was not accepted and recognized in Serbia”.¹⁷

Still, the aristocracy (*vlastela*) has taken over the Byzantine institute of dowry, which was in accordance with the concept of the separate property of the women,¹⁸ accepted earlier, and with the overall influence of Byzantine inheritance law,¹⁹ which already occurred. Nevertheless, it was somewhat adjusted to the Serbian conditions. Another famous Serbian medievalist with Russian origin, Teodor Taranovski, noted: “*Prikija* (dowry) is mentioned in many charters. These texts however do not indicate individual or separate rights of the married woman, but they put *prikija*, or *tastnina*, as it is sometimes called, to the disposal of the husband as his property”.²⁰

The women who were professionally and economically independent enough lived only in the most developed trade and mining centers, notwithstanding the aristocracy. Therefore, it was possible to meet dowry documents in some of those cities, such as those found in Novo Brdo, dating from the XIV and XV century.²¹

¹⁶ A. V. Solovjev, 1928, 130 1

¹⁷ D. Dinić Knežević, *Migracije stanovništva iz južnoslovenskih zemalja u Dubrovnik tokom Srednjeg veka* [Migrations of Population from Southern Slavic Countries to Dubrovnik during Middle Ages], Novi Sad 1995, 149.

¹⁸ T. Taranovski, 48 49.

¹⁹ A. S. Jovanović, *Nasledno pravo u starih Srba* [Inheritance Law of Ancient Serbs], Beograd 1888. The aristocrats have frequently left the part of their inheritance to their daughters as legacy. See more in S. Novaković, *Ustavno pitanje i zakonici Karađorđevog vremena* [Constitutional Question and Codes of Karađorđe’s Time], Beograd 1912, 312 313 and 317 318.

²⁰ T. Taranovski, 49 50. “The cadastre of the monastery Hilandar 1357 1372 serves as proof of the allocation of *prikija*: ‘The Widow Zoje, wife of Roman the black smith, has a son Nikola the blacksmith, his wife being Anna, and one ox, two cows, four pigs, one and a half barrel of grapes, and another barrel in Podavce, brought as *prikija*...’, ‘The widow Teodora, wife of Kopil Teodor, has sons Kuman and Panagiot, one ox, five pigs, three barrels, a barrel and a half in Podavce, and another in Kruševo as her *prikija*’. As it could be seen, the *prikija* is not owned by the woman (Ana), who brought her, but to the husband (Nikola the blacksmith); only when the husband (Kopil Teodor) dies, the *prikija* belongs to the woman widow (Teodora)

²¹ D. Dinić Knežević, “Ograničenja luksuza u Dubrovniku krajem XV i početkom XVI veka” [Limitations to Luxury at the End of the XV and Beginning of XVI Century],

The term *dote* has also been introduced to these regions through reception of Roman law. In the XIII century, Deversius, the master of Konavle, has given to his daughter Dragoslava and son-in-law Mikac the land in the parish (*župa*) of Žrnovica *pro dote*.²² *Dote* is also mentioned by the Despotes Stefan Lazarević in 1423, in the peace treaty between Serbia and the Venetian Republic.²³

However, after the Turkish conquest of Serbia, as was noted by Nedeljkić, “the Serbian medieval society lost almost all of its class differences and everybody was scaled down to the level of *raja* (common people)”.²⁴ As the wealth diminished, and Serbia began to decline economically, the dowry was on his way to fade out. There were no more rich or aristocratic families, those who were the only ones practicing dowry, so that the very institution disappeared along with them.

Montenegro has retained the customary rules of its tribes longer and with more persistence. None of these tribal laws accepted the dowry. The only exception was the small near-coastal region, mainly inhabited by the Paštrovići tribe.²⁵ Paštrovići commonly used in their documents the term *prćija*²⁶ of Greek-Byzantine origin, instead of the latinized term *dos*, *dote*, which was circulating in the coastal areas. It might support in a way Solovjev’s presumption that a major part of czar Dushan’s legislation was applied by Paštrovići even in the XVIII century, especially the first part of the *codex tripartitus*, the s.c. *Laws of the Constantine Justinian*.²⁷

Godišnjak Filozofskog fakulteta u Novom Sadu [Yearbook of Philosophical Faculty in Novi Sad], XVIII 1/1974, 93. Katarina from Novo Brdo, daughter of Nikola Đurđević, has brought to her husband 1000 *dukats* (VS:golden coin) and 100 *ahsađs* (VS: a measure of gold) of gold as dowry. Larger towns in Serbia were inhabited by a great number of traders from Dubrovnik, and they could have contributed, presumably, to the spread of dowry in these regions, especially regarding the practice of preparation of dowry documents. See more in D. Dinić Knežević, (1995),148 150.

²² Cited according to A. V. Solovjev, *Odabrani spomenici srpskog prava* [Selected Historical Documents of Serbian Law], Beograd 1926, 1.

²³ Cited in S. Novaković, 280 281.

²⁴ B. M. Nedeljkić, *Istorija baštinske svojine u novoj Srbiji od kraja 18. veka do 1932* [History of *Baština* Property in New Serbia since the End of the XVIII century until 1932], Beograd 1936, 56.

²⁵ J. Danilović, “O mirazu u Paštrovskom običajnom pravu” [About the Dowry as a Part of Customary Law of Paštrović Tribe], *Srednjovekovna istorija Crne Gore kao polje istraživanja* [Medieval History of Montenegro as a Research Field], Beograd, 1999.

²⁶ J. Danilović, 352: *Depending on the writer, terms such as prt, or sometimes prat (pert) were used. Latin term dos is rarely used in the documents.*

²⁷ A. V. Solovjev, “Dušanov zakon kod Paštrovića” [Emperor Dušan’s Code with in Paštrović Tribe], *Arhiv za pravne i društvene nauke* [Archive for Legal and Social Sciences] 27/1933, 25 26.

On the other side, all Southern Slavic city communes on the Adriatic coast have accepted dowry under Byzantine and Venetian influence. Even though, as it is frequently pointed out, the *Statute of Budva* was mainly just a modification of customary rules, “only when it comes to the goods encompassed by the woman’s dowry, legal regime similar to the one in Justinian’s law applied”.²⁸ Kulišić points out that the custom of giving dowry in Boka Kotorska was introduced under the influence of the *Statute of Kotor*.²⁹

The *Statute of Dubrovnik* from 1272 dedicates to the dowry a whole section. It begins with the provision titled *De dote et perchivio* (IV, 1), implying that these are two very different concepts. However, the wording of the provision makes it clear that the two terms are actually synonyms for dowry. The issue is that it only reflects perplexity of the two terms by different origin: the first one was by Latin origin – *dos*, while the second was basically a Greek word domesticated in the medieval Latin – *perchivium*.³⁰ This is probably a further proof of the apparent influence of the Byzantine Empire, which had come from Apulia, i.e. from the Southern Italy, and which was most evident in the statutes of the nearby coastal cities on the other side of the Adriatic Sea (Budva, Kotor, Dubrovnik), as many legal historians assert. Numerous trade and marital alliances of Dubrovnik with the cities in the hinterland, as well as in Serbia, transferred the concept of dowry from the Adriatic coast to the provinces. This occurred in Konavle, Trebinje, Zahumlje, Novo Brdo, Prijepolje, Bosnia and Drač.³¹

The Croatian prestigious authors, predominantly Margetić and Cvitanić, have shown that the origin of the marital property law in the Dalmatian cities was Croatian, i.e. Slavic in general, mainly forming their

²⁸ Ž. Bujuklić, *Pravno uređenje srednjeevokovne Budvanske komune* [Legal Order of Medieval Commune of Budva], Nikšić 1988, 264.

²⁹ Š. Kulišić, 81.

³⁰ *Lexicon Latinitatis Mediaevi Iugoslaviae, fasc. V, Zagrabiae* 1975, 834; V. Mažuranić, *Prinosi za hrvatski pravno povjestni rječnik* [Additions to the Croatian Legal Historical Dictionary], II, Zagreb 1908–1922, 911; V. Bogišić, “Glavnije crte porodičnoga pisanoga prava u starom Dubrovniku” [Main Characteristics of Family Written Law in Ancient Dubrovnik], *Pravni članci i rasprave* [Legal Articles and Debates], I, Beograd 1927, 147–149; N. Nikezić, “Miraz u kotorskom pravu u prvoj polovini 14. veka” [Dowry in Law of Kotor in the First Half of 14th Century], *Istorijski zapisi* [Historical Writings] 1/1995, 5; I. Sindik, *Komunalno uređenje Kotora od druge polovine XII do početka XV stolecia* [Communal Order of Kotor since Second Half of the 12th century until the Beginning of the 15th century], Beograd 1950, 130.

³¹ D. Dinić-Knežević, (1995), 148–165; Đ. Petrović, “Dubrovačke arhivske vesti o društvenom položaju žena kod srednjeevokovnih Vlaha” [Archive News from Dubrovnik on the Social Position of Women within Medieval Vlach People Society], *Istorijski časopis* [Historical Magazine] 32/1985, 13–21; J. Vukmanović, *Konavli antropogeografska i etnološka ispitivanja* [Konavli Anthropogeographic and Ethnological Research], Beograd 1980, 262.

opinion on the oldest coastal statute of Korčula from 1214.³² However, the *Statute of Korčula* regulated the dowry, which was not, as mentioned above, an autochthonous Slavic custom, not as a novelty, but rather as already highly developed and accepted legal institute. This further goes to indicate that there was an influence of the post-classical Roman law not only in Bar, Budva, Kotor and Dubrovnik, but also in Dalmatia, coming from the Byzantine Empire, and later from Venice.³³ Dowry was common feature of the statutes of the coastal cities, and was present in all of the Adriatic coastal communes with many similarities, regardless of the predominant marital property regime.

2. CONTINUITY OF DOWRY AMONG CROATS

In the larger cities of the continental Croatia, the custom of giving dowry was widespread even in the medieval times.³⁴ The usual amount of dowry to be given on the occasion of marriage of the daughters from noble families was 100 *florins* in Croatia, 200 in Hungary, and 60 in Er-

³² L. Margetić, “Nasljedno pravo descendenata po srednjevekovnim statutima Šibenika, Paga, Brača i Hvara” [Inheritance Law According to the Medieval Statutes of Šibenik, Pag, Brač and Hvar], *Zbornik Pravnog fakulteta u Zagrebu* [Compendium of Faculty of Law in Zagreb] 3/1972, 363, and “Bizantsko bračno imovinsko pravo u svjetlu novele Lava XX Mudroga (s osobitim obzirom na razvoj bračnoga imovinskoga prava u srednjevekovnim dalmatinskim gradskim općinama)” [Byzantine Marital Property Law in the Light of Novella of Leo X the Wise (with Particular Attention to the Development of Marital Property Law in medieval Dalmatian Communes)], *Zbornik radova Vizantološkog instituta* [Compendium of the Byzanthological Institute] 18/1978, 45-46; A. Cvitanić (ed.), *Korčulanski statut* [Statute of Korčula], Zagreb Korčula 1987, XXXII.

³³ “If we bear in mind that the woman in Rome and Byzantium has reached almost full commercial capacity and independence of her property, and that she has enjoyed similar treatment in Venetian law, it might be concluded that the marital law of Trogir is, similar to the law in rest of Dalmatia, basically Slavic law which was applied on the continent around urban territories. Only dotal forms, i.e. dowry would be innovation akin to Roman legal concept”, A. Cvitanić, Foreword to *Statute of the City of Trogir*, Split 1988. L. Margetić, (1978), 154 is even more explicit: “It seems that since XIII century, under the influence of Venetian law, principles of Justinian’s Roman law have been introduced on the Adriatic coast, modified not only according to the Venetian specifics, but also to the local conditions of each commune. Basic characteristic of this newer layer of the legal concepts, regulating the marital property relations, is that the property mass consists of dowry, which has become, in accordance with the evolution of Roman law until Justinian, as well as the influence of the Justinian’s law in its final shape – women’s property with specific intention and special legal regime”.

³⁴ *Law of the League of Nin* (presumably dating from 1108) has prescribed in the Article 69 that the rapist shall take the raped girl for his wife, while the one who has helped him shall ensure the *ruho* (fr. *trousseau*) for the girl, V. Mažuranić, (1922), II, 1271.

dely.³⁵ The influence that the Byzantine and Venetian law, and through them the Roman law, had on the Croatian coastal cities was not transferred to the continental Croatia, whose law was heavily influenced by the Hungarian one. This influence will especially become apparent when the Verbetius' *Tripartitum* was adopted, which appeared in the translation by Ivan Pergoshić in 1574, in Kajkavian dialect of Croatian language. *Tripartitum* has regulated the dowry, stressing that daughters shall get the dowry according to the status of their fathers.

Even though there were undeveloped parts of the country which held on to the custom of bride purchase until the late XIX century,³⁶ dowry has prevailed in the larger part of the territory. Due to stronger foreign influences the modern economy was developed in Croatian areas earlier than in other parts of the Balkans. Some authors are therefore of the opinion that this is the reason for the faster spreading of dowry in Croatia.³⁷ In addition to that, in the XIX century the provisions of the Austrian Civil Code (ABGB) were applied directly (including those regarding the dowry and the elimination of differences of the male and female relatives in the inheritance law). The custom of *dote* was retained in numerous coastal cities and the surrounding countryside from the medieval times. Due to these circumstances, the amount of dowry was usually equal to the total portion of the daughters' inheritance, although the dowry mostly consisted of movable property.³⁸

Alltogether, unlike in Serbia, the dowry has been preserved on the larger part of the Croatian territory since the medieval times.

³⁵ See V. Mažuranić, (1908), I, 267–270; P. Skok, I, 427; D. Dinić–Knežević, (1974), 91.

³⁶ M. Kurjaković, “Ženidbeni običaji iz Vrbove (kotar Nova Gradiška) u Slavoniji” [Marital Customs from Vrbova (kotar of Nova Gradiška) in Slavonia], *Zbornik za narodni život i običaje južnih Slavena* [Compendium for Common Life and Customs of Southern Slavs] 1/1896, 152–159; L. Horak, “Hrvatski ženidbeni običaji – Ovčarevo kod Travnika” [Croatian Marital Customs – Ovčarevo near Travnik], *Zbornik za narodni život i običaje južnih Slavena* [Compendium for Common Life and Customs of Southern Slavs], XXXII 1/1939, 204; A. Sekulić, “Svadbene običaji bačkih Bunjevaca” [Marital Customs of Bunjevci People from Bačka Region], *Zbornik za narodni život i običaje južnih Slavena* 48/1980, 155 [Compendium for Common Life and Customs of Southern Slavs].

³⁷ V. St. Erlich, *U društvu s čovjekom* [In Society with Man], Zagreb 1978, 193 i 195; T. Đorđević, “Plodnost u braku” [Fertility in Marriage], *Naš narodni život* [Our Common Life], Beograd 1984, 39; V. Bogišić, “O položaju porodice i naslijedstva u pravnoj sistemima” [On the Position of Family and Inheritance in Legal System], *Pravnik* [Jurist] 2/1892 i 3/1893, 717.

³⁸ A. Koludrović, “Nekoliko isprava o mirazu is Kaštel Gomilice” [Few Documents on Dowry from Kaštel Gomilica], *Anali Historijskog instituta Dubrovnik* [Annals of the Historical Institute – Dubrovnik], Dubrovnik 1953, 283.

3. TWO SOURCES OF THE RE-EMERGENCE OF DOWRY IN THE XIX CENTURY SERBIA

The medieval Serbian law, very much penetrated and inspired by the Byzantine, strengthened firstly by the military and political skills of King Milutin, King Stefan Dečanski and especially Emperor Dushan, and subsequently by the economic prosperity under Despote Stefan Lazarević, was forgotten after centuries of weary Turkish rule. Writing about the status of women in Serbian inheritance law, Perić noted: "... the fact that the Serbs were under the rule of the Turkish Empire for four centuries had a prolonged influence on the their concepts in general, especially on their social and legal concepts".³⁹ Although the medieval Serbian law was partially familiar with dowry, although mainly limited within the higher social structure, Serbia entered the modern times without it.

The dissolution of the *zadruga* (joint family) in the XIX century Serbia, the formation of individual families in large numbers, as well as frequent wars, lead to the occurrence of the once-hypothetical problems in everyday life. Sometimes, the families would come down to be comprised only of females. The ties with the kin had deteriorated enough, therefore disqualifying it from becoming a successor to the inheritance, and fathers desperate to find a successor were bringing *domazets* (sons-in-law who came to live on the father-in-law's property). *Domazets* assured them a matrimonial successor of their material as well as immaterial (being more important) assets.⁴⁰ Afterwards, new heiresses should have been properly named. It did not take a long time to find the new term. The law of the Turks and other Muslims who lived on Balkans granted to women the right of inheritance, even though their inheritance amounted to a part smaller than the men's part. This is how these brotherless girls (*bezbratnice*) got the name *miraždžijke*, by applying the Turkish term for inheritance – *miras*. This clumsy legal transplant paved the way for the dowry in Serbia. The first written mention of dowry, wherein "dowry" signifies the inheritance, dates back from 1748.⁴¹ The heiresses,

³⁹ Ž. Perić, *Žena u srpskom naslednom pravu* [Woman in Serbian Inheritance Law], Beograd 1927, 351. For Albanians, see M. Đuričić, "Uticaj albanskih običaja na imovinsku slobodu žena" [Influence of Albanian customs upon property freedom of women], *Anali Pravnog fakulteta u Beogradu* [Annals of the Faculty of Law in Blegrade] 5/1988, 565 etc.

⁴⁰ Similar situation was often in Russia: "As early as the seventeenth century, Russian peasants, in the absence of direct male heirs, adopted a son – usually a prospective son in law for a marriageable daughter. Adoption assured a household that its patrimonial property would be preserved intact for subsequent generations and would not devolve to distant relatives or, in the post emancipation era, revert to the commune", C. C. Worobec, *Peasant Russia*, Princeton 1991, 58.

⁴¹ V. Mihajlović, *Građa za rečnik stranih reči u predvukovskom periodu* [Materials for a Dictionary of Foreign Words before Vuk], Novi Sad 1974, II, 390; even more,

according to the term that was accepted for the women's inheritance, were called *miraždžike*,⁴² somewhere *blagarice*⁴³ or *taloshkinje*,⁴⁴ and a while later, with the influences of legal terminology and the occurrence terms like *inheritance mass* in common language, *masalke* or *masanke*.⁴⁵

Almost at the same time, urban settlements began to develop and flourish. Social differences, relatively small during past centuries, became sharper. Rich merchants have quickly capitalized their courage shown during the First and the Second Serbian Uprising. The desire for higher social ranking caused the parents to give larger and richer presents to their daughters in order to demonstrate their wealth. That way, the brothers were not deprived of their inheritance "because they are wealthy enough", or they would at least try to "buy" a successful and prominent son-in-law. As time went by, such well-endowed daughters were referred to as daughters with dowry, because the entire patrimony of a common person could often be smaller than the dowry of the city girls (*prćije varošanki*). Since the daughters always inherited lots of land and other immovables, the term dowry was often associated with possession i.e. inheritance of immovables. Finally, when the patriarchal moral started to decline and when *domazets* were not treated like vultures anymore (and certainly most people regarded them as vultures out of sheer spite), no obstacle remained for the further development of dowry. The desire for wealth was stronger than the attitudes of the patriarchy. *Miraždžike* went from being avoided to becoming the most desired brides.⁴⁶

When one third of the male Serbian population was swept away in the Balkan Wars and in the World War One, the daughters could get married only if their parents prepared them well for the wedding. Their

Vuk Karadžić in his *Serbian Dictionary* (1852 edition) translates dowry as *hereditas*.

⁴² N. Pantelić, *Nasleđe i savremenost čačanski i gornjemilanovački kraj* [Inheritance and Modernity Čačak and Gornji Milanovac Area], Beograd 1991, 46.

⁴³ V. Bogišić, (1867), 120.

⁴⁴ V. St. Erlich, (1978), 187.

⁴⁵ J. Pavlović, "Narodni život u kragujevačkoj Jasenici" [Common Life in Jasenica near Kragujevac], *Srpski etnografski zbornik* [Serbian Ethnological Compendium] 22/1921, 117 118.

⁴⁶ S. M. Mijatović, "Običaji srpskoga naroda iz Levča i Temnića" [Customs of Serbian People from Levče and Temnić], *Srpski etnografski zbornik* [Serbian Ethnological Compendium] 7/1907, 6 7; V. M. Nikolić, "Etnološka građa i rasprave iz Lužnice i Nišave" [Ethnological Materials from Lužnica and Nišava], *Srpski etnografski zbornik* [Serbian Ethnological Compendium] 16/1910, 183 185; D. M. Đorđević, *Život i običaji narodni u Leskovačkoj Moravi* [Common Life and Customs in Leskovačka Morava], Beograd 1958, 436. For vivid descriptions of the cousins guarding the girls from the guys trying to marry them in order to get their wealth in Leskovačka Morava, Boljevac and Homolje, see Milan T. Vuković, *Narodni običaji, verovanja i poslovice kod Srba* [Common Customs, Beliefs and Proverbs of Serbian People], Beograd 1981, 34; T. Đorđević, 37; *Naš narodni život* [Our Common Life], Beograd 1984, 146 147 and 207.

chances were much better if they had some lots of land or a greater amount of money. Such a gift would definitely deprive the daughters (still not used to the new situation) of any idea of inheriting their father's estate, which was a relief for their brothers. As the notion *prćija* became quite different from the previous one, regarding both quantity and quality, it also started to represent a consideration for the renouncement of the parents' inheritance. Still, all the daughters kept in mind the original *miraždžijke*, in spite of their lack of education, and understood the meaning of inheritance. On the other hand, the term "dowry" expanded to all the cases where a woman entered into marriage with valuable property, therefore becoming an equal partner to her husband, despite the fact that he managed the property, and regardless of whether she stayed to live in her home, moved into her husband's family, or if the newlyweds began to live in their own home. At that moment, the dowry in its original Islamic meaning of inheritance or *miras* disappeared, and medieval *prkija* or *dota* (*dos*) revived.

This shy emergence of dowry in the most prestigious families of the larger cities in Serbia has probably started in the late 1820s, but certainly before the implementation of the *Serbian Civil Code* (SCC), since the term *dowry*, which was the technical expression used by the SCC to indicate the part of the property that the women brought with her in the marriage, was evidently used among the people to signify *prikija*, and not only the daughter's inheritance.⁴⁷ The dowry as a constituent of the new customary law has prevailed over the dowry officially introduced by the legislation of the new-formed Serbian state.

The other way of introduction of dowry was the reception of Roman law through Austria. Dowry was officially introduced to the modern Serbian law, which was strongly influenced by the ABGB, as a "backdoor entry". Regarding the dowry the ABGB uses the well-known Austrian concept, based on the postclassical Roman law. On the other hand, the SCC introduced a new legal concept in a fearful, careful and touchy manner. The inept adaptation of the ABGB to the Balkans and the unsuccessful alteration of its articles would result in few major differences between the Austrian and Serbian concept of dowry. One of the most important deviations of the SCC from the ABGB is related to the character of dowry in Serbia, which was, contrary to the ABGB (Art. 1217–1224), not compulsory. Article 762 of the SCC prescribed, as a way to redeem the legislator from the introduction of dowry: "If the dowry was not agreed upon and compulsory according to the contract, the husband has no right to ask for the dowry along with the spouse". This difference in the compulsory character of the dowry does not imply that, according to the Aus-

⁴⁷ Art. 397 of the SCC prescribes that brothers are obliged, after the death of the parents, to ensure their sisters a *decent housing in accordance with the existing customs*.

trian law, the husband was authorized to ask for dowry in any case. Article 1225 of the ABGB clearly states that the husband cannot demand the dowry if it was not agreed upon before the marriage. This difference relates to the obligation, prescribed by the Austrian law, of the parents to give their daughters a dowry, while the SCC did not stipulate this obligation.

The first ruling regarding the dowry was mentioned and commented by Niketić.⁴⁸ Since then the rulings on dowry have become unavoidable in the published jurisprudence collections. This might be the case due to the popularity of dowry; however it might also be due to the confusion of the courts and different interpretations of the SCC.

4. CUSTOMARY VS. CIVIL LAW

After the World War I, the Kingdom SCS (Kingdom of Serbs, Croats and Slovenes) was created, and afterwards renamed to Kingdom of Yugoslavia in 1929. This state, created full of differences, compromises and frictions, was divided into six diverse legal regions, each with its separate legal sources. Although different laws with the rules on dowry were in effect in most parts of the Kingdom of Yugoslavia, it did not imply that the dowry was automatically accepted in all the regions. The dowry has nested pretty fast in urban areas, notwithstanding its adjustments to the urban customs, but it was not accepted and added to the body of local customs in the lesser developed regions.⁴⁹ However, in the decades between two World Wars, dowry has finally become a major marital custom in larger part of the Kingdom.⁵⁰ That was, as long as Serbia is considered, due to huge losses that Serbian army suffered during the Balkan Wars and World War I, which created female majority within the population.⁵¹ There have been also other influences that contributed to

⁴⁸ G. Niketić, *Bilten Kasacionog suda 1866–1878* [Bulletin of the Court of Cassation 1866–1878], Beograd 1908.

⁴⁹ “Legal norms did not significantly influence the customs and the practice of dowry and inheritance. Patriarchy has been especially immune to the modern provisions of the law which are considered as of foreign nature and do not take into account the stage of development of the rural households and factual family relations. The attitude of the people from patriarchal regions towards dowry was single minded and independent from all eight inheritance laws: the daughter does not get any dowry or inheritance”, V. St. Erlich, *Jugoslavenska porodica u transformaciji* [Transformation of Yugoslav Family], Zagreb 1971, 188.

⁵⁰ J. Pavlović, 115; T. Đorđević, “Poligamija” [Poligamy], *Nаш narodni život* [Our Common Life], Beograd 1984, 39. Traces of the bride purchase have remained in the undeveloped parts of Yugoslavia, such as Kosovo and Macedonia.

⁵¹ P. Ž. Petrović, *Život i običaji narodni u Gruži* [Common Life and Customs in Gruža], Beograd, 1948, 94.

the acceptance of dowry, including the rise in numbers of families that should be supported from both sides, especially during the great economic crisis in 1930s.⁵² Pavković also points out the influence of processes that were initiated by the law in force, namely, the transformation of collective family ownership into private property, and gender equality in inheritance law.⁵³ Anyhow, ethnologists have noticed the existence of dowry in their studies of certain regions, especially the rural areas, although they have been frequently pointing out that the dowry is “a *newer* concept”.⁵⁴

Until the end of the World War II the dowry in customary and in civil law have been peacefully coexisting. The customs have somewhat modified the dowry in accordance with the regional differences, and if the dispute would arise, the court would deliver the ruling based on the civil law. However, this harmonious coexistence has been abruptly breached. Right after the establishment of the communist government, dowry has been abolished, envisaged to have been opposing to the gender equality principle and socialist moral.

However, even it was attested mainly by the foreign scholars,⁵⁵ the dowry in Yugoslavia has showed again that “no solemn declaration on the rupture with the past could not defeat the persistence of the custom as an addition, interpretation or abrogation of the law, which sometimes returns to the custom its old glow”.⁵⁶ Therefore, the legislator has recognized the troubles of coping with the dowry when explicitly prescribing in the Article 413 of the *Law on Marital and Family Relations* from 1980 that the dowry is a separate asset of the woman. If there was no dowry, there would be no such provision.⁵⁷

Vasić rightly points out: “the custom of non-application of the law or reasonable custom that is applied contrary to the law is a fact that sig-

⁵² V. St. Erlich, (1978), 187 and 194.

⁵³ N. F. Pavković, “Tradicijnsko pravo i savremena seoska porodica” [Traditional Law and Contemporary Rural family], *Glasnik Etnografskog instituta* [Gazette of the Ethnographic Institute], 32/1983, 42.

⁵⁴ V. Nikolić Stojančević, “Vranjsko Pomoravlje”, *Srpski etnografski zbornik* [Serbian Ethnological Compendium] 86/1974, 358; J. M. Halpern, *A Serbian Village*, New York, Evanston, London 1967, 192; C. B. Brettell, “Property, Kinship, and Gender: A Mediterranean Perspective”, in D. Kertzer, E. Saller (eds.), New Haven, London, 1991, 343.

⁵⁵ D. B. Rheubottom, “Dowry and Wedding Celebrations in Yugoslav Macedonia”, in J. L. Comaroff (ed.), *The Meaning of Marriage Payments*, London 1980; J. F. Gossiaux, “Prix de la fiancée et dot dans les villages yugoslaves”, in G. Ravis Giordani, *Femmes et patrimoine*, Paris 1987.

⁵⁶ R. Vasić, *Pravna obaveznost običaja* [Custom and its Legal Binding Character], Beograd 1989, II.

⁵⁷ *Službeni glasnik SR Srbije* [Official Gazette of Socialist Republic of Serbia], 22/80.

nifies the inevitability of revision of the law based on the obviously changed needs of the society”.⁵⁸ Regarding the *reasonable custom*, one could ask who shall judge (and who shall have enough authority to do so) the reasonability of the custom. What if there was a *non-reasonable custom which is applied contrary to the law*, signifying the inevitability of revision of such laws that are not applied because of the obviously unchanged concepts and needs of the society? Tasić might answer these questions in a simple manner: “The most important thing is when the people believe in the legitimacy of a rule and live in accordance with that rule (as proven by customs)”.⁵⁹ Each custom that is applied in the society contrary to the law must have the base of its effectiveness, its social legitimacy, causes of survival and its functions (both latent and manifest),⁶⁰ which need not to be logical and understandable to the legislator. The same applies to dowry.

There are few reasons for the survival of dowry in rural areas. More men than women were killed in the World War II. The census of 1960 and 1969 testifies on the rise of the number of women settled at the family property, while the number of men decreases, as well as the number of male agricultural workforce.⁶¹ The surplus of women might have caused the use of dowry, similarly as seen in Serbia after the World War I.

Also, legal limitation at landed property in 1953 has contributed to the dissolution and division of *zadruga* families, as partition of large estates was the only way for family to keep its property due to communist limitations in landed ownership quantity.⁶² It has influenced the inheritance system in the villages, thus keeping it closer to the custom than it was the case in the urban areas. The inheritance customs have been contrary the law before,⁶³ and the SCC did have to differ from its model because of the influence of the traditional concepts⁶⁴.

⁵⁸ *Ibid.*, 159.

⁵⁹ Đ. Tasić, *Uvod u pravne nauke (enciklopedija prava)* [Introduction to Law (Encyclopaedia of Law)], Beograd 1941, 80.

⁶⁰ For latent and manifest functions of the bride purchase in Africa, see R. F. Gray, “Sonjo Bride Price and the Question of African ‘Wife Purchase’”, *American Anthropologists* 62/1960, 45–46.

⁶¹ R. First, “Žena u ruralnom i agrarnom razvoju” [Woman in Rural and Agrar Development], *Sociologija sela* [Rural Sociology] 17/1979, 14.

⁶² L. Gavrilović, “Običajno regulisanje pravnih odnosa” [Customary Regulation of Legal Relations], *Glasnik Etnografskog muzeja u Beogradu* [Gazette of the Ethnographic Museum in Belgrade] 52–53/1989, 66.

⁶³ V. Bogišić, (1892–1893), 713.

⁶⁴ The SCC did not accept the equality of male and female inheritors, nor did it prescribe the dowry as mandatory. Likewise, the SCC kept the notion of large *zadruga* family, which was not mentioned in the ABGB.

Therefore, regardless of the gender equality proclaimed in Yugoslavia after the World War II, “in the reality much is still going on according to the old rules: neither the parents give equal parts of the inheritance to their daughters and sons, nor sisters ask their brothers for the part of inheritance that is rightfully theirs. It is like that in Montenegro, and, according to our research, also in Šumadija and Metohija”.⁶⁵

However, this custom has its rational explanation in rural areas, as explained by the same ethnologist: “When the sister waives her part of inheritance to the benefit of her brother, that does not only prove the force of the patriarchal tradition, but also the economic rationality understandable to each peasant, wherein the recognition of equal inheritance rights for each gender means further partition of already diminished properties”.⁶⁶

Gender equality has had to wait better times in the rural areas, establishing the legal dualism in marital and inheritance law in Yugoslavia.⁶⁷ The most important family goods, including most of immovables and equipment, have been inherited by sons, and parents would give their daughters either dowry or the “right to remain in family house, if they are not married”.⁶⁸ That way, the daughters would be settled, and deemed to be waived any further inheritance right to the benefit of their brothers, which was frequently court-certified.⁶⁹ The jurisprudence of the district court in central Serbian city Arandelovac serves as a proof that one fifth of the women (sisters) from this region waive their part of inheritance to the benefit of their brothers.⁷⁰

The ordinary people, unlike the law, have found the reason to retain the dowry. Its different functions have made it the integral part of the conduct of the marriage in entire ex-Yugoslavia, from Triglav (Slovenia) to Gevgelia (Macedonia). The explanation of dowry is therefore not to be found in the law, but in the customs and society.⁷¹ Only in last few dec-

⁶⁵ N. F. Pavković, 43.

⁶⁶ N. F. Pavković, “Etnološka koncepcija nasleđivanja” [Ethnological Concept of Inheritance], *Etnološke sveske* [Ethnological Volumes] 4/1982, 34.

⁶⁷ Lj. Gavrilović, 1989: 65.

⁶⁸ N. F. Pavković, (1983), 43.

⁶⁹ M. S. Filipović, “Život i običaji narodni u Visočkoj nahiji” [Common Life and Customs in *nahija* of Visoko], *Srpski etnografski zbornik* [Serbian Ethnological Compendium] 61/1949, 90.

⁷⁰ N. F. Pavković, (1982), 34.

⁷¹ Similar situation occurs in Greece: “The fact that the institution of the dowry continues to regulate, to a great extent, the property relations between Greek men and women cannot then be explained in terms of the power of its legal norms; the explanation probably lies in the power of its social norms, which render this institution a highly valued

ades the dowry has been squeezed out, first from the urban, and then from the rural areas. It has become a simple gift to the young couple, caused by the rising costs of living of the modern life, which directs the parents, family and friends to jointly help the establishment of the new family, thus showing the much-needed solidarity.⁷² Young couple separated from the parents and trying to establish a family in new home is helped by both sides, and dowry as a gift of bride's parents is complemented with the gift (of same or similar value) that is given by the groom's family.⁷³

That way, the people itself changes its customs from within, relating it not to the law, but to the changed circumstances in the society. The society, on its part, contributes to the gender equality, by making the marital givings coming from both sides equal.

Furthermore, the example of dowry proved that, contrary to the dominant understanding on the supremacy of law over custom, dowry that has arisen from the customary law has been more immune and flexible than the dowry that has been introduced to the Serbian legislation as a transplant from Austrian law, as a specific reception of Roman law. Supposedly illogical and awkward legal transplant – *miras* has justified, by the fact of its long existence, the complexity of the customary law that could not be simply wiped out by the legislation of any kind and its declaratory norms, or at least not before the causes of its existence were wiped out first.

good that each family must at all costs offer to the daughter, and each woman to her husband", J. Lambiri Dimaki, "Dowry in Modern Greece: A Traditional Institution at the Crossroads Between Persistence and Decline", *Social Stratification in Greece 1962 1982*, Athens 1985, 169.

⁷² Similar process has been developing in Poland in the XX century: "The dowry requirements that are less and less specified and its differentiation to the elements that must be given by the man and the woman respectively represent the sign of equality of social roles in marriage and decreased importance of economic functions of the family. That fact could be proven by the prolonged economic responsibility of the parents to wards the child", Z. Staszczak, "Porodični ritual kao izraz promena običaja na selu" [Family Ritual as the Sign of Change of Customs in Rural Areas], *Promene u tradicijom porodničnom životu u Srbiji i Poljskoj* [Changes in Traditional Family Life in Serbia and Poland], Beograd 1982, 31.

⁷³ V. Stanimirović, *Ustanova miraza u našoj tradicijskoj kulturi* [Concept of Dowry in Our Traditional Culture], Beograd 1998, 64.

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DIE NEUENTSTEHUNG DER MITGIFT BEI SERBEN

Zusammenfassung

Den Slawen war ein der Mitgift (miras) entsprechendes Rechtsinstitut ursprünglich fremd. Im serbischen Mittelalter findet man die Mitgift unter dem Namen prikija, was auf einen oströmischen Einfluss schließen lässt. Im alten kroatischen Recht entstand dieses Rechtsinstitut ebenso unter dem oströmischen, aber auch unter dem venezianischen und ungarischen Einfluss und wird nach dem romanischen Vorbild als dote bezeichnet.

Unter der osmanischen Herrschaft scheint die Mitgiftgabe in der ehemaligen serbischen Gebieten verschwunden zu sein. Zu ihrer doppelten Wiederbelebung kam es im 19. Jahrhundert, einmal in dem autonomen Gewohnheitsrecht unter der Bezeichnung miraz (türkisch "Erbschaft"), und zweitens im serbischen Zivilgesetzbuch aus dem Jahr 1844. Das letztere wurde allgemein und hinsichtlich der Mitgiftregelung stark von der romanischen Konzeption des österreichischen ABGB beeinflusst. Freilich wurde im serbischen Zivilgesetzbuch das Wesen der Mitgift anders als im ABGB bestimmt.

Sowohl als Gewohnheit, wie auch als Regelung des (serbischen) Zivilgesetzbuches findet man die Mitgift auch nach dem Ersten Weltkrieg in der Rechtswirklichkeit des neuentstandenen Serbisch Kroatisch Slowenischen Königreichs Jugoslawien. Nach dem Zweiten Weltkrieg bemühte sich die kommunistische Regierung die Mitgiftgabe abzuschaffen. Trotzdem blieb die Mitgift auf dem Lande oft eine verpflichtende Gewohnheit. Der Gesetzgeber müsse sich in der Zukunft bemühen, die aus ideologischen Gründen entstandene Diskrepanz zwischen dem geltenden Recht und der Rechtswirklichkeit abzuschaffen.

Schlüsselwörter: *Mitgift. Legal Transplants. Gewohnheitsrecht.*