

The Lasting Problem of Blood Feud _____

_____ **Klementin Mile, PhD** _____

EUROPEAN UNIVERSITY OF TIRANA

Abstract

Blood feud is one of the most prominent elements of customary law that has been practiced in Albania for centuries. It was an adequate tool of restoring justice while there was no independent Albanian state, but today it is a problematic extra-legal practice that negatively affects the socio-economic life of those involved in it. On the other hand, its existence undermines the very functioning of Albanian state institutions, public security and state legitimacy. Referring to systems theory, the phenomenon of blood feud may be analysed in three dimensions along which it presents itself as a problem to Albanian society: definition, control, and consensus. Since this article aims to answer why blood feud has lasted for centuries in the Albanian soil, we shall focus only on the definition and consensus problems. How can blood feud be adequately defined, so that no ambiguities and abuses result from it? How can one build consensus against blood feud as a social practice? We argue that blood feud should be defined as a legal sanction, which is also the way it is understood by those who practice it. Furthermore, it is crucial to achieve consensus against this phenomenon, especially in those areas most affected by it. We argue that efforts must concentrate on strategies and mechanisms of trust building.

Key words: *blood feud; revenge; duty; right; sanction; consensus*

Conceptual Issues

Following systems theory, we may try to understand and communicate the phenomenon of blood feud in three dimensions of meaning: fact dimension, temporal dimension, and social dimension (Luhmann, 1995: 59-102). All the

three appear simultaneously (i.e. united) in the real world but can be separated for analytical reasons. In order to conceptualise blood feud as a problem, we first need to clarify that our approach is neither ontological, nor merely analytical. A problem does not become such by and in itself, it does not possess the capacity to constitute itself necessarily as a problem. On the other hand, we maintain that problems exist; they are not constituted as such only analytically (i.e. having no correspondence to the reality), e.g. by a sociologist. However, the problems are problems only when and if a system constitutes them as such. Therefore, we will speak of the problem of blood feud only with reference to systems of society, e.g. law, politics, religion, science etc.

Here, for pragmatic reasons that relate to research interests, we will only focus on the fact and social dimensions. This is because we want to know why blood feud has resisted for centuries in the Albanian soil. Thus, blood feud becomes a problem for a system of the society only when: (a) It appears as a complex phenomenon that *cannot be defined adequately*; and (b) the majority of those participating in the system are *against it* – the majority understood as those with the decision-making power, which in the democratic system corresponds to those being able to raise the greater number of votes. Therefore, blood feud may become a problem of *definition* and/or *consensus*. For science (and its subsystems such as sociology, legal theory, anthropology, and ethnography) it is above all a problem of definition. Scientific studies have tried to conceptualise blood feud, to show what it is and what it is not, to understand its function and, by situating it in a broader context, to explain how it has come about and what consequences it may bring. All scientific contributions concerning the function, causes and consequences of blood feud are evidently related to the problem of definition. This problem, however, can hardly be of interest for anyone beyond the domain of science. It would, if it were clear that the way the phenomenon was defined would decisively affect the way and possibilities for handling it. Policymakers, decision-makers, and lawyers are not interested in the definition of blood feud, but in the possibilities for controlling and manipulating it. The problem of consensus is again of crucial importance to policymakers and decision-makers. It is the decision-makers' duty, once a commitment has been made to fight the phenomenon of blood feud, to overcome the problem of consensus.

We maintain that solutions to the problem of definition and consensus must specify: (a) How blood feud can be *adequately defined*, taking into consideration both the internal perspective of the legal system and the external perspective of the science system; and (b) by what means can one bring about *consensus* against the phenomenon of blood feud. Having thus clarified the conditions when blood feud becomes a problem for the society and hinted at solutions, we shall now analyse the interaction between social structural changes and historical semantics

developed in regard to each of the resulting problems. This will allow us to evaluate the solutions given to these problems and to understand better their relevance/irrelevance for the present.

Problem of definition

Elezi attempts to distinguish between *blood feud* (*gjakmarrja*) and *revenge* (*hakmarrja*), believing that this distinction is fundamental to handling properly the phenomenon of blood feud. According to him, a blood feud murder is committed in order to take the blood of a previous murder, or against murder attempts and attempts to cause serious or light injuries. On the other hand, a revenge murder is committed as retaliation for having been subjected to beating, quarrel, insult, violence, and previous unjust offences (Elezi, 2000: 7). Here Elezi merely follows and generalises the sanctions of customary law. In other words, customary law imposed other sanctions (not blood feud) such as expulsion (*dëbimi*), ending of social relations with the punished person (*leçitja*), fines (*gjobat*), and giving a black cheek (*faqja e zezë*) for beating, quarrel, insult, violence, and previous unjust offences. We recognise the usefulness of this distinction in some respects, but also maintain that it is necessary to point out certain problematic aspects in it. Thus, it is difficult to see the difference between insult, violence, and previous unjust offences on the one hand, and attempts to cause serious or light injuries, on the other. It is obvious that an attempt to cause injury to somebody may also be considered as an insult by that person. Also, violence is implied in any attempt to cause injury; no such attempt can occur in a peaceful way. The same holds for previous unjust offences. They can also be attempts to cause injury.

Therefore, although blood feud and revenge can be distinguished, this must be made by using only those properties that cannot be confused with or imply properties used for the definition of the other concept. It is especially important to point out that the distinction used by Elezi reflects the distinction already made inside the legal system based on customary law. Thus, when we say that blood feud as a sanction has been related in an ambiguous way to facts ('attempt to cause injury' qualifies as a legal fact for imposing the sanction of blood feud, while 'insult', 'violence', and 'previous unjust offences' do not), it is not simply a problem of definition created by science, but above all a problem for the proper functioning of the legal system. The system had to treat everyone equally in order for it to be fair and acceptable to the people. If in one case 'insult' was not sanctioned with 'blood feud' and in another case it was, this would create confusion and legitimating problems for the legal system based on customary law.

The only mean this system could use to resolve the situation was *argumentation*. Argumentation becomes necessary for determining unambiguously what the fact

is in each case. Is it simply an act of violence, or an attempt to cause injury? Do previous unjust offences qualify as insults, violence, or as attempts to cause injury, or even as murder attempts? After having determined what the fact is, then it is clear whether this is a case for the implementation of the sanction of blood feud, or not. The Code of Lekë Dukagjini did not provide for the institution in charge of argumentation (i.e. the barrister). However, upon oath, the persons involved in litigation did have the right to express their complaints (i.e. arguments) before the Council of Elders (*pleqnia*) (Gellçi, 2005: 41). Therefore, the plaintiff and the defendant were those who argued about what the legal fact was. Their arguments of course were *ad hoc* and *ad hominem* and did not refer to specialised legal materials, such as precedents, rules, and principles (Teubner, 2001). So, it was left up to the Elders to argue about the facts, after having heard both parties in litigation, as well as the witnesses. From the exemplified cases in the Code of Lekë Dukagjini it is obvious that the Elders held the opinion that the statute (the Code) could provide adequate and unequivocal description of what was the legal fact in a case. When encountering difficulties, they simply could and did recall a principle from the Code so as to establish the legal fact and the corresponding sanction for the guilty party. Indeed, they never had to argue about what the fact was, but only whether, in a given case, that principle of the Code should be recalled/selected or another one. Argumentation was reduced to only a selection among principles. This way of establishing the legal facts was one of the contributing factors to the legitimacy enjoyed by customary law; on the other hand, it contributed considerably to the preservation of this law's norms that registered almost no change at all for a very long time.

Elezi defined blood feud as *a moral and religious right and duty*. The person who did not take the blood (i.e. who refused to get involved in blood feud and kill the person that had murdered one of his family/clan) was despised and sometimes banished out of the clan or family (Elezi, 1983: 12). On the other hand, Diana Gellçi narrows down the definition of blood feud and believes it is *only a social duty*.

Thus, the concepts of 'right' and 'duty' come to the fore. When Elezi expresses his opinion that blood feud is a moral and religious right, he seems to imply that the right given to the people to involve in blood feud was obligatory. However, the obligation rested on morality and religion, not on any legal provisions. It was the society that exerted pressure on the individual, by accordingly distributing esteem or disdain in order to induce one to actualise one's right to take blood. But also, the mystical religious mentality contributed to generating fears, such that the soul of the victim could only rest in peace when his blood was taken back by a relative (Elezi, 1983: 12). Therefore, blood feud was a legal right, but not a legal obligation.

Problem of consensus

One is usually astonished that customary law has managed to outlast time, political, economic and technological development and arrive in its original form in the XXI century. How could it be that customary law originating from time immemorial is still accepted as a valuable behavioural guidance? How can one explain that fact that blood feud, as part of customary law, has endured for so long as a suitable solution for certain conflicts, while other alternative solutions (especially those proposed by the state) have not been preferred? We believe that several factors internal to the legal system have contributed to this. Despite their differences, these factors have one thing in common: they hindered *reflexive communication* (Luhmann, 1995: 153). This is the kind of communication that allows for raising questions about what has been communicated, therefore opening up the possibility of modification and/or correction. Viewed this way, reflexive communication forms the basis of all critical thinking.

The first factor precluding reflexive communication was the fact that customary law was *unwritten*. It circulated orally among the highlanders, while utterance and speech fused into an effective unity, compensating for the lack of information with persuasion, and synchronising speaking, hearing and accepting of communication in a rhythmic and rhapsodic way, leaving literally no time for doubt. Communication is the synthesis of three selections; it is the unity of information, utterance, and understanding (Luhmann, 1995: 147). In other words, in every communication always is implied a selection of the source and content of information, a selection of the form, manner and time in which information is expressed, and a selection of understanding that has excluded all other possibilities of making sense about the way the information has been expressed through utterance. It is precisely the difference between information and utterance that is very difficult to distinguish in the spoken language. On the other hand, in writing there is a clear distinction between information and utterance. Moreover, via printing (as an extension of writing in time and space) the suspicion increases that the utterance is specially prepared for producing certain effects, that it follows its own motives and that it is not merely a servant of information. Only writing and printing suggest reaction to and consideration of communication not as a unity but as a difference of utterance and information: for example, processes for controlling truth and articulating suspicion (Luhmann, 1995: 162). The oral tradition of Albanian highlanders reflected in customary law reduced the probabilities of raising doubt about the real value and suitability of customary law and made it practically impossible to think about better alternatives. This should not be misunderstood. We are not claiming that spoken language impedes reflection about communication (i.e. tradition), but only that tradition, precisely because it was communicated orally, entered

the discussions in a form vague enough to disallow for critique and modification. Moreover, unlike modern Civil or Criminal Codes, the language of customary law was highly metaphorical, which contributed to increase the level of vagueness.

Secondly, customary law is a *mixture of legal norms and social norms, legal sanctions and social sanctions*. For example, one can find in customary law norms concerning family life, marriage, property, trade, *besa*, wedding, work, honour, church, murder and so on. Likewise is the range of sanctions, from death penalty, blood feud, expulsion, fines, burning of the house, and *sodumja* (destruction of plants, meadow, garden etc. through burning or weeding out) to *leçitja* (ending of social relations with the punished person) and *faqja e zezë* (black cheek). This arrangement of norms and sanctions in customary law, where the legal coexisted with the social and the social was easily translated into the legal, hindered the emancipation/evolution of both. Thus, in order to think critically about the relevance of blood feud for doing justice, one also had to consider *leçitjen, faqen e zezë*, honour, family life etc. In this way the problems that emerged in the legal domain were transferred to the social one and conversely, thus escaping strict examination. To be sure, this transferring of problems back and forth would have destabilised both the legal and the social system, were it not for a third factor that ensured stability (i.e. preservation of tradition) – *the coincidence of a certain type of morality with a certain model of societal organisation*.

Morality establishes the coherence between the ‘private’ domain of interaction and the social domain, by imposing the same requirements for earning esteem in both. As we have seen, the morality of Albanian highlanders was based on honour. That means that they needed to show honour wherever they dealt with others – be it in the family, before the authorities, in the economic life and trade, before the guest, in the presence of a single person or of the entire community – in order to earn esteem and avoid disdain. Morality based on honour never fell into crisis, because it was developed in a society that passed from a segmental to a stratified model of organisation. Neither model could create premises for questioning morality. Thus in segmental society all areas of life functioned as one, crossing their own borders to invade each other’s’ territories and thus not be distinguished easily from one another; therefore it made little sense to speak about the ‘private’ and the ‘public’: everything was private and simultaneously everything was public. Honour, as the basis of morality, could pass from interaction between two human beings to the social – from love to marriage, from domestically produced goods to the market, from religious conversations to the church, from legal discussions to the Council of Elders– smoothly. The transition to stratified society only established hierarchies in these areas of life; however, it did not make them more autonomous. Indeed, highlanders expected that those on the top (the authorities/the rich/the most educated/the strongest) showed honour just like all the others.

This expectation (and the use of legal and social sanctions in case it was not fulfilled, among which blood feud) held the Albanian highlanders' society together, thereby reducing the probability of suffering a morality crisis. While in segmental society highlanders needed to show honour across the different areas of life, in stratified society they needed to show honour regardless of the societal position they occupied. Thus customary law and blood feud were safely insulated both from the (potential) *horizontal* critiques referring to political, economic, religious, legal and scientific arguments and the (potential) *vertical* critiques coming from the authorities and the higher strata. Customary law and blood feud as part of it enjoyed wide consensus among Albanian highlanders.

With the transition of Albanian highlanders' society to *functional* differentiation (Luhmann, 1982; 2013) – politics, economy, law, religion, education, intimacy etc. differentiate from each other and become important *per se* – we would expect social consensus for customary law and blood feud to cease. No more can morality be based on honour; indeed, morality has fallen into crisis. Requirements for earning esteem in the 'private' sphere of interaction differ a lot from those in the 'public' sphere of function systems. The society is no more interested in judging the person as a whole, but only as being capable or not at performing specific tasks. Thus, esteem can be earned by accumulating wealth and power, while there is no need to refer to the symbolic medium of honour. Indeed, *power* and *money* have become the most attractive symbolic media and Albanian society is trying to establish a new morality based on them. Moreover, the Code of Lekë Dukagjini has been available in written form since 1933. This means that one can reflect upon it, raise doubts and propose changes. However, a considerable number of people in Albanian highlands (recently also in the valleys and cities because of internal migration) turn to blood feud as a solution to their conflicts. Therefore the question arises: if it is true that honour has left its central position to power and money; if the exclusively oral tradition of the highlanders has been undermined by the introduction of writing; and if customary law itself proclaims that forgiving blood is bravery, why does blood feud occur at all?

Notwithstanding these developments, certain roles foreseen by customary law have not disappeared altogether. The inducer (*gergasi*) is one of them (Gjeçovi, 2001: 116). One may call the inducer the 'memory of customary law,' for it is him that, from time to time, points out the norms and sanctions of customary law in public. Admittedly, the inducer is more sensitive to those norms and sanctions that concern blood feud. On the other hand, although the role of the inducer can be played by everyone, there are only few people (and sometimes a single person) that play it at any given time/occasion. Therefore, how could it be that the position taken by a few does have more important impact in guiding behaviour than that taken by the majority of people?

Systems theory seems to provide the necessary concepts for answering this question. According to this theory, in the situations experienced as particularly risky (public esteem or disdain, because of insecurity of the outcome, is one of such situations) emerge *trust* or *distrust*. Given that people cannot fully predict the behaviour/reaction of others, in order to interact with them, they need to attribute trust or distrust. As a strategy, trust possesses greater scope. Anyone who gives his trust considerably widens his potential for action. He can rely on unsure premises and by doing so increase their certainty value. Trust itself suggests the transition to distrust and therefore surrounds itself with controlling sensibilities. Minor indications of the misuse of trust or of previously overlooked qualities often are enough to trigger a radical change in the relation. One lets oneself run a risk only if one has taken precautions against eventualities – for example, has sanctions in hand or is adequately secured against losses (Luhmann, 1995: 128-129).

Albanian highlanders have experienced two conditions where they had almost no freedom of choice: under customary law, and under Communism. Customary law regulated every aspect of highlanders' life, while social costs for disobeying it were very high to pay. As Gellçi puts it, 'regardless of the fact that one should kill and the other should be killed, both the killer and victim appear as passive agents that followed the rules even against their own desires' (Gellçi, 2005: 41). Likewise, Communism tried to dictate everything and constrained individual choice through severe punishments such as long imprisonment, deportation, and execution. In 1990, when Communism fell, people could choose freely their way of life. Among other things, they could choose whom to trust and whom to distrust. But having lived under the Communist regime for so long (45 years), when they were used to distrust strangers, their neighbours and sometimes even their relatives; and, while looking back to the time before Communism the only tradition they had was that of customary law, when one had to check himself out for any (possibly) inappropriate gestures or deeds; the highlanders (and also Albanians in general) found it difficult to trust the others. Therefore, they choose the strategy of distrust. Only this can explain why the inducer, although in the smallest of minorities, can still influence the decisions of the people in blood feud. The problem with the inducer is that this role is imperishable, precisely because everyone can play it. However, there where trust prevails the inducer cannot be effective.

Conclusion

Blood feud is a legal sanction, not a moral or religious one. Although there may be moral or religious implications, they are only secondary. Blood feud is located within the legal system, as one of these system's tools for restoring justice. It is not

primarily moral or religious in a further consideration. Blood feud cannot be used arbitrarily, as customary law makes it clear. It needs institutions, roles, and values. Blood feud can occur only if there is a Council of Elders that allows for or prohibits the murder, or takes some other sanctions against the one found guilty; a murderer that has sufficient motive (specified in customary law) for committing the murder, a target (victim) who must have certain blood relations to the person found guilty (or be that person himself) and who must have fulfilled certain other requirements such as age, gender etc.; and if honour is demonstrated before, during, and after the murder. In this regard blood feud is like the execution of death penalty in our modern legal systems. Both in blood feud murders and the execution of death penalty, clear and specific procedures are followed, and relevant institutions are involved, for causing death to the person found guilty.

Albanian highlanders seem to have operated with precisely this definition of blood feud. They have considered it a legal sanction of the legal system based on customary law. For this reason, while no centre of power (Albanian or foreign) proved able or interested to rule their territory and undermine their law, they saw no reason to abandon blood feud. It constituted an essential part of the whole of their legal system. But the endurance of customary law was also supported by other factors that hindered reflection upon it. There were three such factors: customary law was unwritten; it was a mixture of legal and social norms, legal sanctions and social sanctions; and a certain type of morality that was based on honour coincided with a segmental and then stratified model of social organisation.

Any governmental or civil society action, whether it aims at eradicating the phenomenon of blood feud, or intends to deal with its consequences, needs to take consideration of the existing social consensus for or against blood feud. In a democratic state the process of blood feud cannot be controlled, however sophisticated the means of control, if the community that perpetuates it is against such attempts and prefers blood feud instead of court decisions.

The social consensus for customary law and blood feud has been traditionally fed on an honour-based morality. Nowadays, this kind of morality has been undermined by power and money. The latter seem to be more attractive media than honour. But in some parts of Albanian society honour has still managed to preserve a relatively powerful position, although occupying far less time than before in the conversations and activities of the daily life of the Albanians. In other words, in contemporary Albania honour is individually useless (it holds no promises of success, one cannot achieve any important personal goals by leading an honourable life), but socially crucial (i.e. in a negative sense the society punishes those that do not demonstrate honour, at least when it comes to the decision of involving in blood feud or not). Albanian society is ambivalent as regards honour: it simultaneously neglects and pays attention to it. The society

neglects rewarding claims referring to honour but is attentive to honour whenever it comes to punishment. Still worse, this social situation is experienced by individuals that distrust the others. Distrust leads them to above all calculate the probability and expectable cost of social punishment and forget about the neglect story. Since it means to be marginalised and disdained by the society to the point of being ashamed of oneself, one usually chooses to involve in blood feud in order to show honour. In any case, this is perceived as a more certain way of avoiding social punishment, in that it leaves no room for alternative interpretations. In this light, efforts for eradicating the phenomenon of blood feud must concentrate on strategies and mechanisms of trust building.

References

- Elezi, I. (1983), *E drejta zakonore penale e shqiptarëve*, Tirana.
- Elezi, I. 2000, *Vrasjet për hakmarrje dhe gjakmarrje në Shqipëri*, Tirana.
- Gellçi, D. 2005, *Gjakmarrja: Albanian Highlanders's "Blood Feud" as Social Obligation*, Tirana.
- Gjeçovi, Sh. 2001, *Kamuni i Lekë Dukagjinit*, Kuvendi.
- Luhmann, N. 2013, *Theory of Society*, Stanford, California.
- Luhmann, N. 1995, *Social Systems*, Stanford, California.
- Luhmann, N. 1982, *The Differentiation of Society*, Columbia.
- Teubner, G. 2001, 'Alienating Justice: On the surplus value of the twelfth camel', in David Nelken and Jiri Priban (eds.), *Consequences of Legal Autopoiesis*, Dartmouth, Aldershot.