CHAPTER 4

Competing Interests in Death-Related Stipulations in South Tirol *c.* 1350–1600

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Introduction

Regarding property and wealth, research on the history of the family has focused above all on various models of inheritance and their consequences. However, we argue that not only inheritance law and practices, but also marital property regimes had far-reaching effects on access to resources. Amy Louise Erickson, for example, pointed out that most of early modern capital was aggregated and transferred through marriage and inheritance—and this in all European societies. Therefore "the laws governing marriage and inheritance must have played a crucial role in structuring the economy".[1] Furthermore, they profoundly shaped marital, familial, and kinship bonds, and with this they strongly influenced agreements concerning life and death. In addition, the differing marital property regimes—community of property, community of accrued gains, and separation of property—could develop their own dynamics and logics within one and the same model of inheritance practice.[2]

In fact, inheritance practice and marital property arrangements were strongly intertwined. This applies to contexts and regions where daughters had access to inheritance as well as to regions where daughters were excluded from it and only received a dowry. The latter was common among the early modern

1 Amy Louise Erickson, "Coverture and Capitalism," *History Workshop Journal* 59 (2005), pp. 1–16, quotation p. 2; see also Maria Ågren and Amy Louise Erickson, eds., *The Marital Economy in Scandinavia and Britain 1400–1900* (Aldershot, 2005).

2 See *Aushandeln von Ehe: Heiratsverträge der Neuzeit im europäischen Vergleich*, eds. Margareth Lanzinger, Gunda Barth-Scalmani, Ellinor Forster, and Gertrude Langer-Ostrawsky, (L'HOMME Archiv) 3 (Cologne, 2010); Margareth Lanzinger, "Marriage Contracts in Various Contexts: Marital Property Rights, Sociocultural Aspects and Gender-specific Implications: Late-Eighteenth-Century Evidence from two Tirolean Court Districts," *Annales de démographie historique* 121:1 (2011), pp. 69–97.

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nobility and in societies and social groups with a strict dotal system such as in most regions of Italy, and in parts of France and Spain.[3]

Studies of urban and rural societies in German territories have shown a certain tendency towards community of marital property in the course of the late medieval and early modern period.[4] This can also be seen in property regimes which combined both separation and community of property, as with the community of accrued gains. In the partible inheritance areas of the Duchy of Württemberg, for example, marital property was defined in the territorial law from 1555 as community of accrued gains. Although the combined marital fund was considered the couple's property, the spouses retained the assets they brought in and any inheritance during the marriage. A widowed spouse was then eligible for his or her own share, half of the gained or lost property during the marriage, and retained usufruct[5] of the deceased spouse's assets.[6]

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3 In contrast to marital community or separation of property, women's position and scope of action in the context of dotal systems has been broadly studied, see for example: the special issue "Femmes, dots et patrimoines" of *Clio: Histoire, Femmes et Sociétés* 7 (1998); Giulia Calvi and Isabelle Chabot, eds., *Le ricchezze delle donne: Diritti patrimoniali e poteri familiari in Italia* (*XIII–XIX*) (Turin, 1998); Simonetta Cavaciocchi, ed., *La famiglia nell'economia europea, secc. XIII–XVIII: The Economic Role of the Family in the European Economy from the 13th to the 19th Centuries: Atti della "Quarantesima Settimana di Studi", 6–10 aprile 2008* (Florence, 2009); Barbara B. Diefendorf, "Women and Property in *Ancien Régime* France: Theory and Practice in Dauphiné and Paris," in *Early Modern Conceptions of Property*, eds. John Brewer and Susan Staves (London, 1995), pp. 170–93; Diane Owen Hughes, "From Brideprice to Dowry in Mediterranean Europe," *Journal of Family History* 3:3 (1978), pp. 262–96; Marion A. Kaplan, ed., *The Marriage Bargain: Women and Dowries in European History* (New York, 1985). With regard to nobility, see Anke Hufschmidt, *Adlige Frauen im Weserraum zwischen 1570 und 1700: Status—Rollen—Lebenspraxis*, (Veröffentlichungen der historischen Kommission für Westfalen) 22 (Münster, 2001); Karl-Heinz Spieß, *Familie und Verwandtschaft im deutschen Hochadel des Spätmittelalters, 13. bis Anfang des 16. Jahrhunderts* (Stuttgart, 1993).

4 See Gesa Ingendahl, *Witwen in der Frühen Neuzeit: Eine kulturhistorische Studie* (Frankfurt a. M., 2006), pp. 189–90; Peter Landau, "Bamberger Landrecht und eheliche Gütergemeinschaft," in *Landesordnungen und Gute Policey in Bayern, Salzburg und Österreich*, eds. Horst Gehringer, Hans-Joachim Hecker, and Reinhard Heydenreuter, (Studien zu Policey und Policeywissenschaft) 8 (Frankfurt a. M., 2008), pp. 1–18, here pp. 5–6. For the Low Countries, see Martha C. Howell, *The Marriage Exchange: Property, Social Place, and Gender in Cities of the Low Countries, 1300–1550* (Chicago, 1998).

5 Lifelong usufruct meant that the surviving spouse received unrestricted use of the estate similar to the administratrix: he or she could manage the estate and keep the revenues.

6 On the composition of the marital fund in the Duchy of Württemberg, see David Warren Sabean, *Property, Production, and Family in Neckarhausen, 1700–1870* (Cambridge, 1990), esp. pp. 194–95; on the legal context and marital property law, see Rolf-Dieter Hess, *Familien- und*

At the same time, we also encounter regions where separation of property prevailed, such as Saxony,[7] but the distribution was across scattered areas. Therefore, it is impossible, as Gabriela Signori stated, to identify clear tendencies which correlate with overall socio-cultural processes of transformation.[8] While community of property made the married couple the favoured entity, separation of property, in contrast, revolved around the paternal and the maternal line: children and relatives, in other words, descendants and kin, had priority over the widowed spouse. We assume that these different marital property regimes played a decisive role in negotiating and stipulating property between and within the generations as well as between the sexes. In our research area, present-day South Tirol, separation of property predominated, in contrast to most other Austrian Hereditary Lands. Especially in cases following the death of a spouse, separation of marital property had the potential to create conflicts between people competing for property as well as for care and sustenance. And, unlike community of property, it could result in a rather fragile position for widows and, to a certain degree, also for widowers. Consequently, planning for death was of crucial if not of existential relevance and a broad range of legal instruments came into use for this purpose.

The contribution explores the implications of inheritance practices and separation of property on the planning for death.[9] Given that in case of the death of one spouse, the estate of the deceased person reverted to his or her kin unless other arrangements such as wills allowed for reservations, many court records reveal conflicting interests especially during widows' endowment proceedings. This evoked the following questions: which legal practices

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Erbrecht im Württembergischen Landrecht von 1555 unter besonderer Berücksichtigung des älteren württembergischen Rechts, (Veröffentligungen der Kommission für geschichtliche Landeskunde in Baden-Wüttenberg, Reihe B: Forschungen) 44 (Stuttgart, 1968), esp. pp. 93–101.

7 See Karin Gottschalk, *Eigentum, Geschlecht, Gerechtigkeit: Haushalten und Erben im frühneuzeitlichen Leipzig* (Frankfurt a. M., 2003).

8 Gabriela Signori, *Von der Paradiesehe zur Gütergemeinschaft: Die Ehe in der mittelalterlichen Lebens- und Vorstellungswelt* (Frankfurt a. M., 2011), p. 62.

9 In our contribution, we present preliminary results of the research project "Legal spaces and gender order as social processes in a trans-regional perspective: Negotiating and stipulating in urban and rural contexts of South Tirol from the fifteenth to the early nineteenth century," funded by the Südtiroler Wissenschaftsfonds. Margareth Lanzinger and Janine Maegraith are continuing with a new project "The Role of Wealth in Defining and Constituting Kinship Spaces from the sixteenth to the eighteenth century", financed by the Austrian Science Fund (FWF).

and property arrangements came into effect? Were there possible embedded sources of tension and potential fields of conflict? Who was competing with whom: the widow and the relatives of the deceased husband, or the stepfather and the children from the woman's former marriage, or the children or their guardians and the surviving spouse? What kind of stipulations was thought to effectively prevent conflicts of interest?

Planning for death was important and recognized as such by many couples. Various instruments were used for this purpose such as wills and mutual wills, guarantees on marriage portions and morning gifts, and property transfers. These documents were either recording the property of the spouses, transferring property before death and/or stipulating future arrangements in case of death. But those legal instruments could fail to achieve their goal and hence dispute would ensue. Therefore, to identify the remaining legal intricacies, it is important to trace in which situations this had occurred and how it was settled.

Regional and Legal Contexts

The region of historical Tirol included the Habsburg land of the County of Tirol as well as the prince-bishoprics of Brixen and Trent and monastic territories; it covered approximately present North, East, and South Tirol, and Trentino. Today's South Tirol is particularly well suited for an analysis of law on the one side and legal practice on the other. This is because it is situated on the borderline where two legal cultures met. The use of both Italian and German law can be verified in this area early on. Especially neighboring statutory regulations—of Grisons, Swabia, Trent, and Görz/Gorizia—might have had a certain influence. The legal framework was set by Tirol's law code, the *Tiroler Landesordnung*, with versions of 1526, 1532, and 1573.[10] These printed codifications, drafted by the government and representatives of the country, contained among other things statutes about endowments, the making of wills, and inheritance. Their significance is underlined by their comparatively fast implementation in legal practice.[11] The *Landesordnung* itself sustained older legal regulations, for example the criminal law from 1499. The principle of usucaption law (*Ersitzungsrecht*), elaborately described in the law of

10 Martin Paul Schennach, *Gesetz und Herrschaft: Die Entstehung des Gesetzgebungsstaates am Beispiel Tirols*, (Forschungen zur deutschen Rechtsgeschichte) 28 (Cologne, 2010), pp. 481–585.

11 Schennach, *Gesetz und Herrschaft*, p. 525.

1532, can even be traced back as far as 1289.[12] Multiple charters support the existence of an extensive territorial law (*Landrecht*), which must have been developed by count Meinhard II (*c.* 1239–95) and his council based on existing customary law.[13] The formulaic mentioning of the *ius terre* in sources from the fourteenth and fifteenth centuries indicate its continuing validity.[14] The origin of the law was still known nearly two centuries later as a rural award states.[15] Unfortunately its exact content remains unknown due to the lack of written records, therefore this continuity remains debatable.

On a regional level, towns, court districts, and communes additionally preserved customary laws, often referred to as old customs. These codifications mainly concerned jurisdictional competencies or the control and regulation of a local market and rarely mentioned specific inheritance laws and marital property provisions. This is also true for the municipal law of Brixen, which came to existence under the jurisdiction of the prince bishop around 1380. It included a multitude of rules for everyday life, but notably also allowed women to make use of their dowry corresponding to the territorial law.[16] In this manner, the region of Tirol was still shaped by a plurality of laws until the late seventeenth century, to some extend overlapping, but also complementing each other.[17]

While the *Landesordnung* in terms of inheritance law allowed the division of property as well as impartible succession,[18] it distinctly specified the

12 It describes how ownership of immobile property could be gained after rightful use of said property for more than ten years, Tiroler Landesordnung [hereafter TLO] 1532, book [Buch] II, section [Titel] 51.

13 Herrmann Wiesflecker, "Das Landrecht Meinhards II. von Tirol," in *Neue Beiträge zur geschichtlichen Landeskunde Tirols: Festschrift Franz Huter zum 70. Lebensjahr*, ed. Ernest Troger, (Tiroler Wirtschaftsstudien) 26 (Munich, 1969), pp. 455–65; Otto Stolz, *Die Ausbreitung des Deutschtums in Südtirol im Lichte der Urkunden*, 4 vols. (Munich/Berlin, 1927–34), 3:2, p. 18.

14 Wiesflecker, "Landrecht," p. 462.

15 Ignaz Vinzenz Zingerle, ed., *Tirolische Weistümer* 4:1, (Österreichische Weistümer) 5 (Innsbruck, 1888), p. 248f: "*Da herzog Meinhart das lant zwang und* [...] *was herr über alles lant, da satzt er sein rät nider, ritter und knecht, die erfunden landsrecht, wie er das lant vestent*."

16 Josef Mutschlechner, *Alte Brixner Stadtrechte*, (Schlern-Schriften) 26 (Innsbruck, 1935), p. 40: "*Eß ist auch zewißßen, daß eyn igleich Frau mit irer Haimsteuer und mit irer Morgengab und Erbgut alles daß tun soll daß landes recht ist*."

17 Schennach, *Gesetz und Herrschaft*, p. 825.

18 Paul Rösch, "Lebensläufe und Schicksale: Auswirkungen von zwei unterschiedlichen Erbsitten in Tirol," in *Südtiroler Erbhöfe: Menschen und Geschichten*, ed. Paul Rösch (Bolzano, 1994), pp. 61–70; Rudolf Palme, "Die Entwicklung des Erbrechtes im ländlichen

principles of separation of marital property: wealth brought into the marriage by bride and bridegroom had to be divided into its original components again when one of the spouses died.[19] This seems to be in line with previous practice.

Source Material

For the investigated period, the main sources are charters and registers drafted by notaries public, as well as court records. It is a unique situation that in medieval South Tirol, both the notarial charters without seal and sealed charters were used. The notaries, initially mainly in the service of the prince-bishop of Trent, were established in the Adige and Vinschgau valleys since the twelfth century.[20] In late medieval towns, especially in Bozen, Glurns, and Meran, but also in smaller market settlements like Neumarkt, several notaries worked simultaneously.[21] They issued charters, mainly written in Latin and according to recognized rules (*ars notariae*) based on Roman law. Like their counterparts in Italy, the notaries public documented and safeguarded a variety of private transactions, including, for example, contracts and property deals.[22] For our topic, the high number of wills and certificates regarding marriage property are of interest. The individual acts were also recorded in an abbreviated form in registers (*Imbreviatur*), which allowed controlling and reissuing charters at a later time. This essential function highlights the similarity to courts books, which were introduced in the fifteenth century.[23] Though losing significance,

Bereich," *Südtiroler Erbhöfe: Menschen und Geschichten*, ed. Paul Rösch (Bolzano, 1994), pp. 25–37.

19 TLO 1532, 1573 III 38–42.

20 Christian Neschwara, *Geschichte des österreichischen Notariats: Vom Spätmittelalter bis zum Erlass der Notariatsordnung 1850* (Vienna, 1996), pp. 46–95; Richard Heuberger, "Das deutschtiroler Notariat: Umrisse seiner mittelalterlichen Entwicklung," *Veröffentlichungen des Museum Ferdinandeum* 6 (1926), pp. 27–122.

21 Hannes Obermair, "The Use of Records in Medieval Towns: The Case of Bolzano, South Tirol," in *Writing and the Administration of Medieval Towns: Medieval Urban Literacy*, 1, eds. Marco Mostert and Anna Adamska, (Utrecht Studies in Medieval Literacy) 27 (Turnhout, 2014), pp. 49–68.

22 Fundamental Hans von Voltelini, ed., *Die Südtiroler Notariatsimbreviaturen des dreizehnten Jahrhunderts*, 1, (Acta Tirolensia) 2 (Innsbruck, 1899).

23 Hermann Wopfner, "Zur Geschichte des tirolischen Verfachbuches," *Forschungen und Mitteilungen zur Geschichte Tirols und Vorarlbergs*, 1 (1904), pp. 241–63, here p. 244.

notaries continued to work in South Tirol, partly as clerks.[24] Therefore, it does not come as a surprise that a court book of the sixteenth century was occasionally referred to as *liber imbreviaturarum*[25]—now written in German instead of Latin.

The increasing use of court books is representative of the general attempt to develop a more organised and regulated court system and thereby to enforce the law. As late as 1525, the displeased population demanded the use of court books instead of solely issuing sealed charters, to lower their cost for each required transaction.[26] These court books, usually called *Verfachbuch*, gradually found wide use in all court districts of Tirol since the sixteenth century.[27] These books recorded legal changes in property and real estate within the court district, for example purchase and sales contracts, marriage contracts, obligations, guarantees on marriage portions, wills, usufruct contracts, probate proceedings, and widow's endowment contracts. In their chronological sequence and cross-linkage the extracted cases can, when preserved, create a network of different proceedings almost recreating the life course of a family. This can in some cases stretch across several generations.

A brief example which links six proceedings illustrates the opportunities of this approach. In 1574, Barbara Mairin drew up a will for her husband, Leonhard Mitlberg. She died in the same year and because they had no children, inheritance proceedings between the widower and her brothers as the next of kin followed. Leonhard Mitlberg married again and in 1589, he and his second wife drew up a mutual will in which they bequeathed each other lifelong usufruct. After his death in the same year, the widow Christina von Preue entered the inheritance proceedings with his next of kin; again, the marriage was childless and his heirs disputed the will of her deceased husband. The proceedings were postponed and when they were taken up again, the widow forewent the bequeathed usufruct and her widow's endowment was stipulated. Shortly afterwards, the heirs sold the estate and a sales contract was created.[28]

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24 Hannes Obermair, ed., *Die Urkunden des Dekanatsarchivs Neumarkt* (*Südtirol*) *1297–1841*, (Schlern-Schriften) 289 (Innsbruck, 1993), p. 40; Stolz, *Ausbreitung*, 3:2, pp. 81–83.

25 Stolz, *Ausbreitung*, 3:2, p. 225.

26 Hermann Wopfner, ed., *Quellen zur Geschichte des Bauernkrieges in Deutschtirol 1525. Vol. 1: Quellen zur Vorgeschichte des Bauernkrieges: Beschwerdeartikel aus den Jahren 1519–1525*, (Acta Tirolensia) 3 (1908; repr. Aalen 1973), p. 38.

27 Wilfried Beimrohr, *Mit Brief und Siegel: Die Gerichte Tirols und ihr älteres Schriftgut im Tiroler Landesarchiv* (Innsbruck, 1994), pp. 97–101.

28 Südtiroler Landesarchiv, Bolzano, Italy [hereafter SLA], Verfachbuch [hereafter VfB] Sonnenburg 1574, 15 Feb., 23 Apr. 1574; VfB Sonnenburg 1589, 16 June, 27 Nov., 28 Nov., and 29 Nov.

ILLUSTRATION 4.1 *Marital property arrangements were a key aspect of planning for death in medieval and early modern Europe as Christian Hagen, Margareth Lanzinger, and Janine Maegraith discuss in their chapter. An unknown artist painted the marriage of Saint Hedwig and Henry I the Bearded, future Duke of Silesia on parchment in the life and works of Saint Hedwig* (Vita beatae Hedwigis) *in 1353.*
REPRODUCED WITH THE KIND PERMISSION OF THE J. PAUL GETTY MUSEUM, LOS ANGELES.

This example shows how in some cases stipulations across two marriages and beyond can be reconstructed. It also illustrates the extraordinary richness of the material with cases going back to the end of the fifteenth century.

For this contribution, several different court districts were chosen to address aspects of social milieu and the respective legal contexts. For the medieval period, several areas within the region are being examined. Prior to the introduction of the aforementioned court books the urban and rural population turned to public notaries for the certification of their property. The considerable number of late medieval written records preserved in Meran informs us of the practice in a core area ruled by the counts of Tirol. The *Burggrafenamt*, a court district in the Adige river valley, situated between Naturns and Bozen, had the ancestral home and eponymous castle of Tirol at its centre. The court of law itself was based in the town of Meran, a small but important urban centre within the medieval territory of Tirol. Due to the continuing presence of the notary since the thirteenth century, people with different social origin

made use of them. On the basis of the oldest existing register from 1328, it can be determined that not only did the population of surrounding villages and valleys come to Meran for their legal transactions, but the notary also came to them.[29] In a few cases, gentry families even employed them to write up their marriage contracts.[30] Amongst the more than sixty preserved registers dating back to the fourteenth and fifteenth centuries are a few volumes by notaries, who resided and worked in the Vinschgau region, the western part of the Adige river valley.[31] The entries concern rural communities like Laas and Mals as well as the small town of Glurns near prince-bishopric of Chur and show a similar pattern.

Several court districts were investigated for the early modern period, especially the sixteenth century. The court district of Enn and Caldif is situated in the southern part of South Tirol. It consisted of the market town Neumarkt and three villages: Auer, Montan, and Aldein. Accordingly, these court books are divided into four sections. As it previously formed a part of the *Comitatus Tridentinus*, the institution of the notary was introduced here in the late twelfth century.[32] Legal transactions continued to be performed by a notary throughout the whole sixteenth century—the last documented notary Markus Anton Scutelius from Trent took office in 1631.[33] Our choice fell on Neumarkt because it also shows some crucial urban features: its fully entitled members held the status as burgher and the socioeconomic structure was characterized by trades. On the other hand, the earliest preserved *liber imbreviaturarum* alias *Verfachbuch* dates back to 1523 and hence predates the introduction of the first version of the *Landesordnung* of 1526.

Another examined court district is Sonnenburg which was chosen for its mainly rural milieu with some local craft, and for its political setting as a monastic territory. In 1500, the monastic territory of the abbey of Sonnenburg situated in the *Pustertal* became part of the County of Tirol. With the integration into the County, it gained political advantages as a member of the

29 Helga Karner, *Die Tätigkeit des Notars David von Meran: Teiledition seiner Imbreviatur aus dem Jahre 1328*. Unpublished PhD thesis, University of Innsbruck, 1985; Markus Gamper, *Die Tätigkeit des Notars David von Meran: Teiledition seiner Imbreviatur aus dem Jahre 1328*. Unpublished Diploma thesis, University of Innsbruck, 1993.

30 Karner, *Tätigkeit*, pp. 147–51.

31 Stadtarchiv Meran/Merano [Town Archive of Merano, Merano, Italy], Notariatsimbreviaturen [hereafter NI, Notarial documents] 22 (1391), NI 36–37 (1404–06), NI 38 (1407).

32 *Die Urkunden*, ed. Obermair, pp. 33–36.

33 *Die Urkunden*, ed. Obermair, p. 233.

territorial estates but it also became part of the County's judicial system.[34] The jurisdiction of the abbey was not limited to its proximity (Sonnenburg, Pflaurenz, and Fassing) but it also had diversified holdings in the Ladin Gader Valley (Untermoi), in the Mühlwalder Tal (Valle dei Molini), Weitental in Pfunderertal (Valle di Fundres), and Ahrntal (Valle Aurina, with Michelreis). For the court district of Sonnenburg, the *Verfachbücher* commence in 1540 and for the period of 1540 until 1600, 334 cases were extracted.[35] The information within those cases shows that the court district had mostly embraced the Tirolean law code by the 1540s. In *c.* 42 per cent of the cases, references to the *Landrecht* (territorial law) can be found, while nine cases refer directly to the Tirolean law code. But references to local customary law were made as well so that we can assume that both existed parallel to each other without being mutually exclusive.[36] An additional court district with a similar rural setting has been chosen for comparison. The court district of Kastelruth near Bozen represents a rural area as well, but it was involved in the profitable commerce with oxen which were sold to Northern Italy. Here, the court books start in 1546. Finally, the contribution compares the outcomes achieved by the study of court records with arrangements made by the nobility.

In principle, it was obligatory to document any changes in property and real estate at court according to the Tirolean law code.[37] But how far this was practised, remains a matter of research. A number of cases included references to verbal agreements such as settlements of disputes through neighbours and arbitrators and thus show that not all matters were put into writing. But the case of Sonnenburg reveals an increasing number of cases towards the end

34 On Sonnenburg, see Wilhelm Baum, "Sonnenburg," in *Germania Benedictina III/3: Die benediktinischen Mönch- und Nonnenklöster in Österreich und Südtirol*, eds. Ulrich Faust and Waltraud Krassnig (St. Ottilien, 2002), pp. 604–702; Ellinor Forster, "Zwischen Landtag und Huldigungsumritt: Politische Handlungsspielräume des Stifts Sonnenburg und des Klarissenklosters Meran in der Frühen Neuzeit," in *Frauenklöster im Alpenraum*, eds. Brigitte Mazohl and Ellinor Forster (Innsbruck, 2012), pp. 169–88.

35 SLA, Sonnenburg A 742 (Verfach-/Gerichtsbücher 1540–73), VfB 1–15 (1573–1600). The court district of Enneberg was not part of this analysis.

36 In 30.5 per cent, references were made to both territorial and customary law, and in *c.* 13 per cent only customary law was mentioned. In about 43 per cent no direct legal reference was made.

37 The Tirolean law code stipulated that all court matters should be settled at court, TLO 1532 II 10: *Schreiben vnd Siglen ausser Gerichts*. For example, bequests and gifts of morning gifts above a certain amount had to be documented, see TLO 1532, 1573 III 7: *Gab vnd Ordnung vmb Morgengab*.

of the sixteenth century—the numbers almost doubled in the last decade of the sixteenth century.[38] This suggests increasing use of the court and its written instruments—although this could also be due to population growth with higher numbers of people taking recourse to the court,[39] it is most certainly a consequence of the increased efforts by the authorities to enforce that all legal instruments should be exclusively drawn up by the courts and not settled out of court.[40]

Court proceedings were subject to legal charges. These were regulated in the Tirolean law code and could reach in Sonnenburg for example as much as 24 Gulden due to the length of a session and costs of food and drink.[41] This raises the question if those charges represented an impediment for people of fewer means as discussed by Martin Schennach.[42] Looking at the values which were negotiated during the proceedings in Sonnenburg, we can see that an overwhelming proportion of the cases dealt with the lower value groups: although a range between four and 3000 Gulden were negotiated, the majority of the 250 cases with values dealt with a range between four and 480 Gulden, of which 151 cases or 60 per cent negotiated between 4 and 195 Gulden (the median was 134 Gulden). It can therefore be assumed that even people with fewer means used the court to negotiate and settle their cases in spite of the legal charges. But what remains obscure is the number of cases which were not brought to court because of the legal costs. With reservations, the cases documented in the *Verfachbücher* can be regarded as fairly representative.

A plethora of different legal cases were negotiated and documented in the *Verfachbücher*. Relevant for our research were cases dealing with inheritance, marital property, and property transfers within families, wills and guarantees on marriage portions, and widow's endowments. Widow's endowments

38 The analysis of the court books of Sonnenburg between 1540 and 1600 showed the following results: While between 1549 and 1570 only 17 relevant cases were found, there were 78 for the decade 1571–80 and 85 for 1581–90. Between 1591 and 1600 the number almost doubled to 154.

39 Population numbers still have to be researched and verified. For an excellent discussion of the increasing level of textualisation/writing during the early modern period, see Adam Fox, "Custom, memory and the authority of writing," in *The Experience of Authority in Early Modern England*, eds. Paul Griffiths, Adam Fox, and Steve Hindle (Basingstoke, 1996), pp. 89–116.

40 See Martin Paul Schennach, "Dem gemeinen armen Mann der Weg zum Recht gleichsam gesperrt und verschlossen …," in *Festschrift Rudolf Palme zum 60. Geburtstag*, eds. Wolfgang Ingenhaff, Roland Staudinger, and Kurt Ebert (Innsbruck, 2002), pp. 455–86.

41 SLA, VfB Sonnenburg 1581, 27 Sep.

42 Schennach, "Dem gemeinen armen Mann," pp. 455–86.

entailed the widow's own assets and her provisions which were subject to negotiation. To obtain a better idea about the content matter of the recorded cases, the *Verfachbücher* of Sonnenburg were analysed according to variety and frequency of the different cases. The most frequent cases in Sonnenburg were siblings' settlement contracts (22 per cent) where the main heir or group of heirs were determined and the inheritance shares of the other siblings were defined and settled. The siblings' settlements were closely followed by widows' endowment contracts with 20 per cent. Both contracts are related to each other as often the widow's contract was followed by the proceedings regulating the children's inheritance. Wills and property transmissions constituted ten per cent, and guarantees on marriage portions made nine per cent of the extracted cases. Mutual wills were only found in about four per cent. Marriage contracts, on the other hand, seemed to have been mostly absent or taken the form of verbal agreements during this period; only two were found for Sonnenburg. What was said about the rising number of cases in general over the examined period is also true for the number of payment contracts for children and widows, for wills, mutual wills, and guarantees.

A tentative inference could be that securing planning for death in written form and at court was gaining more importance over time and was practiced on a broader social basis than before. But this thesis still has to be tested, since the relative sparseness of earlier proceedings could also be a local phenomenon of Sonnenburg; first viewings of the court books of Brixen or Neumarkt, for example, show a higher number of cases during the first half of the sixteenth century. In addition, differences of this kind could be associated with various contexts. One influencing factor is doubtless a certain contrast between rural and urban communities, for example between Sonnenburg and Brixen. However, different legal cultures and influences could play a decisive role as well. The court records of Neumarkt—shaped by the notary's practice—already contain almost exclusively civil law matters concerning property and assets from the beginning (1523), whereas in conventional mid-sixteenth-century *Verfachbücher*, court cases in the sense of lawsuits predominate.[43] This composition of two different types of court books was also put into use in other districts such as Meran.[44]

Given the lower numbers of wills and guarantees, most of the inheritance and widows' endowments proceedings were probably negotiated without

43 This is, for example, the case with the court books of Kastelruth and the early court books in Sonnenburg (1540–58, 1564).

44 Franz Huter, ed., *Das älteste Tiroler Verfachbuch* (*Landgericht Meran 1468–71*), (Schlern-Schriften) 283 (Innsbruck, 1990), p. 25.

additional legal instruments. In many cases, people referred to the written and customary law and probably trusted them to secure their due share, and that no additional safeguarding was needed. This changed slowly with the number of guarantees on marriage portions and wills rising over time.

Potential Lines of Conflict and Modes of Stipulating

As a consequence of the specific marital property law which defined separation of property, marriage and "dynastic" thinking competed with each other and created disputing interests. From our case studies so far, we can identify several fields of tension and conflict which originated mainly from the following relational categories of difference: gender, marital status, children or childlessness, and property status. These revolved around the distribution of property between husband and wife and landownership. In sixteenth-century Tirol, the prevailing form of "landownership" was hereditary land tenure, mostly so-called "*Erbleihe*" or "*Baurecht*", which gave peasants *de facto* property rights.[45]

In this respect, it must be emphasized that the unequal distribution of real estate between men and women was less grounded in law than it was the result of a practise of inheritance and succession that gave preference to sons. The fact that the position of widows compared to widowers tended to be weaker is closely associated with this. From a more detailed perspective, the following constellations proved to be the most significant conflict lines: firstly, childlessness could lead to conflict between the widow and the relatives of the deceased husband.[46] Secondly, when minor children were present, conflict could arise between the widow or the widower and the guardians of the children. Usually, members of the local elite or, again, relatives were appointed as guardians.[47]

45 See Palme, "Die Entwicklung," p. 29. More formal seigneurial consent was necessary in cases of property sale.

46 For such conflicts, see also the chapter by Mia Korpiola and Elsa Trolle Önnerfors in this volume.

47 According to the *Landesordnung* of 1526, guardians could be designated by will. Failing this, the closest suitable and trustworthy relatives were to be appointed as guardians: "*Wo den verwaißten kinden / in jrer va*^{e}*tter vnd Eltern leben / nit ordenlich Testamentarj vnd Gerhaben geordennt / so sollen dieselben kind / mit den negsten taugenlichen gesipten vnuerda*^{e}*chtlichen Freünden versehen / vnnd jnen die zu Gerhaben besta*^{e}*t warden*," TLO 1526, book I, part 3, section 5 ("part" in 1526 equals "book" of the later codices). The later versions of 1532 and 1573 specify that neither the father nor the mother could act as guardians unless designated as such in a will. Furthermore, fathers, mothers, and relatives of

Thirdly, in the case of remarriage, issues could come up between the widow or the widower and the children of a former marriage and their guardians. The stepfather or the stepmother as well as relatives of the deceased spouse could be involved in a dispute. Generally, there was a certain power imbalance between landed and landless parties: those who had real estate and equally their heirs usually had more power when negotiating. However, entitlements on inheritance payouts, for example, and documents such as contracts or acknowledgments of marriage portions, entitlements to maintenance, or debts helped to enforce legal claims. Various forms of economic and symbolic capital could also strengthen the bargaining position of the landless party. When a husband married into his wife's property bringing in a large sum of money (economic capital) which was then used to pay off debts resting on the property, while a person's reputation or the age difference between the spouses which could have influence on marriage arrangements can be perceived as symbolic capital.

Implemented in these conflict lines are disputing interests and possible settings of negotiating and stipulating rights of ownership and inheritance shares. This could include the acknowledged need to safeguard marriage portions, trousseaus—comprising of clothes, linen, bedclothes, jewellery, household items, and personal items—and morning gifts of women and also of men. Couples could secure their shares by drawing up a letter of guarantee of the marriage portion on the real estate, a will, a mutual will or a marriage contract. With those often mutual agreements, the spouses aimed not only to ensure that they kept ownership of their specific marriage portions and that the surviving spouse would be paid out accordingly, but also secure the inheritance shares of the respective family lines in case of childlessness or if children of two marriages were involved. First of all, these documents reveal where possible origins of tension and potential fields of conflict were situated: many of them were closely related to postmarital scenarios upon the death of one of the spouses. The following negotiations between the heirs of the deceased and the widowed spouse show the resulting conflicts and often had to be arbitrated at court.

Safeguarding Marriage Portions

The particular kind and amount of assets women brought into marriage could lead to dispute, if undocumented. Our earliest sources dating back to the thirteenth century already specify the amount of the marriage portion which usually had to be paid in cash, the composition of the trousseau, sometimes

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both parents were not allowed to be guardians if they were involved in property claims against the children, TLO, 1532, 1573 III 48.

also its value, and the amount of the morning gift. As a reference to lineage, the marriage portion is frequently declared as paternal and/or maternal assets. Simple confirmation letters acknowledged the husband's receipt of the marriage portion (*dos* or *haimsteuer*) coming from the wife's family. Often the husband simultaneously promised his morning gift.

In July 1237, for example, the blacksmith Lantemann from Bozen confirmed his wife Diamut's marriage portion of 30 pounds in Veronese coin and guaranteed 50 pounds for her morning gift by using his house as security.[48] In case of a childless marriage, the husband was entitled to half of the marriage portion after the death of his wife, the other half was to be returned to her relatives, but if Lantemann predeceased her, Diamut would receive 15 pounds as property. Even though it is not mentioned, it is safe to say she would also have maintained ownership over her morning gift after her husband's death. In general, this documentation served to prevent conflict between both family lines, but was especially important for Diamut's future claims, which is why the notary appropriately describes it as her charter. By 1400, the tendency to safeguard the marriage portions was already widely spread in Bozen, Meran, and their surroundings, as well as in the Vinschgau and even the Lower Engadine.[49]

Since the mid-fourteenth century, it seems to have been common practice in the county of Tirol for the husband to safeguard his morning gift as well as the marriage portion of his wife by providing some or all property as security. This custom coincides with the law of neighbouring regions, such as Bavaria and Austria.[50] In the case of a marriage between an inheriting daughter and a man marrying into her family (*einfahrender Geselle*), the wife guaranteed her husband's assets.[51] But, in contrast to a marriage portion, they did not enjoy the same privilege in the event of bankruptcy.

In 1574, Domenig Oberpacher from Untermoi in the court district of Sonnenburg confirmed that he had received the marriage portion of his wife Lucretia Kassäl, daughter of a clerk (*Gerichtsschreiber*) in Thurn. Her marriage portion amounted to 140 Gulden from her father's inheritance and ten Gulden on their wedding day (*Hanndtsellig gelt*). She also brought into her marriage her marriage chest and trousseau. The husband used the farm

48 *Die Südtiroler Notariatsimbreviaturen*, ed. Voltelini, nr. 592.

49 SAM, NI 26 (1404), fols. 12r, 15r, and 41v–42r; SAM, NI 38 (1407), fol. 15r.

50 Walter Jaroschka, Heinz Lieberich, and Wilhelm Volkert, eds., *Das Rechtsbuch Kaiser Ludwigs des Bayern von 1346*, (Bayerische Rechtsquellen) 4 (Munich, 2010), pp. 316–19.

51 As it was the case with Helena Lienspergerin, who was very carefully trying to prevent any future conflicts with guaranteeing her husband's assets in her will and then, after the purchase of the new house, renewing her will, SLA, VfB Sonnenburg 1595, 19 July.

Oberpachhof—of which he and his three brothers had shared ownership—as surety for his wife's assets. At the same time, he stipulated the terms in case of his death: Lucretia was not to be driven off the property unless she was paid out her above-mentioned assets she had brought into the marriage, her due morning gift and what was customary and appropriate according to the court and territorial law. On the same day, Domenig Oberpacher and his three brothers equally guaranteed the marriage portion of their widowed mother on their shared property, also according to the territorial law. Her assets amounted to 12 Gulden and 24 Kreuzer and her so called widow's rights had been negotiated to 17 Gulden and 24 Kreuzer.[52] Both pledges must have been produced after the death of the father. The security of the widowed mother therefore had to be renewed since the ownership of the farm on which it had been previously guaranteed had changed.[53]

The marriage portions were guaranteed on real estate and took the form of a mortgage. Therefore, in case of a change of real estate ownership, a renewal of the guarantee on the new property was necessary for safeguarding the assets. In principle, this provided security for the surviving spouse and regulated future inheritance proceedings. Marriage portion guarantees thus constituted an integral part of planning for death. In the case of indebtedness, the marriage portion took precedence over creditors' claims. It also could become a powerful instrument in the hand of the widow. As a consequence, the husband's original stipulation upon death could result in a rather different arrangement.[54] Marthin Pierpraur from Kastelruth, for example, had appointed his and his

52 Widow's right or "*Wittiben Recht*" constituted part of the widow's endowment. It stated that the widow had the right to her clothing, jewellery, and trousseau, and a third of the moveable goods. But it gave her also the claim on a temporary livelihood befitting her social status and an endowment in kind. The last two aspects were subject to negotiation and interpretation and were meant to either bridge the period of time until the widow received her first payment of her assets or for her livelihood in case she agreed on leaving her assets on the property for the time being. The cases reflect that the duration of the marriage, age, and whether there were children or not influenced the outcome of the negotiations, see TLO 1532, 1573 III 40.

53 SLA, VfB Sonnenburg 1574, 8 Jan. A few years later, in 1578, Domenig Oberpacher again guaranteed his wife's assets but this time on his newly acquired property, the farm called Untercollätsch in Untermoi. As previously, he also secured her future payment of all her assets and due morning gift after his death according to the territorial law code and customary law of the court district of Sonnenburg, SLA, VfB Sonnenburg 1578, 5 July, fols. 224–26.

54 A comparable effect is reported in the context of the Venetian dowry system, see Anna Bellavitis, *Famille, genre, transmissions à Venise au XVI^e siècle* (Rome, 2008), Chapter 3.

wife's Appolonia's sons as heirs: Jacob, the eldest, who was nearly of age, and his two younger brothers Hanß and Cristoff. However, he bequeathed to them not only his belongings, but also a certificate of debt. In 1573, the inventory was drawn up and revealed that the heirs were not able to pay out their mother's marriage portion and some additional money which she had brought into the marriage because of the remaining debts. On her "gender guardian's"[55] advice, she insisted on her legal rights with the outcome that her sons had to renounce the inheritance.[56] Despite possible further difficulties due to the mentioned debts, Appolonia's assets were recovered this way.

Especially noble families had a specific interest in protecting their property at an early stage. Accordingly, their marriage contracts were already more elaborate often including the daughter's renunciation of inheritance in favour of her brothers.[57] The renunciation of landed property demanded from daughters can be seen in connection with a trend towards agnatic relationships becoming stronger.[58] This process commenced in some areas during the High Middle Ages and did not end before the second half of the seventeenth century. Recent studies have shown, that the "shift toward patrilineal systems was, on the one hand, less general than earlier research had assumed, but on the other hand, specifically related to modes of linking political power to the possession if certain goods such as castles, titles, and offices that remained stable over the course of generations".[59] In the end, not only daughters, but also younger sons were affected by "the triumph of primogeniture" which can be observed "in virtually all of the dynasties".[60] However, the chronology of its

55 The widow was allocated a gender guardian (*Anweiser*) by the court. According to the *Landesordnung*, women, especially unmarried or widowed women were obliged to have a gender guardian. TLO 1532, III, 53.

56 SLA, VfB Kastelruth 1573, fols. 10v–11v. There is no reference to landed property in this document.

57 *Die Südtiroler Notariatsimbreviaturen*, ed. Voltelini, nr. 729, 828, and 829 (1237).

58 See Michaela Hohkamp, "Sisters, Aunts, and Cousins: Familial Architecture and the Political Field in Early Modern Europe," in *Kinship in Europe: Approaches to Long-Term Development (1300–1900)*, eds. David Warren Sabean, Simon Teuscher, and Jon Mathieu (New York, 2007), pp. 91–104; Hufschmidt, *Adlige Frauen im Weserraum*, pp. 275f and 291; Spieß, *Familie und Verwandtschaft*, pp. 133 and 327–43.

59 David Warren Sabean and Simon Teuscher, "Kinship in Europe: A New Approach to Long-Term Development," in *Kinship in Europe*, eds. Sabean, Teuscher, and Mathieu, pp. 1–32, here p. 6.

60 Karl-Heinz Spieß, "Lordship, Kinship, and Inheritance among the German High Nobility in the Middle Ages and Early Modern Period," in ibid., pp. 57–75, here p. 60. See also Renata Ago, "Giochi di squadra: uomini e donne nelle famiglie nobili del XVII secolo," in *Signori,*

implementation could vary from family to family. While the Tirolean comital family of Wolkenstein-Trostburg still bequeathed several sons with land and castles in the sixteenth century, the daughters had to waive their claim on landed property.[61] To a certain extent, the noble dowry system provided compensation.

Intergenerational Agreements

Planning could also stem from the parent generation with property transmissions by the parents to their children in the context of a marriage, for example. Those inter-generational settlements could be linked to certain conditions but would also act as an advance of the inheritance share to one of the children. In 1587, Peter Weger married Ursula, daughter of Hans Widman of Clera in the court district of Rodeneck. His father, Domenig Weger, had promised in an extrajudicial marriage agreement, that he would transfer him the ownership of a third of his farm Weger in Untermoi as inheritance in consideration of his son's continued faithful and obedient behaviour. However, this transfer had not taken place yet and was now to be arranged according to the Tirolean law code. The father added the condition that his son was expected to honour and obey his stepmother. Peter Weger had been promised the whole farm after his father's death as inheritance provided that he payed out his siblings' shares.[62] The property transfer to the son on the event of his marriage was supplemented with the condition that the son would respect the continued paternal power and also his stepmother. The marriage agreement could not be found in the documents which might indicate that it was an extrajudicial agreement. Several other cases are linked to this transfer including the inheritance proceedings after the father's death. The son Peter was to inherit the whole farm as promised, but he repudiated it on the grounds that the farm was too indebted and accepted only half of the estate.[63] The transfer agreement promising the son the inheritance of the estate also included post-mortem provisions. As such, it not only provided the couple with a living but also with the security of a future estate. The father secured several aspects with his stipulation: his son's

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patrizi, cavallieri in Italia centro-meridionale nell'Età moderna, ed. Maria Antonietta Visceglia (Rome, 1992), pp. 256–64.

61 See Siglinde Clementi, "Deren von Wolkenstein: Familienstrategien, Heirat und Geschlechterbeziehungen bei den Wolkenstein-Trostburg, ca. 1500 bis 1650," in *Die Wolkensteiner—Facetten des Tiroler Adels in Spätmittelalter und Neuzeit*, eds. Gustav Pfeifer and Kurt Andermann (Innsbruck, 2009), pp. 111–47, here pp. 126–37.

62 SLA, VfB Sonnenburg 1587, 4 Dec.

63 SLA, VfB Sonnenburg 1592, fols. 82–88, 20 May.

inheritance, the payment of the other children by the principal heir, and the continuity of the family line on the land. But in this case, the legal planning for death was not complemented by an economic one since the indebtedness of the estate made the principle heir decide against full ownership.

From a household as well as a lineage perspective, intergenerational arrangements between the bride's parents and their sons-in-law tended to have significantly higher potential of conflict than the opposite case. On the one hand, this is connected to internal power relations, which could become problematic if the father-in-law retained a managerial position. This seems to have been a common practice also with sons as the above-mentioned case shows.[64] Agreements of this kind result in a so-called stem family consisting of two married couples with decision making power and authority on the father's side.[65] Furthermore, a power imbalance could result from the husband's status as a landless man marrying into the family of his wife, which additionally stood in stark contrast to his expected position as *pater familias* in his marriage.

On the other hand, tensions could be caused by the eventuality that the heiress died before her husband without leaving children behind. After his death, if succession was oriented towards the line of descent, neither the husband's relatives in the case of childlessness nor his children from a later marriage would have been entitled to inheritance of the estate—his family would have only been entitled to the personal belongings and assets he had brought into his marriage. Nevertheless, relatives could request more, especially if the deceased husband had in their opinion, for example, made a substantial contribution to the improvement of the farm or workshop as happened upon the death of Cristian Tumpnberger from Auer. As representative of the co-heirs, his brother Hans stressed the financial investment, the beneficence, and the enhancements as well as the work done by Cristian for many years ("*zupringen, wolthun, pesserung und jar dienst*") on the farmstead of the now widowed Anna

64 However, there are also cases where the power was given to the son or son-in-law. Steffan Parvöl was declared as "owner with power"—power in the legal sense of *potestas*—("*gewaltiger wirt*") by his father-in-law. SLA, VfB Neumarkt 1524, fols. 15^{r}–15^{v}.

65 See Antoinette Fauve-Chamoux and Emiko Ochiai, eds., *The Stem Family in Eurasian Perspective: Revisiting House Societies, 17th–20th Centuries* (Bern, 2009); Antoinette Fauve-Chamoux, "Aging in a Never-Empty Nest: The Elasticity of the Stem Family," in *Aging and Generational Relations Over the Life Course: A Historical and Cross-Cultural Perspective*, ed. Tamara K. Hareven (Berlin, 1996), pp. 75–99; Margareth Lanzinger, "Paternal Authority and Patrilineal Power: Stem Family Arrangements in Peasant Communities and Eighteenth-Century Tirolean Marriage Contracts," in *The Power of the Fathers: Historical Perspectives from Ancient Rome to the Nineteenth Century*, ed. Margareth Lanzinger (London, 2015), pp. 65–89 (republished version of *The History of the Family* 17:3 [2012], pp. 343–67).

Hueblin. Four pages of demands, negotiations, and concessions follow in the court record regarding all the property items the widow had to hand over to her husband's relatives, amongst others meadows which Cristian had bought with his money during the marriage.[66]

In principle, daughters were not excluded from inheritance; provided they were inheriting, they were also thought to be able to represent their lineage. Consequently, inheritance passed on to the daughter's children was seen as continuity of ownership within the family line, although this was in contrast to strict patrilineal concepts of kinship. In many cases, it was in the interest of the daughter's family to circumvent or avert any claims on the side of the son-in-law from the beginning. In 1528, shortly after the death of Hans Reinprecht from Montan, four "neighbours"[67] reported the combined appointment and marriage stipulations (*Einsazung und Heyradtspruch*) at court that he had made verbally for his son-in-law Martin Fabian and his eldest daughter Barbara, as well as for his other four children. He had installed Martin Fabian on one half of his estate, but Hans Reinprecht and his wife retained lifelong managerial power (*gwaltig regierung*) of the whole estate. Concerning the situation after his death, he had settled that his apparently relatively young son Caspar was to take over the father's half of the property.[68] His three younger daughters were to be provided with a marriage portion of 15 *Perner* marks and a trousseau of customary size in the case they would marry. If Caspar, his son, would die, his property share was to be transferred to one of his sisters. This procedure of replacement had to be adopted in any other event of death among the siblings.[69]

Unfortunately, the further destiny of Martin Fabian is not explicitly discussed in this document. Following its logics, his appointment on the half of the property would end, at the latest, with the death of his wife. Either his children from the marriage with Barbara Reinprechtin or her sisters, a nephew or a niece would inherit the farmstead. In eighteenth-century marriage contracts but also in other types of documents, such cases are dealt with in a far more precise way: usually, in the case of childlessness, the son-in-law was allowed to remain in the house or farmstead and to exercise his usufruct rights as long as he did not remarry. If he was permitted to remarry, then his possible children

66 SLA, VfB Neumarkt/Auer 1528, fols. 3^{v}–5^{v}.

67 In rural areas, this could be a political and juridical function; neighbours often were representatives of the village and had various responsibilities.

68 This should occur—as the father explained—under the condition that he will reach the "fertile years"; the same applies to the three younger daughters. A children's guardian was present too.

69 SLA, VfB Neumarkt/Montan 1528, fols. 18^{r}–18^{v}.

of any subsequent marriage were strictly excluded from the inheritance of his first marriage. After his death, the property reverted to the family of his first wife—even though as a bridegroom he once had been accepted as co-owner and, in many cases, had purchased—at least on paper—half of the property upon marriage to her.[70] Only if men brought a substantial amount of money into their marriage were they able to achieve "real" ownership status, especially if the estate was considerably indebted.

These intergenerational settlements are proof of the tendency to solve potential inheritance disputes in an amicable way before the need to draw up a will even occurred which thereby minimized voidability. This explains, for example, why a widow from the Passeier valley transferred all her property from her father's and mother's side as well as her trousseau and *donatio propter nuptias* to her three children in 1357. She did not install her children as heirs, but gave it to them as donation *inter vivos*, granting them all prospective rights. In return, she was allowed to have power of control until her death, also enabling her to make the usual donations for her salvation.[71] Frequently this way of planning for death also meant taking precautions for the time of death. In 1444, a butcher's widow from the region of Meran, for instance, gave all her property to her grandson, who in turn assured to provide for her.[72] In a similar fashion, the married couple Bumel passed on all their goods and chattels to their son with the approval of their daughter and her husband. By way of reciprocation, the son guaranteed his parents' accommodation and provision as they could not provide for themselves any longer due to their age.[73]

Wills and Mutual Wills

The oldest preserved notarial registers from Trent and Bozen (1236/37) include overall 960 entries, but only three wills and a few references to wills.[74] Assuming the general increase in sources is not misleading in terms of proportion, this indicates that the idea of drafting a will gained in popularity during the following

70 See Lanzinger, "Marriage Contracts," pp. 88–89.

71 SAM, NI 3, fols 54v–56r. On the scope of action donations could offer to widows, see Angiolina Arru, "'Schenken heißt nicht verlieren': Kredite, Schenkungen und die Vorteile der Gegenseitigkeit in Rom im 18. und 19. Jahrhundert," *L'Homme: Z.F.G.* 9:2 (1998), pp. 232–51.

72 Martin Gögele, *Transkription und Kommentar der Notariatsimbreviatur des Notars Stephanus Roman aus dem Jahre 1444*. MA thesis, Faculty of Humanities, University of Innsbruck, 2003, nr. 74.

73 Gögele, *Transkription und Kommentar*, nr. 179. For rural retirement contracts, see also the chapter of Korpiola and Trolle Önnerfors in this volume.

74 See *Die Südtiroler Notariatsimbreviaturen*, ed. Voltelini.

centuries. The early wills consisted of three main parts: the appointment of an heir, the bequests *ad pias causas*, and a codicil clause. The form and content was not yet shaped by the *Landesordnung*, but rather followed the mentioned notary rules and Roman law. The drawn-up charter merely functioned as evidence for the verbal will and became valid by the attestation of at least five or seven witnesses according to Roman law. This formal composition gradually lost its importance, so that three or four witnesses sufficed since the fifteenth century.[75] At the same time, mutual wills increased significantly in the region, where they had been practically unknown before.[76]

Wills and mutual wills entailed different strategies for the testator. He or she could either bequeath property in the form of ownership; but this was limited to a third of the whole property in the 1532 Tirolean law code.[77] It was more common to bequeath lifelong usufruct to the surviving spouse which could ease the economic situation of the widowed spouse and the estate. But it would also evoke possible conflicts with surviving children and their guardians or the heirs of the family line as it deferred the receipt of the inheritance indefinitely. All the more emphasis was put on the return of the property to the heirs and the "genuine line" (*ad proximos heredes et ad verum stipitem*).[78] At the end of the fourteenth century, this restitution after the usufruct was already being referred to as territorial law.[79]

How much a spouse brought into the marriage and who was the one marrying into landed property mattered and could determine the character of the settlement. For example, different stipulations could follow depending on whether a woman or a man married into landed property. The former being the more common case, it would generate less favourable settlements than the latter. Similarly, if a spouse—usually the wife—did not bring in any marriage property, a particularly fragile situation would occur and in some cases the spouse would take precautions on his own accord to provide for her widowhood especially in case of childlessness. For example, Thomas Tripach, a blacksmith in Pflaurenz, and his father drew up a will in view of the small marriage portion of Thomas's wife, Anna. She had only brought some bedding, linen, clothing, and her trousseau into the marriage. They stipulated that should he

75 Correspondingly, wills drawn up in sixteenth-century Sonnenburg *Verfachbücher* record in most cases three to four witnesses.

76 For mutual wills between spouses, see also the chapter of Marko Lamberg in this volume.

77 TLO 1532 III 3, *Testament / Ordnungen / Gaben / Geschaefft vnd Vermaecht / nach tod / wie die beschehen soellen.*

78 SAM, NI 5 (1369), fol 76^{r}.

79 SAM, NI 20 (1396), fol. 60^{v}.

die first, Anna was entitled to a payment of 40 Gulden for her widow's claims on her possessions for her faithful housekeeping and the "wear and tear of her days" (*Abschleissung ihrer Tage*). In addition to this, she was entitled to her trousseau and household goods. Furthermore, she was to retain free lodgings in the house as long as she stayed a widow. Should Anna die first, then her heirs were only to receive a payment of 20 Gulden, half of her moveables and her trousseau in view of her humble belongings she brought into the marriage.[80] With this, her husband provided for her widowhood more generously than he legally had to out of good will. A possible dispute with her heirs was solved by determining exactly how much they were entitled to.

Social milieu and location mattered as well and permeated all cases. Under certain circumstances, craftsmen's widows, for example, were given the choice between lifelong usufruct rights and the ownership of one-third, whereas noble families seemed to mostly retain imperative thinking along family lines. In 1529, the childless master baker Hans Prantl from the market town of Neumarkt drew up his will. In its first part, he specified the marriage portion and comestibles which his wife Dominica had brought with her as well as the morning gift provided by him. He emphasized her "faithfulness, love, and friendship" (*treu, lieb und freundschafft*) and the "homely good will" (*hauslichen gutwillen*) proven by her during their marriage and in periods of his illness. Then he firstly underlines that he had no "relatives entitled to inheritance" (*kain erbfreundt*) in "this land", that is in the territory of Tirol, and, secondly, that all his possessions were not inherited but "won and acquired" (*gewonnen und erobert*) with the work of his own hands. Thus, according to the Tirolean law code, in the case of his death she could enjoy the lifelong usufruct right on his entire property including cash, silver jewellery, clothes etc. or the ownership of one half. This signified "real" ownership in her favour as it was expressed by the formula "for her and her heirs".[81] In his will, Prantl refers to the "recent law code"—that of 1526—which provided this option.[82] It is important to stress that this option had to be given in a will—it could not be demanded by the widow herself. The testator's comparatively generous decision might have been influenced not only by his status as craftsman, but also by a possible

80 SLA, VfB Sonnenburg 1580, fols. 5–6 and 14 Jan., *"Anna Tripacherin Testament und Vermächt. von Thoman und Wolfgang, Vater und Son den Tripachern, Irem Hauswürt und Son"*.

81 SLA, VfB Neumarkt 1529, fols. 15v–16v.

82 TLO 1526, book 1, part 3, section 2.

migratory context. Most notably, it becomes very clear that it made a great difference whether property was inherited or acquired.[83]

The widow had to decide for one of the two possibilities within a quarter of the year after the so-called *Dreißigist*—that means, thirty days after an event of death destined to draft an inventory of the estate which remained blocked for this period of time, and to clarify any claims on the estate. The deceased husband's relatives may have exerted pressure in this situation as is shown in the case of Anton Marvöl's widow Anna from the court district of Neumarkt in 1529. Her father-in-law and two brothers-in-law as representatives of their wives filed a protest against Anton's will at court. A compromise was reached which granted the widow the usufruct right and called on the brothers-in-law to help her with the work on the small farmstead.[84] The claim on the ownership right of one-third had been averted this way. Generally, in a peasant context this option may have been estimated as hardly viable. At the same time, this case reveals possible limitations of a will, especially if the provisions were diametrically opposed to the interests of the deceased husband's relatives. Compared to this, mutual wills may have been considered more reliable, consequently replacing marriage contracts.

Mutual wills played an important part in the process of planning for death. Joint wills reveal a multiplicity of involved interests as a consequence of the system of separation of property, but also the need to plan for the event of death to avoid future conflicts and to provision for the surviving spouse and children. Many times, they guaranteed the marriage portions of the spouses as well and secured their future payment. The earliest examples most importantly contain mutual assurances for a lifelong usufruct.[85] Since the late fifteenth century, mutual wills included the option for the surviving spouse to either receive a third of the property, or to hold the whole property in usufruct until death.[86]

In some cases, the difficulties resulting from a strict separation of property became apparent especially when property was bought with the assets of both

83 This differentiation is explicitly made in the *Landesordnung*'s version of 1532 (also included in that of 1573): the freedom to dispose included at most one-third of inherited property (*Erbgüter*), but a half of acquired property. TLO 1532 and 1573 III 3. This distinction between inherited and acquired property existed also in Swedish law as discussed in the chapters of Korpiola and Trolle Önnerfors, Lahtinen, Lamberg, and Rantala, in this volume.

84 SLA, VfB Neumarkt 1529, fol. 36 and fols. 46r–46v.

85 SAM, NI 35 (1418), fol. 64r.

86 *Tiroler Verfachbuch*, ed. Huter, nr. 187 (1471).

spouses. Although jointly acquired, it would not be treated as common property. Who was to get the land title and thus in whose family line was it to remain? The married couple Georg Rauchegger and Maria Siggin in Lappach (court district of Sonnenburg), for example, bought a farm from her father, Balthas Sigg. For this, they drew up a sales contract but found it necessary to draw up a mutual will as well to prevent any future dispute. It stipulated that in case of Georg's death, Maria would acquire lifelong usufruct and management of the whole estate, but only if she would not remarry. But should the widow remarry or move off the estate, she would be paid out half of the property price of 190 Gulden, which constituted her marriage portion, morning gift, and payments due to her widow's rights. She would also get her trousseau and endowment in kind according to custom. Should she die first, then he would only have to pay her heirs 190 Gulden. The husband guaranteed his wife's brought-in assets on the estate.[87] The mutual will established that although the couple had purchased the estate together, the land title remained with him. This meant that in case of her death and if they had no children, her heirs would be paid out half of the purchase price which was made up of her marriage portion and morning gift only. Lifelong usufruct ensured continuous use of the estate for the widow, although technically she was not allowed to change anything on it.

Similar cases could indeed lead to conflict especially with the family lines and then mutual wills were used to address existing disputes. In 1588, for example, Hans von Pach bought two thirds of a large farm in Untermoi and used his wife's marriage portion of 600 Gulden as part of the payment. This arbitrary use of his wife's money caused a dispute between the spouses and the wife's next of kin, and the matter was brought to court. It was stipulated that the sales contract should remain intact, but the couple drew up a mutual will to define the property rights. Should the husband die first, his wife would acquire lifelong usufruct of the whole estate. After her death, her assets in form of her marriage portion should be paid to her relatives, but the farm would remain with the husband's heirs. Should she die first, then her husband would acquire full ownership of the estate, but after his death, her assets would go to her heirs. Should they have children, then the surviving spouse was obliged to raise them while the inheritance would go to them according to custom and law. In the last case, the mutual debts of the spouses were absorbed in the children's inheritance.[88] Similar to the first case, it was secured that the farm would remain in the ownership of the husband and his family line respectively. The wife had entitlement to usufruct but only her own assets stayed in her line. The

87 SLA, Sonnenburg VfB 1596, 2 June 1596.

88 SLA, VfB Sonnenburg 1588, 5 July, fols. 226–30.

mutual will responded to an existing dispute and clarified the property rights. In both cases, planning for death had two objectives: to secure the livelihood of the surviving spouse and their prospective children, but also to secure that the land title remained with the husband's family.

The upbringing and support of existing children was a strong motive to plan for the event of death and could even form the condition for the property's usufruct. Balthasar Veichter and his wife Barbara Tässgassteigerin, for example, drew up a mutual will in 1589. She had inherited a farm from her father in Mühlwald, and her husband had brought in a marriage portion of 70 Gulden. The will stipulated that the surviving spouse would acquire lifelong usufruct of the combined property and anything they would accrue during their marriage. After his or her death, the property shares would fall back to the respective family line. Should the couple have children, the surviving spouse was obliged to raise and support their children on the estate until they reached adulthood. They were to provide them with a customary marriage portion and trousseau. Should the surviving spouse not provide for the children appropriately, then he or she would lose the claim on the usufruct of the estate and the children's guardians had the right to withdraw it from the surviving spouse. The spouse would then be paid out with his or her share according to customary and territorial law.[89] This mutual will differs from others in that it treats the property differently, and that it adds the future accrual as well. She had brought in the land and he a marriage portion of 70 Gulden. The couple bequeathed each other lifelong usufruct of the combined property and the accrued assets but added the condition of treating their children well. This can be regarded as a measure to safeguard the well-being and inheritance especially of young children in case of remarriage of the surviving spouse. Thus, it not only safeguarded the provision of the widowed spouse but also of the children and reflects a clear strategy in case of the death of one spouse.[90]

89 SLA, VfB Sonnenburg 1589, 17 Mar.

90 In cases where the children were still underage, the main interest of the couple was to secure the upbringing of the children. The competing property interests seem to have had less importance than in cases where the children were of age or almost of age. Therefore, when the widow had no landed property and the children were still very young, she was often awarded usufruct. A comparable case can be found in Tuscany, where Giulia Calvi found that widows were appointed to the status of "*Donna e Madonna*" with usufruct rights on the deceased husband's property for the time of child-rearing. Giulia Calvi, "Rights and Ties that Bind: Mothers, Children, and the State in Tuscany during the Early Modern Period," in *Kinship in Europe*, eds. Sabean, Teuscher, and Mathieu, pp. 145–62; Giulia Calvi, "Widows, the State and the Guardianship of Children in Early Modern

Remarriage was common and couples with children of different marriages recognized the potential conflicts this could entail. Mutual wills were used as a strategy to avert future conflicts with clear terms on the use of the property in case of death. Especially when the property was very small and hence the situation precarious, provisions were important for the surviving spouse. For example, Michael Wiesenstein, court servant (*Gerichtsdiener*) in Sonnenburg, and his second wife Christina drew up a mutual will in 1591. They had three children together, and he had three children from his first marriage, all but one married. His second wife had brought in a marriage portion of ten Gulden and a bed. In case of his death, she would acquire lifelong usufruct and lodging in his small farm house in Pflaurenz, but only if she stayed widowed. After her death, the children would inherit the estate together. The children were not to question the widow's right to her lodgings, and she in turn was to assist the children. His wife, on the other hand, bequeathed him all her belongings as lifelong usufruct.[91] The couple's property was very small. This precarious situation called for a mutual will to safeguard the provision for the surviving spouse as well as that for the children. The husband provided his wife with the usufruct of his belongings in case of his death on the condition that she would assist their children and refrain from remarriage. Further documents show that she died before him, and he drew up two more wills settling the small inheritance of his children. This example shows how under certain conditions even a small property could be a potential matter of dispute and needed planning, especially if children of two different marriages were involved. Other examples show similar strategies in that the surviving spouse was to acquire lifelong usufruct but on condition they further support the children from two marriages. Usufruct was then not only conditional but also fundamental for continuing support of the children.[92]

Wills and mutual wills expressed the intentions of the parties. In some cases, they were drawn up at a later stage of a "successful" marriage which could improve the negotiation position of the wife. They balanced the interests in respect of the spouses' future provisions when they awarded usufruct. But they also established property rights and here clearly favoured one side since separation of property did not involve common property. However, another question is how such stipulations were handled in the actual case of death.

Tuscany," in *Widowhood in Medieval and Early Modern Europe*, eds. Sandra Cavallo and Lyndan Warner (Halow, 1999), pp. 209–19.

91 SLA, VfB Sonnenburg 1591, 15 Jan.

92 SLA, VfB Sonnenburg 1591, 7 Feb.

In Case of Death: Putting Legal Regulations and Agreements to the Test

As we have seen, wills and letters of guarantees on marriage portions and morning gifts were increasingly used as legal instruments to safeguard property and adjust existing law and practice. The only problem was that a will or letter of guarantee could easier be contested than a contract, and its contents had to be accepted by the other heirs and next of kin. In addition, the amounts bequeathed were subject to definition in relation to the actual property.[93] In many cases wills were accepted but they opened up another area of conflict with the heirs to the lineage property.

For instance, in 1589, the tanner Leonhard Mitlberg made a will benefiting his wife Christina von Preue. He bequeathed her his whole property as lifelong usufruct according to the custom of the country. After her death, his property would then revert to his family line. At the same time, his wife Christina made her will and devised him her property of 60 Gulden including her trousseau in kind as lifelong usufruct. After his death, her property would also revert to her family line. In this mutual will, both bequests followed the regulation of the Tirolean law code according to which lineage property would—if there were no children—revert to the family line. But they could not alter, bequeath, or sell it as it was not legally theirs. However, the surviving spouse could decide whether to accept usufruct or instead have his or her property paid out. Usufruct eased the harsh situation of the separation of property and often constituted a more economical solution especially if there were children. But in this example the couple had had no children. After the death of her husband in 1589, the widow published the mutual will in accordance with the law code. But the existence of the will created a conflict with the heirs of her deceased husband. They demanded of her an inventory of the estate and a statement on any changes since the issuing of the will. They also referred to the Tirolean law code, and so the case was brought before the court for settlement.

The heirs insisted on an inventory so that they could then decide whether to opt for the inheritance or not. They had the right to do this, and by law the widow could lose all her widow's rights should she not comply with this. The inventory was made, but the heirs continued questioning its validity. Meanwhile the heirs asked to be acknowledged as the proper heirs of the estate. Obviously, they now found it worthwhile to do so. But during the proceedings the widow decided to forego the bequeathed usufruct of the property

93 For testators' restrictions and upper limits of the proportion of assets which could be bequeathed, see TLO 1532 III 3, esp. §4, fols. 30^{r}–30^{v}.

and instead demanded to be paid out her property and widow's claim. A contract was drafted in which the widow received all her claims, her marriage portion of 60 Gulden, the third of the movables, plus her widow's rights, which made 133 Gulden. However, she was instructed to pay the debts of 36 Gulden from her share, which left her with an amount of 97 Gulden. She accepted this solution and abstained from any further claims. The question arises why she reached this decision, and if the heirs maybe put pressure on her to make her waive the will. The following entry in the court book sheds some light on this. Shortly after the inheritance proceedings, the heirs sold the property which consisted of two houses, gardens, and a tanner's workshop for 340 Gulden. Of this money, the widow's endowment had to be paid and the rest was divided up between the four inheriting parties. In the end, the widow had made a good deal, receiving 97 Gulden.[94]

Usufruct might not have been her preference although it would have strengthened her position significantly. But without a tanner, she might have been overburdened and the revenues would have been very small. It is noteworthy that both parties referred to the same law code but to its different articles, which made competing interpretations possible. Only her refusal to accept the will made a settlement feasible. But the will gave her a better basis for negotiation because if she had accepted usufruct, the heirs would have had to wait for their inheritance until after her death.

Conclusion

As we have shown, death-related stipulations were not only influenced by inheritance law, but by the marital property regime as well. The examples ranging from the fourteenth to the sixteenth centuries depict a region where the principle of separation of property was applied. Furthermore, they reveal how the potential of conflict was structurally ingrained within this specific way of organizing property relations between spouses. From what we know of eighteenth-century cases, alternative models were often preferred as these reduced the harsh effects separation of property could have on the estate since the payment of marriage portions, inheritance shares, and morning gifts could entail enormous economic consequences. But it seems that alternative models were not preferential in fourteenth- to sixteenth-century South Tirol. Instead, preparing for death and arrangements after death were conflict-prone and particularly needed requirements of safeguarding. The choices made by a married

94 SLA, VfB 8 Sonnenburg 1589, 16 June, 27 Nov., and 28 Nov.

couple were negotiated at the time of death and economic circumstances governed the decisions whether the widowed spouse was to be paid out or receive usufruct.

The question remains how the contracts, especially widows' endowment contracts, were implemented since follow-up documents which give evidence on either payments, usufruct, or granted lodgings are missing in most cases. A common phrasing in such documents is, for example, that the widow had the right to remain on the estate as long as she had not been paid out with her marriage portions, morning gift, and her "widow's right". The mentioned "widow's rights" were subject to negotiation and could depend on the length of marriage, if they had children or not, and on the economic situation of the estate. In a 1559 widow's endowment contract in Kastelruth, for example, the payout was regulated first, then the widow was offered her lodging on the estate as an alternative. Also her sustenance was stipulated in case she preferred to live separately.[95] Contracts offering this kind of alternative appear throughout the sixteenth century, but the sustenance could vary according to the wealth of the estate from basic food provisions to extensive provisions with food, clothing, firewood, and other entitlements such as access to the baking house or the mill. Should she accept lodging or sustenance, her own assets would remain in the estate either accruing interest or not. It seems as if the courts showed a certain interest in securing a provision for the widow. In one case, the court secured the provisions for a very old widow, "so that she would not be thrown out of the house, orphaned, and driven into the fields". She was secured her assets and was in addition granted lifelong free lodging, sustenance, her own bedroom, and access to free firewood.[96] So far the court books revealed no case where the widow was left without any provisioning, and a comparison with other European regions might reveal how such provisions varied. But in most cases, it remains open which alternative was chosen in the end.

It seems that in subsequent periods a breakup of the property was less frequent than between the fourteenth and sixteenth centuries, because the surviving spouse was either offered usufruct of the estate, or the widow obtained separate lodgings within her former husband's house while her own property remained part of the property of the deceased husband's family line for which she received interest.

So far, South Tirolean cases *c.* 1350–1600 revealed an element of continuity regarding an emphasis on "dynastic" approaches to property. Preparing for

95 SLA, VfB Kastelruth 1559, fols. 89–90.

96 SLA, VfB Sonnenburg 1588, fols. 241–55, 17 Aug., "*damit sy nit hinauss gestossen waislos gelassen, und aufs weite Veld gebracht werde*".

death did not only mean securing the provision for children and the surviving spouse, but also the continuity of the line by prearranging that the property would revert back to its respective family line. This could, depending on the economic situation of the estate or whether the couple had children or not, determine the stipulation for the widow or widower where granting usufruct could rescue an estate from economic ruin by avoiding a payout. But in most cases, the advance definition of a widow's own property regulated the future division of the matrimonial estate. What remained unclear in many cases is which solution was chosen in the end. However, a comparison with the later development and especially the eighteenth century would be worthwhile in order to find out when "dynastic" thinking was moderated.