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Janine Maegraith

## “Landlessness”. Reviewing the early modern property structure in southern Tyrol

Access to land ownership, land use, or landlessness are important variables that can serve as a historical lens to gain insight into social structures and social changes over time. Land, buildings, and workshops served as means of production and in many cases as a foundation for household income. In early modern southern Tyrol, for example, house- and landownership was substantial and not only shaped people's socio-economic lives and status, but it also had ramifications on demographic structures.<sup>1</sup> Due to prevailing undivided inheritance practices in the area under observation, for example, siblings not inheriting land needed other economic security in form of a craft, service, compensation payments for their inheritance entitlements, or the possibility to marry into property to start a family.<sup>2</sup> Lack of access to land could be a preventive factor for marriage reflecting attempts since the seventeenth century to restrict the number of marriages through the need of permissions from the local authorities on the grounds of property and social status.<sup>3</sup> In many cases we find that one of the spouses had access to some land, nevertheless, especially in early modern times, married couples who had no land can be identified in our samples. They were lodgers, cottagers or leaseholders and relied on income through their labour. However, over time more restrictions were introduced and since the eighteenth and especially during the nineteenth century, there is evidence for couples going to Rome to get married because without sufficient property they were not allowed to marry in Tyrol.<sup>4</sup>

By shifting the perspective away from property owners towards landless households, a much larger and more heterogenous picture of the early modern countryside emerges. Not only cottagers and smallholders become visible, but also servants, labourers and women as household heads. This complex social structure was interwoven in multiple social, legal, and gender aspects as well as in local politics. I argue that people made use of the complexity and showed resourcefulness in counteracting seeming exclusion from access to resources and land. But also that they were facing negotiations with their community. In this paper, I will therefore explore the different meanings of property and how it was linked not only to economic factors but also to kinship, gender and civil law. I am focusing on the second half of the sixteenth

1 This paper is based on results from our research 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), [https://kinshipspaces.univie.ac.at/\(06-04-2019\)](https://kinshipspaces.univie.ac.at/(06-04-2019)); Lanzinger/Maegraith 2017b; on the importance of landownership in this area, see Lanzinger/Maegraith 2017a.

2 On development and existence of different inheritance practices, partible and impartible, in early modern Tyrol see Rösch 1994: 61-70; Palme 1994: 25-37.

3 For an overview on marriage restrictions in the German lands see Ehmer 1991: 45-61.

4 Margareth Lanzinger is describing such cases for Innichen in the nineteenth century, where unpropertied couples experienced a harsh treatment by the secular and religious authorities alike, Lanzinger 2003b: 129-131; see also Lanzinger 2020.

and the seventeenth century, with some references to the eighteenth century. For the purpose of this analysis, landlessness is defined as not possessing farm holdings or larger pieces of land. It came in various forms, from people without any real estate such as servants or lodgers, often women, to cottagers with a small garden, to craftsmen with house and workshop.<sup>5</sup> The boundaries between landlessness and land poverty were fluent and although both brought certain legal disadvantages, they were not synonymous with being poor (Mitterauer 1992: 38-39). But they were gendered. The close relationship of property with law, gender, kinship, and local politics, that affected the property market and thus access to land, calls for a broader interpretation of landownership or landlessness.

The research area, the Habsburg dominion of the County of Tyrol, was located in the Alps. This mountainous area was under agricultural cultivation including high alpine meadows since the high middle ages (Pechlaner 2015: 128). In southern Tyrol, today part of Italy, mixed agriculture with cereal cultivation and animal husbandry, forestry, some specialisation in cattle trade, and also viticulture was practiced alongside urban and rural crafts and trade. But, cereal production was not sufficient, and Tyrol remained a grain-import region until the nineteenth century leading to several price increases and shortages (Bonoldi/Novi Inverardi 2018).<sup>6</sup> The population grew during the fifteenth and sixteenth century especially in the mining areas and Kurt Klein assumes that most of the growth happened in the first half of the period and subsequently slowed down beginning of the seventeenth century (Klein 1973: 85-86).

## Property and social structure in the early modern countryside

Studies on property structure and proportions of unpropertied inhabitants have recently become more prevalent to balance a disproportionate focus on land-owning households especially in England, where this has been discussed in the context of ensuing social changes during the sixteenth and beginning of the seventeenth century with renewed population growth after 1520, inflation, and rising food prices. This development enabled larger farmers to become wealthier selling their produce on the markets, and to enlarge their holdings considerably by absorbing smaller ones. The process of engrossment led to an increased number of smallholdings and agricultural labourers, often living in cottages, who were either landless or had very little land. Both Keith Wrightson and Craig Muldrew stress the emergence of a polarised society as a result. Although the economy was growing from the mid-fifteenth century on with an emerging “middling sort of people”, this structural poverty contributed to a widening social divide (Muldrew 1998: 15-17; Wrightson 2000: 198-201). Leigh Shaw Taylor, discussing the problem of the exact timing of this development, points out that by 1800 the agrarian society in England was very different to the one in most parts of Europe. In England, agrarian capitalism became more important than family

farming, especially in the south-east, and as a key variable he refers to the high ratio of labourers to farmers (Shaw Taylor 2012).

Indeed, in many European areas the countryside did look different to south-east England, but much more research is needed to arrive at a meaningful basis for comparison. For the central European countryside, the presence and increase of landless or land-poor households and their income and investment strategies has been analysed in the context of the early industrialisation and development of proto-industry and in context of transitions to capitalism, for example (Pfister 2007; Brakensiek 2004: 226-227; Gosh 2016: 258, 262-263, 271). But examinations of land-poor households such as of rural craftsmen, agricultural labourers, servants, and widows, to name but a few, in early modern Central Europe is only recently gaining pace. The focus here is directed at the distribution of landed property and the proportion of unpropertied households especially in the context of socio-economic changes and changes in family structures. Jürgen Schlumbohm, in his pathbreaking microstudy, contrasted landholding and landless households in the north-west German parish Belm, for example, and analysed demographic and economic changes between 1650 and 1860. Landless households already made up a third of the population around 1600 and after the Thirty Years War their ratio increased to 60% in 1772. Schlumbohm saw one reason for this development in the maintained impartibility of farmsteads (Schlumbohm 1994: 53-58). By looking at social mobility within this society he found that about a quarter of the offspring of landholding farming households became landless and 11% could secure a smallholding. Significantly, he found that of the siblings who had to move off the main estate, half of the female siblings became landless. He therefore linked the rising number of landless households with the indivisibility of farmsteads, unequal opportunities for ceding heirs, gender relations, and limited opportunities for upward social mobility (Schlumbohm 1994: 368-378).

Property transfer and changes in social differentiation in early modern southern Bohemia was the focus in Hermann Zeitlhofer’s work (Zeitlhofer 2014). He also found a surprisingly high proportion of landless families in his research area after 1650, mostly lodgers and servants, and his work refutes previous assumptions that the rate of landless families decreased after the Thirty Years’ War in this area. His important findings also point to the fact that for many, landlessness was part of the life course as, for example, many elderly people would withdraw to a cottage; and that in spite of existing marriage restrictions for unpropertied people the marriage rate of lodgers was quite high (Zeitlhofer 2014: 253-254). He therefore identifies that, in practice, landed property was not a condition for marriage and points to a major methodological challenge: the proportions he established through record-linkage were not consistent with contemporary census material. Unearthing the true numbers of landless households poses a challenge for historians.

In her study on upper Styrian domains in the early sixteenth century, Birgit Heinzle focuses on marital property choices and the effects the multiple practices had on the social structure. Looking at widowhood, for example, she finds that few widowed people chose to retain management of the landed property and instead retired to an *Altholde* or life estate. A tax register of 1526 lists only 8.6% of households with one householder. Instead, she found that of the people living on life estates, 75.5% were widowers and especially widows and only 20.8% were married couples. Her findings resemble the ones from northern Bohemia but differ from southern Bohemia, where

5 The list could be amended with leaseholders. For this research area, lease holding reveals a varied picture, since in some cases, farmers who already possessed a holding leased another one in addition, so that lease holding was not always equivalent with landlessness.

6 The area experienced supply shortages in 1566-1567 and famine in 1569-1572 and 1594, and outbreaks of infectious diseases in the 1560s, 1570s, 1611-1612, and 1635/1636; see Fischer 1919; Schretter 1982; Nothdurfter/Landesmuseum Schloss Tirol 1991.

married couples made up half of the *Altenteil* inhabitants (Heinzle 2018: 36-40).<sup>7</sup> Widowhood decisions could affect the social structure and composition of landless households as much as succession practices.

Bernard Derouet revisits the question of the chronology of transmission by looking at late medieval and early modern France and emphasizes that in many cases, children could leave the parental home early with opportunities on the labour market or received an advance on inheritance. In both cases, this could enable them to create the foundation of their own household (Derouet 2011: 44-45). With such opportunities, ceding heirs could either become lodgers or even buy their own land and consequently the property structure of a region would be more heterogeneous. Such structures can be established especially for the nineteenth century, where relevant sources are more abundant than for early modern times. Christine Fertig, for example, analysed the social structure and family systems in nineteenth-century Westphalia in her work. For this, she determined the distribution of landed property and identified similarly to Schlumbohm so called *Heuerlinge*, families without landed property who lived on farms in houses with a garden and some farmland (Fertig 2018: 201).

Establishing numbers of unpropertied or land-poor households in sixteenth and seventeenth century County of Tyrol faces similar problems as in early modern Bohemia. Early census and court proceedings focus on landed property and its changes, but less so on lodgers or servants. One way of addressing this problem is by analysing cottagers in rural areas; although they owned a small house and sometimes a garden, they were land-poor especially compared with the owners of bigger farmsteads. In addition, cottages offered an alternative for ceding heirs (*weichende Erben*) and a base for rural crafts. Looking at changes of the proportion of cottages can offer some insight into changes of the social structure. At first glance, the history of rural Tyrol seems well researched. The older historiography of the social and economic history of Tyrol emphasized the importance of access to land and the legal and political history pointed to the strong position of the peasants. But it focused on the analysis of peasant farms (*Höfe*) and the idea of a continuity of agricultural structures. Although Hermann Wopfner and Otto Stolz, for example, discussed cottagers, lodgers, and the exclusion of illegitimate children from their parent's inheritance, their focus remained on the farm and on the successors to the property (Stolz 1949: 207-210; Wopfner 1995: 155-157). Stolz and Wopfner refer to cottagers and lodgers in their legal context and Wopfner especially in relation to population growth, but they did not endeavour a systematic analysis of the property structure in Tyrol, but rather generalised their findings (Zörner 1988: 9). Wopfner suggests that the number of cottages was relatively small in the sixteenth century but then grew steadily as a consequence of property divisions and “overpopulation”.<sup>8</sup> The problem remains that very little population data survives for the sixteenth and seventeenth centuries and a definition of “overpopulation” is not only missing but hardly applicable. Jon Mathieu also pointed out that census documents were produced with social control in mind and their political nature was continued in later narratives of over- or underpopulation (Mathieu 2009: 43, 123-124). Therefore, political agenda more than facts influenced interpretations of census material.

<sup>7</sup> She compared her findings with Štefanová 2009: 185; and Zeitlhofer 2004: 73-96, here 85.

<sup>8</sup> Wopfner offers some quantitative evidence of specific locations in northern Tyrol but overall remains general. Wopfner 1995: 149.

Thus, for a long time the social structure in Tyrol, its changes and implications remained largely understudied. This was picked up by Marianne Zörner in 1988 with a pioneering study on the property structure of northern Tyrol from 1600 to 1850. She addressed central problems related to changes in the property structure of selected communities such as the role and influence of the sovereignty, climate and soil quality, inheritance practice, and demography. She found that while climate and soil quality did influence the size of the holdings, this did not exclude the emergence of small holdings and cottages in such areas. The most important factors linked to the development of small holdings and cottages were opportunities in by-employment and local trade, while the influence of inheritance was not substantial and no link between property and population structure could be established. Regarding cottages and smallholdings, she found that their number and ratio declined during the seventeenth and the eighteenth century save three court districts, Kitzbühel, Pillersee and Rattenberg. In those, local trade and industry contributed to a rise of small holdings and cottages. Therefore, she concludes, more microstudies are needed to analyse changes in the property structure (Zörner 1988: 1-2, 59, 109-110, table 4.3.2.1).

Newer historiography is addressing this need and in 2005, Georg Jäger, for example, analysed the historical development of cottagers and village crafts in northern Tyrol highlighting their importance for the development of commercial structures. His main objective is to analyse the Tyrolean agrarian and rural crafts structures using the approach of perseverance (*Persistenz*) in a more nuanced way. Thus, he highlights the role of village crafts such as smithies and seasonal traders in structural innovation and identifies the changes in the region's social structures by calculating the proportion of cottages. Contrary to Zörner, he found in his analysed court districts a rising proportion of cottages over time especially by 1780 (Jäger 2005). But he also stresses the fundamental problem of competition for usage rights especially entitlements to common land and pasture, wood and water. Still, he can find settlements of landless families in many alpine villages since the sixteenth century and his results confirm the presence of people and households who relied on their craft or labour for income rather than land ownership. The literature suggests several aspects that influenced distribution and rising number of landlessness such as engrossment, presence of local industries and crafts, inheritance practice, widowhood and old age, marriage restrictions, and entitlements to common rights – less so geographic indicators. This redirects the focus to the inhabitants and their economic and social practices.

### Exclusion from succession in early modern southern Tyrol: options and alternatives

Correspondingly, our research of the court records (*Verfachbücher*) and rentals (*Urbare*) in southern Tyrol reveals a more nuanced social structure in urban as well as rural areas with diverse crafts, cottagers, day labourers, lodgers, and women as household heads apart from the proprietors of farms and town houses – in short, a large proportion of people without significant landholdings. As opposed to the farm proprietors, these households could be called landless or land-poor, since they could not live off their small property but needed additional means of income stemming from their labour or craftsmanship. To fully understand the specific property struc-



ture, we not only need to determine the proportion of landless people, but also the underlying social structure born out of inheritance practices and marital property regimes to understand possible limitations of access to property. Based on results from our research project “The Role of Wealth in Defining and Constituting Kinship Spaces”, we analyse the legal and social context of succession, marital property and the resulting property structures of areas in southern Tyrol. Assuming that a large proportion of wealth was transferred by inheritance or marriage in early modern Europe, and that these transfers contained structurally inherent conflicts between kin and marital partners involved, kinship and wealth become interlinked. To better understand how wealth implicated and created kinship spaces and vice versa, we analyse wealth transfers and arrangements of selected areas in early modern southern Tyrol. For this contribution, I will look at the manorial court of Sonnenburg in the Puster valley with rural villages and agricultural areas.

The main sources are court books (*Verfachbücher*) of the manorial court containing documents on all property-related issues such as wills, inheritance proceedings, marriage contracts, guarantees on marriage portions, endowment contracts, land purchase and exchange contracts, lease agreements, and property transfers, as well as settlements to resolve conflicts (Beimrohr 1994). So far, I have compiled a dataset of 772 legal documents from the manorial court of Sonnenburg for the period 1540 to 1600, and the sample years 1610-1612 and 1670.<sup>9</sup>

The patterns of succession in our research area are based on the sixteenth century Tyrolean law code introduced in 1526 and revised in 1532 and 1573. It codifies that the legitimate children inherit the property of their parents.<sup>10</sup> The law code does not prescribe a particular hierarchy as to how many or which children should inherit. It mainly says that the sons should receive a fitting advantage. This opened up the opportunity for different inheritance practices to develop so that in some areas, such as in the court district of Schlanders, partible inheritance structures evolved, whereas in the Puster valley a form of impartible inheritance prevailed.<sup>11</sup> If there were no legitimate children then the inheritance or succession would go to the next-of-kin of the deceased. The emphasis was on the blood relation so that this included female next-of-kin such as daughters, sisters and nieces. The regulation of inheritance and emphasis of the next-of-kin as prescribed by the Tyrol law code already indicates the marital property regime in this area: the law code specified the strict separation of marital property. Spouses could therefore not inherit from each other unless they made a special bequest in their will – and even then, the amount was limited to either a third of the wealth if it was inherited, or half if it was gained.<sup>12</sup> In our research area, however, the use of the bequest of a third or, rarer even, half of the estate was less frequent in the rural areas than in the town of Brixen, for example (Kaska/Maegraith 2018).

In a study on property distribution and gender imbalances for the rural court district of Sonnenburg and the diocesan town of Brixen in the sixteenth century, it

could be shown that the prevailing inheritance practice was impartible inheritance with male preference: one or several sons succeeded the estate and their brothers and sisters were compensated with their inheritance shares in money and goods. In only 7.5% of the analysed documents, women were identified as successors to the main estate in Sonnenburg, whereas in Brixen (although a much smaller sample) this proportion reached 22% pointing to a different practice in rural and urban areas (Maegraith 2020a). The study also showed that separation of marital property perpetuated an existing property situation: in most cases, the husband owned the land or town house and his wife had brought in a marriage portion in form of money, credit and movables. As a widow, she had no entitlement to his property due to the regulation of separation of marital property.<sup>13</sup> The widow therefore either received her money and goods back, or in some cases was granted usufruct rights of his estate. Thus, in most cases her property situation did not change in widowhood and she remained landless. This was also true for husbands who married into the property of their wives, so called *einziehende Gesellen* or “fellows” marrying in. Consequently, legal structures, kinship, property distribution, and gender contributed to a continued imbalance in land ownership in early modern southern Tyrol.

A case from the Mühlwald valley in the court district of Sonnenburg illustrates some of the aspects discussed:<sup>14</sup> After the death of Gall Weidach, owner of the farm Weidach in 1596, the inheritance proceedings were resumed. Gall left six children (four sons and two daughters) of his first marriage behind, and one newborn son of his second. First, the entitlements of his widow Agnes Sippin, his second wife, were settled. She was to receive 70 Gulden consisting of her marriage portion and the morning gift and her clothing, bedding and other personal belongings. In addition, she received material provisions and free lodging for a time, in consideration that she had just given birth to a son. Second, the eldest son was named successor to the farm and had to compensate his four brothers and two sisters with movables and money. His youngest (half-)brother was entitled to a „fitting advantage” for ceding his right of the youngest (ultimogeniture). The successor also had to raise his underage siblings on his farm. This case study represents a common occurrence in this area, where the widow was compensated with her financial and material entitlements but had no rights to the land, and the siblings of the successor received a compensation but had to leave their father’s farm once they were of age. But this pattern of succession raises questions: if, as seen in the case study, a large number of siblings were excluded from succession, where did they go and what were their options? In addition, children born out of wedlock were excluded from their parents’ inheritance by law which led to unequal access to property.<sup>15</sup> The parents of illegitimate children were aware of this and attempted to counterbalance their exclusion by testamentary bequests. I could identify several of such bequests in the court district of Sonnenburg for the sixteenth and early seventeenth century from which a focus on the maintenance of illegitimate children and on giving them a starting capital emerge (Maegraith 2017). The justification in the wills were, for example, “so that he could reside more easily”, indicating that without entitlement to inheritance, illegitimate children faced more difficulties

9 Südtiroler Landesarchiv (SLA), A 742 Verfachbuch (VfB) Sonnenburg 1540-1558, 1564-1573 (1559-1563 missing); VfB Sonnenburg 1573-1600, 1610-1612, 1670.

10 Tiroler Landesordnung (TLO), 1573, book [Buch] III, section [Titel] 8 and 9.

11 For a more detailed discussion of the inheritance practice in the research areas of our project see Lanzinger/Maegraith 2016: 15-31.

12 TLO, 1573, III, 3 §1.

13 TLO, 1573, III, 20 §2.

14 SLA, Sonnenburg VfB 13, 1595-1596, no fol., 11. June 1596, no title.

15 TLO, 1573, III, 8; Wesener 1976.

to settle down.<sup>16</sup> Such bequests could, similar to inheritance compensations, enable people to utilise economic niches and alternatives. But which economic niches and alternatives existed in this area and period and were they utilised?

In southern Tyrol, one option for compensated siblings without landownership was to marry into property. In the majority of marriages that can be identified in the court proceedings, the husbands owned the land and the wives had brought in a marriage portion which was secured on the husband’s land. But also, men who were excluded from succession married women who became successors to landed property if no brothers were present or able to accept the inheritance. Alternatively, according to the Tyrol law code of 1573, it was also possible for a couple without any landed property to get married and to rely on their labour for income.<sup>17</sup> In cases, where the spouses brought less than 25 Gulden into the marriage, the widowed spouse retained the entitlement of usufruct to the deceased partner’s marriage portion and the gains. That way, a couple without property as security had some coverage. The possibility for unpropertied couples to get married is also shown in the police ordinance of 1573, where wedding celebrations are regulated and the group of people it addressed includes day-labourers working for daily wages, and common workers and servants usually serving on a farm or in a business for annual wages and board.<sup>18</sup>

One case in Pflaurenz illustrates how it was possible for servants and day-labourers to consolidate their well-being through marriage and access to a house: Lorenz Tagwerker in the village of Pflaurenz was taken in as a boy and raised by the farmer Georg Mayr, where Lorenz worked as a servant until at least 1592.<sup>19</sup> Lorenz married Maria Peuntnerin who had inherited a house with garden in Pflaurenz from her father in 1589.<sup>20</sup> When she died in 1596, he successfully claimed lifelong usufruct on her property based on a will from his wife, provided that he continued to take care of their children in the house and endowed them with movable goods when they married.<sup>21</sup> The guardians of the children sold the movables of their mother to facilitate them with a small inheritance of 40 Gulden. The widower had to pledge that if a child wished to learn how to read and write or to learn a trade, that he would send them to school at his own expense. With the bestowment as starting capital, Lorenz Tagwerker was able to marry as a servant and by marrying into property secured himself and his children a house and garden. Also, he could change his status from dependent servant to day-labourer. As a “fellow” marrying into property he only had claims in usufruct, but the children would inherit the mother’s house. Inhabitants could use marriage and their economic resourcefulness to secure a basis for income.

Some ceding heirs remained unmarried on the farm, other women and men worked as servants in towns and as farm servants. Farms were very labour-intense and in need of additional help to the family members (Mitterauer 1992: 192-198).

16 For example, SLA, Sonnenburg VfB 14, 1597-159815. April 1597, no fol., where a mother bequeathed her illegitimate adult son 65 Gulden and one feather bed.

17 TLO, 1573, III, 20 §1.

18 Tiroler Polizeordnung 1573, Tit. 15 §1.

19 SLA, Sonnenburg VfB 9, 1590-1591, no fol., 6. July 1591; SLA, Sonnenburg VB 11, 1592, p. 57-65, 28. March 1592 (Lorenz receives a bequest from Christina, she calls him her former servant and worker).

20 SLA, Sonnenburg VfB 8, 1589, no fol., 20. March 1589.

21 SLA, Sonnenburg VfB 13, 1595-1596, no fol., 26. June 1596.

The Sonnenburg court books contain cases where farm hands and servants and their outstanding wages (*Lidlohn*) are mentioned. In a leasehold contract for the farm Weidacher in Weißenbach, for example, the lessor affirms that he provided the lessee with a farm hand, maid servant and boy and that he had already paid their outstanding wages and clothing.<sup>22</sup> While most servants received bed and board, other labourers, servants or craftsmen needed to rent lodgings. Lodgers (*Ingeheisen*) appear in census lists or are mentioned in purchase deeds. In Brixen, several purchase contracts for houses contain references to lodgers and the collection of their rent. In June 1600, for example, Caspar Schmidl, baker in Brixen, sold Adam Rigger, baker from Mühlbach, his house for 347 Gulden. The contract contained a clause whereby the seller was entitled to collect the rent from the lodgers living in the sold house until Michaelmas.<sup>23</sup>

Many sons received training in a craft often evidenced in apprenticeship contracts (*Lehrbriefe*) and inheritance proceedings where the upbringing and material provision of underage children is specified, and the sons’ future training secured. Sometimes the choice to learn a craft was preferred to succession. In 1593, for example, although after the death of Hans Pühler in the Mühlwald valley the youngest son Mattheis was named successor to his father’s farm Pühl, he decided to learn a craft instead; since he was still young and unmarried, he left the farm to his eldest brother.<sup>24</sup> A considerable number of people emigrated as can be seen in court proceedings when wealth was negotiated in the absence of a sibling, for example. In many cases, their whereabouts were reported as unknown. Unfortunately, for the sixteenth and seventeenth century, it is not possible to reconstruct a quantitative distribution of the life course of siblings excluded from succession and without landownership.<sup>25</sup> But the references in the court documents suffice to show that siblings utilised a number of economic niches and alternatives their compensation payments made possible. For this, however, access to land and the presence of a land and labour market was essential. Without such markets, options of ceding heirs or landless inhabitants would have been significantly limited. On the other hand, ceding heirs fed labour markets and helped shaping their structures.

## Using the inheritance share: purchase of real estate

Inheritance and marriage were fundamental in facilitating transfer of wealth but there were also other ways to transfer property. The analysis of the court books, which contain all records connected to property matters, infer an active land market with many purchase deeds, leasehold contracts, and exchange of landholdings. Not only farms, but also pieces of arable land, meadows, gardens, vineyards, houses, and cottages were sold and bought between the residents in and outside the court districts. These cottages, or *Söllhäuser*, were small rural houses, sometimes with a garden.

22 Sonnenburg VfB 11, 1592, fol. 240-245, 23. November 1592.

23 SLA, Brixen Stadtgericht VfB 112, 1599-1601, fol. 174v-175v, 22. June 1600. Lodging was, however, not equivalent to being poor. Some lodgers in Brixen had considerable wealth.

24 SLA, Sonnenburg VfB, 1593-1594, no folio, 16. November 1593.

25 Because of insufficient information from the parish registers, no family reconstitution was created. For a critique on previous studies on migration and its estimation see Mathieu 2009: 123-124.

In many cases, community rights were attached to those houses and the owners or lodgers could graze some small livestock such as goats or a cow, had access to a certain amount of firewood, or access to water.<sup>26</sup> Stolz acknowledges that *Sölleute* could be found in almost every village earning their living mainly as craftsmen, servants, day-labourers for the farmers, or as forest labourers or miners. He also points to the *Weistümer* or local ordinances which contain many references to cottagers and their limited access to common rights such as forest and pasture (Stolz 1949: 207-210; Jäger 2005: 136).<sup>27</sup> The common rights attached to the cottages are often specified in purchase deeds. In 1612, for example, Christina, daughter of the late Hans Cameler in the village of Untermoi, sold a cottage with half a garden attached situated in the grounds of the Corisell farm.<sup>28</sup> Christina was unmarried and represented by her guardian Hans Pacher. She had inherited house and garden from her father. The buyer was Dorothea Collätscherin, also unmarried and in presence of her brother. She paid 34 Gulden for the cottage. With the cottage she gained entitlement to keep one or two goats in summer and winter and to collect fire wood as needed from the Corisell forest. The property paid dues to the sovereignty in kind and twelve Kreuzer to the Corisell farm. In this case, usage rights were shared out by the farm holding the cottage was built on, not by the “neighbourhood”.<sup>29</sup> The common rights attached to cottages were essential in securing a living for people who otherwise had little access to land, even if they did not resemble the full right of use of a farm holding. With this, possessing a cottage had a crucial advantage to lodging.

In the court district of Sonnenburg, 25 purchases of a cottage could be identified for the period 1568 to 1612. Of those 25, 17 were cottages without garden or land, and seven of those were half cottages. Eight of the 25 cottages were sold with a garden attached in the same period, one of them was a half cottage. The purchase price of all cottages ranged from 13 to 79 Gulden, three ranged between 120 and 163 Gulden.<sup>30</sup> To put this into context, a day-labourer could earn approximately 15 Kreuzer per day, and one *Tiroler Stär* or 31 litres of wheat could cost up to one Gulden. The sales of these cottages made up about 14% of all land sales in this area and period. In comparison, most sales entailed farms and part of farms (55%), followed by pieces of land with 18%, and (village) houses with 13%. The majority of the sold cottages were situated in the rural areas of the court district, only two were in the villages of Sonnenburg or Pflaurenz. This reveals that a relatively high proportion of those small houses were bought and sold on the market throughout the sixteenth century. The trading of cottages continued in the seventeenth century. Of 18 sales contracts in 1670, three or about 17% were for cottages.<sup>31</sup>

26 For a definition see also Stolz 1949: 207-208; Jäger 2005: 57-58. The *Tiroler Weistümer* contain many references to such entitlements, Zingerle 1888.

27 Jäger found that in the local ordinances, cottagers were entitled only to half or a third of the forest and pastoral use a farmer was entitled to. They also had a limited voice in the neighbourhood.

28 SLA, Sonnenburg VfB 18, 1608-1612, no fol., 20. February 1612.

29 Common rights such as grazing rights, forest and water use, and trespass rights were attached to farm holdings. The members of the neighbourhood, or property owners in a particular locality, controlled access and obligatory maintenance through municipal codes. See Pechlaner 2015: 496; TLO 1573, 4.2.

30 SLA, Sonnenburg, VfB A 742, 1568-1573, VfB 1-15, 1573-1600, VfB 18, 1608-1612.

31 SLA, Sonnenburg, VfB 1670. A note on the quantitative results of the analysis of purchase deeds: not all deeds were copied into the court books. Some contracts and some inventories refer to

Compared to farms and part of farms that were sold for prices between 150 and 1800 Gulden, cottages were much more affordable and they offered people excluded from succession, who received their inheritance shares in money or obligations, a way to participate in the land market.<sup>32</sup> Investing the money from compensation payments stemming from inheritance entitlements or shares in land or buildings gave some people the opportunity for upward social mobility. This was not only the case for craftsmen, day-labourers and labourers, but also for women in different stages of their life course. As we can see from the case study of Christina Cameler and Dorothea Collätscherin, women could become successors to their parent's estate and appear as buyers and sellers as well, especially of cottages (Maegraith 2020b). Women's participation in the land market or as ceding heirs has been much neglected in the historiography. Even Georg Jäger solely refers to sons of peasants who have to move off the estate, mineworkers, craftsmen and day labourers as forming the majority of cottagers. But he conceals the fact that daughters of peasants and also widows who had to move off the estate of their parents or deceased husbands had to earn their living and find lodging (Jäger 2005: 58; Lanzinger/Maegraith 2017b; Maegraith 2020a). Of the 75 households in Sonnenburg and Pflaurenz that were counted in a census in 1679, for example, 15 were headed by women.<sup>33</sup>

But for the numerous heirs who were excluded from succession, a correspondingly high number of cottages or lodgings would have been needed to absorb the number of people moving off the farms or for offering alternatives. Georg Jäger analysed the frequency of such cottages mainly for northern Tyrol but also for the Puster valley and found a rising number of cottages resulting in their relatively high proportion in rural communities of around 30% by the eighteenth century. For example, he analysed the description of all taxable peasant holdings and cottagers in the Puster valley from 1545, where the court district of Sonnenburg is also situated, and found that cottages related to industry only made up three percent (Jäger 2005: 127-133).<sup>34</sup> For the seventeenth century, he found a stark rise in the number of cottages especially near local industries such as a hammer mill and further smithies in this area. For 1780, Jäger established a proportion of cottages of 34% compared to 66% peasant houses based on the Theresian tax cadastre (Jäger 2005: 132).<sup>35</sup> His findings correspond with the historiography, where an interdependence between rising landlessness and local industries is suggested.

To test this for our research area and especially for the earlier period, I analysed the rural holdings of the court district of Sonnenburg, specifically the Mühlwald valley, north of the Puster valley. Three rentals (*Urbare*) from 1562, 1621, and 1706 describe the farm holdings and other properties such as fields and cottages belonging to the sovereign, and the annual dues in kind and cash the possessors of the land

previous sales contracts that cannot be found in the court books. The numbers analysed here therefore only represent a part of the actual activity on the land market.

32 A full analysis of sales prices and the land market will be part of the planned monograph by Janine Maegraith. See also Maegraith 2020c.

33 Tiroler Landesarchiv (TLA), Stift Sonnenburg, Fasz. VI. Position 18 Karton 13: Volkszählung im Gericht Sonnenburg 1679; see also Table 2.

34 „Pustertaler Beschreibung“ in TLA, Kat. 0/8. Jäger's limiting definition might have left some cottages out.

35 Jäger bases this partly on the analysis of the place names in Richter-Santifaller 1937.



owed the sovereignty. These registers of land rent do therefore not list inhabitants or households possessing no land. The first book from 1562 lists the cottages as part of the farm holdings they were built on, but the later volumes contained special sections for cottages, which already signify their growing importance. The analysis of the three rent books could confirm a rising number of cottages:<sup>36</sup>

Table 1: Property structure in the Mühlwald valley

Year	Owners	Farms	Cottages	Cottages as % of owners
1562	113	92	23	20
1621	125	92	38	30
1706	132	92	43	33

The results show a slow rise in the number of owner households while the number of farms in the Mühlwald valley remained constant. This can be explained with a rising number of cottages during the sixteenth and seventeenth century. Interestingly, here the proportion of cottages in 1706 has already reached the level found by Jäger for 1780. The question remains whether the development of social differentiation and rising number of the land poor slowed down during the eighteenth century and why this would be. If the population grew by around 2% in this period, as shown by Jon Mathieu, one explanation could be the presence of legal regulations (Mathieu 2009: 28; table 2.2).<sup>37</sup> A limit on building new houses, as this was the case in Innichen, for example, could have contributed to a stagnation of the number of residents (Lanzinger 2003a). But overall, the results suggest that even in seventeenth century southern Tyrolean agricultural areas, around 30% of the households listed in the rentals owned a cottage but no land or farm. They relied on small-scale farming and day- and agricultural labour, rural crafts, and industries.

The presence of rural crafts can point to the presence of land-poor households. This can be shown for the villages in the court district of Sonnenburg. The “description of the Puster valley” from 1545 that Jäger also used, lists for the court district of Sonnenburg the inhabitants with taxable wealth, that is landed property in Sonnenburg, Pflaurenz, Fassang and Untermoi. It does not list lodgers, servants or other landless or land-poor inhabitants. For the village Sonnenburg, for example, the census shows that the majority of owners invested in fields probably to support agricultural by-employment. For Pflaurenz, the neighbouring village, more villagers with just a house and garden and no fields are listed, but since there are no values attached and the rents are in those cases not given, it is not possible to use this census to investigate land-poor inhabitants in the villages. A few references to rural crafts and industry are included: for Sonnenburg, one weaver, and in Pflaurenz one miller and one smithy are mentioned.<sup>38</sup> The census of 1679, however, offers a more comprehensive picture

36 TLA, Stift Sonnenburg, Fasz. XXIII, Pos 2, Urbar 1562: Urbare 108/60, Mühlwald 1562; TLA, Stift Sonnenburg, Fasz. XIX, Pos 5, Urbar 16. Jh: Urbare 108/54, Weissenbach, Lappach, Mühlwald [probably 1621f.]; SLA, Stift Sonnenburg Karton 11, 23, Urbar 1706. The number of owners is not the sum of farms and cottages; some own two farms, for example.

37 For Bolzano/Bozen the data begins in 1685, and for today’s Austrian Tyrol it begins in the late fifteenth century. See also Klein 1973: 47-112.

38 TLA, Kataster 0-8 Band II-01-44, „Pustertaler Beschreibung“ of 1545.

of the social structure of Sonnenburg and Pflaurenz:<sup>39</sup> this census counted households and not properties, with name and often occupation of the household head, number of adults and children, servants and lodgers. The aim of the census was to establish whether the households were sufficiently provided for with food – an important factor since southern Tyrol was dependent on grain imports (Fischer 1919; Lorandini 2017: 207-208; Bonoldi/Novi Inverardi 2018). The comments relating to this offer some insight into the economic state of the households.

Table 2: Census of 1679: Households (HH) and occupational structure in Sonnenburg and Pflaurenz

Place	Number of people	HH	Female HH heads	Occupation given	OH	C	DL	M	F	no, few provisions
Sonnenburg	173	43	8	24 (56%)	5	15	1	1	2	19
Pflaurenz	116	33	7	13 (40%)	1	9	1	2	0	15
<b>Total</b>	<b>289</b>	<b>76</b>	<b>15</b>	<b>37 (49%)</b>	<b>6</b>	<b>24</b>	<b>2</b>	<b>3</b>	<b>2</b>	<b>34</b>

OH = office holders; C = crafts; DL = day labourers; M = millers, smiths; F = farmers

The census from 1679 reveals a plethora of different crafts and offices in Sonnenburg and Pflaurenz: of those occupations given it shows 16 different crafts from carpenters, weavers, shoemakers, tailors, and blacksmiths to sculptor, next to farmers, day-labourers, millers, smiths, and office holders. It also shows that 20% of the households were headed by women, some of them were defined as lodgers although probably more of them were, as the attribute “lodger” was not used consistently. The majority of the women, eleven, had either no or only little food supply, two said they would attend to provisions, and three were secured for a while. All in all, over 45% of households – mainly headed by women or lodgers – were insufficiently or not provisioned with food supplies at all. Of the 24 male headed households with no information on occupation, 14 claimed to have provisions. It is possible that they were landowners or farmers and that the occupation “farmer” was just omitted, a similar practice is found in parish registers. But since it remains unclear, whether and how much the village households owned in land and whether those with land were better provisioned, a comparison with agricultural Untermoi is useful. Here, 27% of households were insufficiently or not provisioned. They consisted of female household heads or day labourers. The 73% of provisioned households were peasants with landed property.<sup>40</sup> This conveys the importance of landholding in this area when it came to food stocks. However, the households with no or little supplies in the villages lived off their labour

39 TLA, Stift Sonnenburg, Fasz. VI. Position 18 Karton 13: Volkszählung im Gericht Sonnenburg 1679 [census of the court district of Sonnenburg, 1679].

40 TLA, Stift Sonnenburg, Fasz. VI. Position 18 Karton 13: Volkszählung im Gericht Sonnenburg 1679. My own analysis.

and crafts such as cobblers, carpenters, tailors and weavers, and were not all “poor” households. Also, inventories show that landholding households traded grain with nearby households and paid for craft and labour services, which might point to a possible interrelationship between landowning and landless households.

## Building new cottages

These results evidence a differentiated social and property structure with an increasing proportion of landlessness: craftsmen, day-labourers, millers, and also women were participating in an economy which did not fully rely on landownership but where people lived off their labour or training, and some could buy or inherit a house or cottage to consolidate their livelihood. The picture of farms dominating the property structure in southern Tyrol as described at the beginning needs to be qualified. For the early modern period, Jäger found an increase in the proportion of cottages (Jäger 2005: 138). His findings can be confirmed, but the results from Sonnenburg indicate that a higher ratio of cottages was reached earlier, already at the end of the seventeenth century. This development can be observed in other central European areas as well, such as Silesia and Bohemia.<sup>41</sup> But how easy was it for a person to acquire land and build a cottage in a community? It is our thesis that there might have been a competition between the court district administrations and the communities who were keen to protect access to resources such as communal rights to water, grazing, and firewood.<sup>42</sup> Such communal rights were necessary for cottagers to ensure some agricultural income through keeping a cow or some goats, and to secure supply of fuel and water. Communities and court administrations might have disagreed in granting those rights to new buildings that were prescribed in the local ordinances and attached to existing cottages. Schlumbohm, for example, found in his area that the settlement of landless people generated many conflicts especially during the late sixteenth and early seventeenth century. Here, the landowning peasants as well as the landlords opposed the settlement of *Husselten* families until they found an arrangement resulting in the *Heuerling* system, where the landless family rented an annex of the farm building and some land in return for their labour on the farm. The landlords realised how even landless households contributed to tax income and dues (Schlumbohm 1994: 59-66). They were also aware of the necessity of local crafts for the communities.

In the district of Sonnenburg, cottages were located on the premises of larger farms or on community land. The building of a cottage therefore had to be agreed by the landowner or the community (“neighbourhood”) and the sovereign. In one case, a petition to the convent in Sonnenburg from the tailor Gall Russ from 1566 survives in which he described his “miserable” situation:<sup>43</sup> for 14 years he and his young family had to live as lodgers and move from place to place. He then had inherited a small piece of arable land in Sonnenburg from his father and to be able to improve

his situation and to have permanent lodgings he asked for permission to build a small house on this land. Otherwise he would have to move away from the court district. The convent was sympathetic with his situation but passed the petition on to the neighbourhood which decided against his plea. The neighbourhood argued that it had not been the custom in Sonnenburg to build new cottages on community or other land and that the petition should therefore be turned down. The villagers were concerned about sharing out communal rights. The convent thus declined the permission and the tailor probably had to move away. The decision shows the power the neighbourhood could exercise in controlling economic and social structures of their community. Although he had inherited the land, the community decided against including him as a participant of the community and its customary rights. The letter by the tailor also illustrates the meaning such small houses had for people who had to find economic niches. The power of the community was considerable and went hand in hand with a weaker lordship that was limited to and focused on the collection of dues. The convent in Sonnenburg was interested in maintaining the indivisibility of the farms to secure the dues, for example, but nevertheless permitted divisions in some cases. The options of people without property were therefore dependent on the consent of the sovereignty but also on the decisions of the communities they planned to settle in.<sup>44</sup>

Such a restrictive community policy as seen with Gall Russ would have impeded the options for landless people and prevented a rise in the number of cottages. But, as demonstrated above, the number of cottages did rise in the seventeenth century. Was there a change in local policy? A case from the late seventeenth century might indicate changed practices and ways to overcome the neighbourhood’s concerns about sharing out resources. Andre Aichner, carpenter in Sonnenburg, had asked the sovereignty for permission to build a cottage and garden on a piece of common land in Sonnenburg.<sup>45</sup> In 1690, the convent granted his petition on condition that he paid an annual due of one Gulden to the sovereignty. In 1693, a declaration (*Revers*) was drawn up in which Aichner promised to fulfil all the conditions asked by the sovereignty: to pay the annual dues, keep up the buildings, undertake no changes without permission, and grant the sovereignty pre-emption rights in case he wanted to sell the property. To the neighbourhood he promised to conduct himself well when keeping livestock, and to respect the community and the commons; should he or his heirs misuse any of the communal use rights and harm the neighbourhood, he would be punished by banishment from the court district. He subjected himself to the duties of a farmer as was customary in the court district and according to territorial law. The declaration was drawn up and sealed by the manorial judge, remarkably in the presence of the whole neighbourhood of the village of Sonnenburg. In this case, sovereignty and community came to a compromise and ascertained their privileges by demanding this declaration. The sovereignty secured its incoming dues and its ultimate right over the property, but also agreed to expel the carpenter should he violate the community’s conditions; the neighbourhood defended its power over the distribution of resources. Its cautiousness might have been a response to rising pressure on resources stemming from population growth. The carpenter, on the other hand, had to manoeuvre

41 For Silesia, see for example Forster/Maegraith 2015; for Bohemia, Zeitlhofer 2014.

42 As reference on the debates on communal rights, their protection by the community and exclusion of others see, for example, Brakensiek (2000); Grüne/Hübner/Siegl 2015; Siegl 2017; Warde 2013.

43 TLA, Stift Sonnenburg, Fasz. XIV Position 1 (1566).

44 For an example in Eastern Switzerland, where the community controlled usage rights and obligations probably in reaction to increased pressure on resources due to population growth and commercialisation, see Sonderegger, 2019.

45 TLA, Stift Sonnenburg, Fasz. XIV, 1552-1780, Pos.1, Kart.23, 12. May 1693.



between the two, agree to all conditions and only then was able to build himself a cottage and ensure his livelihood.

## Conclusion

It is worth noting, that Russ was married and had family, although he was unpropertied. As we have seen, the Tyrol law code allowed marriages of unpropertied couples and the court records show that this was also practiced in the sixteenth and seventeenth century. Aichner was probably also married although this was not explicitly stated. Of course, more research needs to be done to learn more about the changes in property and social structure in this area for the seventeenth and especially the eighteenth century. A census in Tyrol from 1785 suggests not only population growth but also a stark change in the social structure. In the principality of Brixen, for example, with three towns and 135 villages as well as rural areas, 45% of the counted men were cottagers, and Jäger's result for the Gader valley in 1780 showed over 34% of cottages (Egger 1880: 118-119; Stolz 1949: 209; Jäger 2005: 132). The underlying demographic, social and economic changes evoke further questions: Did this affect practised patterns of succession and access to alternative livelihoods? Did increasing landlessness have an impact on marriage decisions?

For the sixteenth and seventeenth century, it can be demonstrated that people made use of their options and available alternatives. Men and women who were excluded from succession were partaking in the land market, buying cottages, and earning their livelihood with their labour. The property structure was more flexible and heterogenous than the older historiography suggested leaving economic niches open. But this flexibility and resourcefulness of women and men was dependent on negotiations with the neighbourhood and their interest in safeguarding the sharing out of resources. Cottagers did not have a strong voice in the neighbourhood which shows how land ownership and access to rights of land use was also linked to social status. The acquisition of forest and pasture rights for new cottages, for example, had to be negotiated not only with the sovereignty, but with the property-owning neighbours who at the same time were the prioritised owners of the common rights. The rising number of cottages in this period could indicate concessions to increasing pressure on resources. The law created a fairly flexible framework, inheritance practice and marital property law determined resource distribution, but changes had to be negotiated with the community and here crucial aspects such as gender, kinship, and social standing came into play. Landlessness as a historical lens reveals a more complex and changing social structure.

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