

Excerpt from:

Vierteljahrschrift für Sozial- und Wirtschaftsgeschichte – Beihefte 253

## Busy Tenants

*Peasant Land Markets in Central Europe*  
(15<sup>th</sup> to 16<sup>th</sup> Century)

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Franz Steiner Verlag

2021

## Table of Contents

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THOMAS ERTL / THOMAS FRANK / SAMUEL NUSSBAUM

Introduction ..... 7

JOHANNES KASKA

The Influence of Institutional Factors on Land Transactions

*An Analysis of the Practice of Partible Inheritance and Tenancy in Common  
in the Lambach Estate in Late Medieval Austria* ..... 15

SAMUEL NUSSBAUM

Counting Land Transactions

*The Perils and Gains of Quantitative Approaches to Late Medieval Land Markets,  
Tested on Wine-Growing Villages Near Vienna, 1454–1513* ..... 45

BIRGIT HEINZLE

Transactions Intertwined

*Land Transfer Among Tenants in the Aflenzen and Veitsch Estate  
(Upper Styria), 1494–1550* ..... 75

THOMAS ERTL

Vienna's Wine

*Urban Vineyard Possessions Around 1400 AD* ..... 109

THOMAS FRANK

The Tenants of the Hospital Santa Maria dei Battuti, Treviso, in the 15<sup>th</sup>  
and Early 16<sup>th</sup> Century ..... 127

TOMÁŠ KLÍR

Land Transfer in a Late Medieval City State

*Cheb Region 1438–1456* ..... 151

JANINE MAEGRAITH

Selling, Buying and Exchanging Peasant Land in Early Modern

Southern Tyrol ..... 193

EMMANUEL HUERTAS

Des sociétés en mouvement

*Les marchés de la terre en Europe centrale (XV<sup>e</sup>–XVI<sup>e</sup> siècle)* ..... 231

# Selling, Buying and Exchanging Peasant Land in Early Modern Southern Tyrol<sup>1</sup>

JANINE MAEGRAITH

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**Abstract:** Recent research on medieval and early modern developments of 'land markets' has shifted the focus away from Northwestern Europe and revealed a vivid picture of varied land transactions all over Europe. At the same time, the approach to markets in history has changed, questioning the dichotomy between pre-modern and 'modern' market societies. In this contribution, an open definition of 'land markets' is adopted. Research on early modern Southern Tyrol reveals a high frequency of land sales and exchanges, and the analysis of a sixteenth-century case study from the Mühlwald valley highlights important aspects of what seems to have been an active 'land market' with few institutional restrictions and the use of various contractual instruments and financing opportunities. The transactions reveal a strong link between credit and land as well as credit and kinship. Thus, a distinction between 'commercial' and 'non-commercial' transactions would overlook their interconnectedness; this contribution proposes a more comprehensive concept of land markets.

**Keywords:** Early Modern Period, Land Transactions, Ownership Rights, Financing, Kinship, Peasants, Social Status, Gender, Southern Tyrol

## Introduction

This contribution is based on the finding that there was a surprisingly high frequency of land sales and purchases in early modern Southern Tyrol. The following analysis

- <sup>1</sup> The paper is based on analysis done in the context of the research project *The Role of Wealth in Defining and Constituting Kinship Spaces from the Sixteenth to the Eighteenth century* (P 29394), financed by the Austrian Science Fund (FWF); URL <<https://kinshipspaces.univie.ac.at/en/>>, accessed on 26 September 2020. See also Lanzinger, Maegraith, "Vermögen als Medium". I would like to thank Birgit Heinzle, Margareth Lanzinger, Michael Maegraith, Craig Muldrew, and especially the reviewers for their valuable comments and suggestions.

of a sixteenth-century case study with cross-linkage between many purchase and exchange contracts highlights important aspects of what seems to have been an active 'land market' in early modern Tyrol. The questions will centre on how such a buoyant land market was possible, who participated in it, what the legal and social framework of land transfers was, how they were facilitated, and what this can tell us about the early modern Central European countryside and its social order.

The case study serves to address the methodological debate surrounding early modern markets and particularly land markets where landed property was transferred. Following the explicit suggestion by Josef Ehmer and Reinhold Reith that we need to overcome the conceptual dichotomy between modern and early modern markets, I employ an open definition of markets in early modern Europe.<sup>2</sup> In response to Karl Polanyi, Craig Muldrew also suggested in his work on the anthropology of the market that a dichotomy between traditional and market societies conceals the fact that many features of the latter were already present in medieval and early modern times. In his study on early modern England, he regards market exchange as the mode by which individuals bought and exchanged goods, and by which they entered into contracts.<sup>3</sup> This also recognises what Shami Ghosh termed the rise of market dependence along with a rise in monetisation and credit dependence in rural economies in England as well as in Southern Germany.<sup>4</sup> If we leave the ideal of a 'modern' market society behind and approach early modern economies more comprehensively, as was also discussed at the international workshop in Pavia, then we can analyse such economies in their social, political, legal, familial and especially regional contexts.<sup>5</sup> Giovanni Levi and David Warren Sabean have shown the potential of such an approach and demonstrated how entangled commercial and kin-related exchanges were.<sup>6</sup> In their work, the importance of kinship leads to a more critical review of the land-family bond debate in England, and Levi points out that it is not so much a question of who bought and sold, but how transactions were concluded and how prices were negotiated between buyer and seller.<sup>7</sup> Markus Cerman takes Levi's criticism further and stresses that it is not possible to maintain the (or rather, another) dichotomy between commercial and kinship transactions or land market and inheritance practice. Instead, Cerman suggests focusing on

2 Ehmer, Reith, "Märkte"; This is in contrast to the theoretical economic definition, where the supply and the demand side meet and where complex decisions determine the price, see Jeggle, "Konstituierung", pp. 13–16.

3 Muldrew, "Anthropologie", pp. 172–173.

4 Ghosh, "Rural Economies", p. 265.

5 *Trading Peasant Land: Patterns and Strategies of Land Transactions in Late Medieval Central Europe and Northern Italy*, 22.11.2018–23.11.2018 Pavia, in H-Soz-Kult, 11.01.2019; URL <[www.hsozkult.de/conferencereport/id/tagungsberichte-8053](http://www.hsozkult.de/conferencereport/id/tagungsberichte-8053)>, accessed on 7 September 2020.

6 Levi, *Erbe*; Sabean, *Property*.

7 Levi, *Erbe*, pp. 89–91.

regional differences and institutional contexts.<sup>8</sup> I will apply these ideas using a case study from Tyrol. It will show a high number of transactions between kin and non-kin that use different kinds of contracts and payment strategies, and will help to explore early modern transactions that were rooted in a complex of legal, social, familial and economic practices. It will also serve to question the assumption that the evolution of exclusive ownership rights and thus institutional changes were needed in order to make the development of a land market possible, as argued by Bas van Bavel and others.<sup>9</sup> Gérard Béaur and Jean-Michel Chevet have contended that such ownership rights barely existed, and that instead we have to acknowledge the variety of developments and contractual arrangements across countries and regions, and the adaptability of the historical actors.<sup>10</sup> This would not only include the analysis of other contractual land transactions, such as life estate arrangements (*Ausgedinge*), for example, in Birgit Heinze's case study, or tenancy in common, as described by Johannes Kaska, but also other forms of land use, such as leasehold, the importance of which is demonstrated by Thomas Frank in this volume.

In our aforementioned project *The Role of Wealth in Defining and Constituting Kinship Spaces*, we are looking at intergenerational and marital property transfers, transfers within and outside the nuclear family, arrangements of wealth, and disputes over property in early modern Southern Tyrol, from the sixteenth to the eighteenth century. Together with this, we examine access to the land market, as well as the broader perspective of how wealth was tied to kinship and entitlements. Such an approach incorporates an array of relevant transfers of wealth, aspects of legal arrangements and use of law. With this reciprocal understanding of kinship and wealth, we look at land markets in a broader sense, from sales and inheritance to usufruct and land use. This may reveal the possible effects of kinship as an economic factor, but also, conversely, how property affected kinship. We investigate whether kinship entitlements to wealth affected wealth transfer and distribution, and examine the options available to people who were excluded from succession, taking aspects such as gender, social status and access to the land market into account. We focus on people in towns, markets and rural areas who owned, inherited, bequeathed and sold houses, plots and whole farmsteads.

Geographically, I am focusing on two court districts, the town court of Brixen and the court district of Sonnenburg. Brixen was an independent prince bishopric, and Sonnenburg was a Benedictine nunnery in the Puster valley (Val Pusteria/Pustertal) with considerable, albeit not coherent, rural holdings consisting of four parts or departments: the large holdings of the court district of Enneberg, the department or the territory (*Amt des Landes*) with diversified holdings around Sonnenburg and St Mar-

8 Cerman, "Bodenmärkte", pp. 128–130, 148; Cerman, "Social Structure"; Levi, *Erbe*, pp. 89–90.

9 van Bavel, "Organization".

10 Béaur, Chevet, *Institutional Changes*, drawing on wide-ranging European historiography and research, and on the evidence and results of the contributions of the edited volume.

tin, then holdings in the Etsch and Eisack Valley, and the department of Mühlwald with holdings in the Mühlwald Valley, Lappach, Weißenbach and Michlreis (Taufers). The *Amt des Landes* and *Amt Mühlwald* are the focus of my research. They cover the villages of Sonnenburg, Pflaurenz and Fassing, and various holdings in the Ladin Gader Valley (Val Badia, with Untermoi, Welschellen, Weitental), in the Mühlwald Valley (Valle dei Molini), and Ahrntal (Valle Aurina, with Michlreis and Weißenbach).<sup>11</sup> The court books of the court of Sonnenburg contain the entries relating to both departments. The rural territory of the court district of Sonnenburg with its agricultural areas and villages, lends itself to the study of land transactions in the countryside.

The legal framework is defined by the Tyrolean law code (*Tiroler Landesordnung*); it was introduced in 1526 and augmented in 1532 and 1573 respectively. The law code was effective until the end of the eighteenth century. It regulated civil law, including inheritance and marital property, general property matters and lien (*Pfandrecht*) or mortgage rights and obligations.<sup>12</sup> In addition to the law code, the court districts followed their customary laws, although in most cases they were subordinated to the Tyrolean law code. In Sonnenburg, for example, some contracts contained references to both the territorial law of the County of Tyrol and the customary law of the convent of Sonnenburg (“nach dem Lanndtsrecht d[er] F[ürstlichen] G[rafschaft] Tyroll unnd des hochwürdig unnd löblich Gotshauß Sonnenb[urg] gebrauch, Sit unnd Herkhomen”).<sup>13</sup>

Our *main sources* are the so-called *Verfachbücher*, court books, in Tyrol.<sup>14</sup> The County of Tyrol was part of the Austrian house of Habsburg, and the administrative records were written in German. The court records mainly contain civil law cases. Commencing from the sixteenth century, they include various documents, copies of proceedings and sealed contracts on all property-related issues and changes of ownership, such as wills, inheritance proceedings, widowhood endowment contracts, deeds of purchase and exchange, lease agreements, arbitrations, marriage contracts and securities for marriage portions, to name but a few. However, these court books are not equivalent to land registers and do not show property distribution or acreage.<sup>15</sup> Equally, the *Urbare* or rentals of the sixteenth and seventeenth centuries focus on the dues and taxes

11 Baum, “Sonnenburg”, pp. 685–690; Loose, “Zur Siedlungsentwicklung”.

12 Pauser, Schennach, *Die Tiroler Landesordnungen*. Civil law such as inheritance was regulated in the *Tiroler Landesordnung* (from now on TLO) 1573 book 3; mortgage and lien in TLO 1573, 2.63–85.

13 Südtiroler Landesarchiv (from now on SLA), Sonnenburg, *Verfachbuch* (from now on VfB) 4, 1580–1581, no fol., 28.9.1581. See also Hagen, Lanzinger, Maegraith, “Verträge als Instrumente”, pp. 207–209.

14 For the areas under study, these are located in the SLA.

15 Beimrohr, *Brief*, pp. 97–101; Hagen, *Fürstliche Herrschaft*, pp. 151–156.

on the landed properties and omit sizes. In the court district of Sonnenburg, sizes are only given in the eighteenth-century tax registers.<sup>16</sup>

For Sonnenburg, I extracted all relevant cases for the sixteenth century and the years 1610 to 1612, and for Brixen, cross-sections for the sixteenth century.<sup>17</sup> For the seventeenth and eighteenth century, I extracted all cases concerning wealth transfer for the sample years 1670 and 1780. So far, the database on Sonnenburg and Brixen, for example, comprises about 1,168 entries (Brixen 386, Sonnenburg 782). The documents indicate a broad range of different wealth groups. In both places, the values negotiated in the documents range from zero to 10,000 Gulden, with a median of 186 Gulden in Sonnenburg and 206 Gulden in Brixen.<sup>18</sup> The majority of cases dealt with the lower value group of below 300 Gulden: 60 % in Sonnenburg and 61 % in Brixen, of which 30 % negotiated wealth under 100 Gulden in Sonnenburg and 24 % in Brixen.<sup>19</sup> This shows that people with fewer means also used the court, especially in rural Sonnenburg, even if facing legal charges – except for the very poor. Unpropertied people are mentioned, for example in inheritance cases or as servants, in leasehold contracts as farmhands or lodgers, or as illegitimate children excluded from inheritance; but all in all, people without much property remain underrepresented because they had no or very little property to negotiate.<sup>20</sup> To put the values into perspective, around the year 1600, a day labourer could earn about 12 Kreuzer per day in the court district of Sonnenburg. 60 Kreuzer amounted to one Gulden, so he would have to work five days to earn one Gulden.<sup>21</sup> In the court district of Sonnenburg, a small cottage had a median price of 30 Gulden, and some could even be purchased for 13 Gulden, for example, the equivalent of 65 days' work for a day labourer.

Looking at the cases of the rural court of Sonnenburg, the frequent occurrence of commercial land transactions visible in purchase and also exchange deeds, often concerning the same property being resold after only a short time, is striking. Taken together with inheritance contracts, *inter vivos* transfers, retirement and leasehold

16 See, for example, SLA, Sonnenburg, 3 Steuer Kataster 1779, size of real estate in *Jauchert* and *Klafter*. On changes in the approach to tax calculation, see Zörner, *Besitzstruktur*, pp. 4–8.

17 SLA, Sonnenburg, *Verfachbuch* (VfB) A 742, 1568–1573, VfB 1–15, 1573–1600, VfB 18, 1610–1612; Brixen, VfB 1528, 1530–1539, 1540, 1574, 1600.

18 The values stem from all kinds of negotiated wealth, from estates in inheritance proceedings and inheritance entitlements, marriage portions, debts or payments, securities, widowhood settlements, to real estate prices and many other forms.

19 Sonnenburg 554 cases: 0–100 fl = 195, 101–200 = 109, 201–300 = 56; Brixen 280 cases: 0–100 fl = 76; 101–200 = 63, 201–300 = 32.

20 Maegraith, *Vermögen der Unvermögenden? Strategien bei ungleichen Besitzverteilungen im südlichen Tirol des 16. Jahrhunderts*, paper given in Vienna, History Faculty seminar series *Geschichte am Mittwoch*, 21.6.2017; Maegraith, “Landlessness”.

21 In Sonnenburg, one case indicates that the daily rate for a day labourer was 12 Kreuzer, SLA, Sonnenburg VfB 18 (1608–1612), no fol., 6.8.1611. In Brixen, this could have been slightly more: Wolfsgruber, “Brixner Hand- und Tagwerkerlohnordnung”, pp. 709–710; the rate varied between 5 and 16 Kreuzer according to type of work, season, and whether food and drink was included or not.

contracts, the land market merged intra-familial with commercial transactions and appeared incredibly buoyant.<sup>22</sup> The interlinkage of the data reveals whole networks of transfers, where properties changed hands within short time periods and amongst a circle of probably unrelated sellers and buyers. One such case serves as an illustration of this highly dynamic practice of transactions. It took place in the Mühlwald Valley during the second half of the sixteenth century and has been reconstructed based on the court records.<sup>23</sup>

### Lease, Exchange and Sale of Agrarian Properties in the Sixteenth-Century Mühlwald Valley

In 1572, Dionisus Scherlehner leased his *Hof* called *Holzlehen* in the Mühlwald Valley to Balthas Schweingras.<sup>24</sup> The fields and meadows were properly fenced, and the property owed dues and rent to the convent of Sonnenburg. The leaseholder would also receive all the existing hay and straw. The leasehold contract specifies that Balthas Schweingras would lease the *Hof* for 15 years against an annual payment of 245 litres each of rye, barley and fodder to the lessor, payment of all taxes and dues, and the proper maintenance of the property.<sup>25</sup> However, Dionisus Scherlehner excluded the use of the meadow and pasture called *Köfele* from this contract; he had bought these himself, and they were not part of the *Hof*. Scherlehner had possessed *Holzlehen* as hereditary land tenure (*Baurecht*) and was thus free to sell, exchange or lease it, or to leave it to his children.

However, only five years later, in February 1577, Dionisus Scherlehner sold *Holzlehen* to Urban Niderweg for 315 Gulden, ten years before the leasehold was supposed to end. The only reason given for the sale was that he had the opportunity to do so and hoped to benefit from the sale. The seller granted Niderweg the right to graze

22 A similar argument is made in Béaur, Chevet, *Institutional Changes*, p. 29.

23 On the Mühlwald Valley and its *Höfe*, see also Santifaller, "Geschichte"; Richter-Santifaller, "Hofnamen". I have used the names as given in the contemporary deeds. However, these were slightly altered over time, and in the 19<sup>th</sup>-century cadastre map, they were registered as: Hölzel (*Holzlehen* unter Pieterstein), Schörlechner, Röderlechner, Klamm, and Schweingraser.

24 The documents in the court records refer to properties as "Baurecht und Gerechtigkeiten", employing the legal term for the property and its rights as hereditary land tenure. This is then followed by the name of the property and a description. In this case study, the properties concerned are farmsteads or *Höfe*. A *Hof* usually comprised buildings (house, stables, barn, baking house, bathhouse, courtyards, etc.), land (gardens, arable fields, meadows, mountain pastures), and access to forest and wood, water, and commons and common rights. The English expressions 'farmstead' or 'full holdings' do not fully describe the meaning. To avoid inaccuracy, I have retained the original expression *Hof*. See also Ghosh, "The Imperial Abbey of Ellwangen", esp. pp. 192–194.

25 SLA, Sonnenburg A 742 VfB, 1568–1573, no fol., 4.10.1572, no title. The property paid two Gulden to the sovereignty, taxes and tithe, and the lessee was to pay the lessor eight *Tiroler Star* [1 Star = 30.57 litres] of rye, barley and fodder each. On measurements, see Rottleuthner, "Mass"; Rottleuthner, *Localmasse*.

up to five cattle and 15 goats on his pasture according to the old deeds. The purchase included plough, harrow, *Stifler* (stakes to dry sheaves on) and a house table. The previous leaseholder Balthas Schweingras was not mentioned in this contract, so we do not know whether he still worked the land or not. He might have terminated the leasehold himself in order to move on. Urban Niderweg, also from the Mühlwald Valley, was to pay 200 Gulden in May the same year, followed by ten Gulden annually until the full sum was paid off. He guaranteed the debt through all his and his designated heirs' immovable and movable current and future property.<sup>26</sup>

A document from March 1578 reveals more information about Dionisus Scherlehner. In this he is described as being widowed with three young children. The document refers to an inheritance contract from 1560 in which Dionisus was declared the successor to his father's property, *Hof Scherlehen*. Dionisus had compensated his half-sisters and half-brothers from a second marriage of his father, and they had in turn renounced any further entitlements to the property. Now, in 1578, this renouncement (*Fürzicht*) was renewed at court to avoid any possible future disputes.<sup>27</sup> But why was this done 18 years after the inheritance contract was drawn up? The sixteenth-century urbarium or rental (*Urbar*) shows that the *Höfe Holzlehen*, which Dionisus had sold the previous year (1577), and *Scherlehen* were neighbouring properties, and the rental from 1621 suggests that the *Holzlehen* property belonged to the owner of the *Hof Scherlehen*.<sup>28</sup> In 1560, Dionisus probably became successor to both, and maybe his siblings did not agree with the sale of *Holzlehen* in 1577. Significantly, one of his half-sisters, Margretha, was married to the miller Balthas Schweingras, who had previously leased *Holzlehen*. Maybe she had an interest in the property herself, or it had become a matter of renewed inheritance negotiations.

Only a few months after Scherlehner sold *Holzlehen*, in June 1578, Urban Niderweg exchanged his recently purchased *Holzlehen* property with Balthas Schweingras' *Hof* called *Schweingras* in the adjacent court of Taufers. Balthas did this in conjunction with his wife Margreth Scherlehnerin, the half-sister of Dionisus. The exchange contract specifies that they had bought the *Hof Schweingras* in 1577 from Hans Mesner, formerly Schweingras, and his wife Agnes Welhin. This means that Schweingras bought the property in the year his former leasehold was sold by Dionisus Scherlehner and was probably no longer working on *Holzlehen* by then. Significantly, neither exchanging party had been in possession of their purchased properties for more than one year. Since *Hof Schweingras* was deemed better and larger, Urban Niderweg agreed to pay an

26 SLA, Sonnenburg VfB 2, 1576–1577, no fol., 22.2.1577, no title.

27 SLA, Sonnenburg VfB 3, 1578–1579, pp. 46–50, 17.3.1578, *Der Scherlehner Entschlagung*. The inheritance contract from 1560 could not be found.

28 Tiroler Landesarchiv (from now on TLA), Stift Sonnenburg, Fasz. XXIII, Pos. 2, Urbar 1562: Urbare 108/60, Mühlwald 1562, no fol.; Fasz. XIX, Pos 5, Urbar 16. Jh: Urbare 108/54, Weißenbach, Lappach, Mühlwald (probably 1621 f.), no fol.

extra 210 Gulden to cover the difference in value. He apparently paid in cash, and the parties were even.<sup>29</sup> With this, Balthas and his wife now owned the *Baurecht Holzlehen* that Balthas had leased in 1572.

However, Urban Niderweg did not hold on to *Hof Schweingras* for long. Two years later, in March 1579, he exchanged it with Ruprecht Clamer's *Hof Clam*, also in the Mühlwald Valley and in the neighbourhood of the *Scherlehen* und *Holzlehen* properties.<sup>30</sup> Niderweg's *Hof Schweingras* was estimated to be worth 500 Gulden, and the exchanged livestock and farming equipment 25 Gulden. *Clam* was estimated to be worth 200 Gulden, and Ruprecht Clamer agreed to pay the difference with 325 Gulden (including the 25 Gulden for the movables). Significantly, Ruprecht Clamer could not be present in person due to his old age and was instead represented by his son.<sup>31</sup> The question why he then decided to 'upgrade' to a larger property remains unanswered. Perhaps he invested in it for his son to take over at some point in the future. But, according to a purchase contract from September 1581, Ruprecht Clamer bought the *Clam* property back from Urban Niderweg in 1580. This purchase contract specifies that Ruprecht Schwarzenbach Clamer (father or son?) had now sold *Clam* to Erasmus Rederlehner for 310 Gulden – significantly more than its estimated worth in 1579. Although the existent hay, straw, wood, household goods and farming equipment was included in the price, this alone does not explain the increase in price.<sup>32</sup> Unfortunately, the contract does not reveal where Niderweg, who sold the property back the year before, went from there.

Meanwhile, in March 1581, the couple Balthas Schweingras and Margreth Scherlehnerin sold *Hof Holzlehen*, which they had recently exchanged in 1577, back to Margreth's brother Dionisus Scherlehner for 300 Gulden, which was paid in cash.<sup>33</sup> Dionisus was said to have been a *Kranebiter* in the neighbouring court of Taufers – presumably he had been in possession of the *Kranebiter Hof* there and had now decided to buy back *Holzlehen*. And indeed, two weeks later, in April 1581, Dionisus Scherlehner bought back *Hof Scherlehen* as well for 900 Gulden from Caspar Kranebiter, who said that he had moved onto this property in May 1580 – just under a year earlier. The two might have exchanged their properties in May 1580, but I have not found a contract yet. Scherlehner still owed Kranebiter 100 Gulden from this exchange.<sup>34</sup> The negotiated instalments would have continued until around 1590.

29 SLA, Sonnenburg VfB 3, 1578–1579, pp. 183–187, 12.6.1578. Unfortunately, the month of the previous sale is not recorded, only the year 1577.

30 *Clamer* is listed after *Scherlehen* and *Holzlehen* in the rentals.

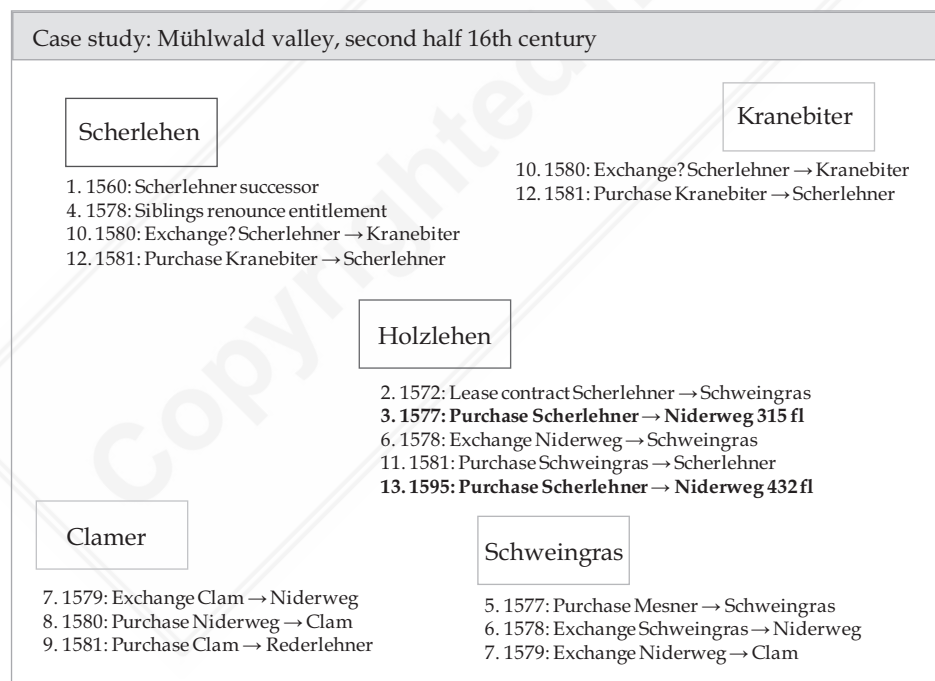
31 SLA, Sonnenburg VfB 3, 1578–1579, pp. 443–445, 30.3.1579. He could not be present "Alters und Leibschwachheit halb". Unfortunately, the name of his son is not given.

32 SLA, Sonnenburg VfB 4, 1580–1581, no fol., 9.9.1581.

33 SLA, Sonnenburg VfB 4, 1580–1581, no fol., 22.3.1581.

34 SLA, Sonnenburg VfB 4, 1580–1581, no fol., 5.4.1581.

For the next 14 years, I found no documents referring to *Holzlehen*. But in April 1595, Dionisus Scherlehner – in the meantime once again in possession of the *Holzlehen* property – sold this to Urban Niderweg, together with the pasture entitlements, now for 432 Gulden.<sup>35</sup> With this he would presumably have made a profit of 132 Gulden, similar to Ruprecht Clamer previously. Urban Niderweg was now, after a myriad of transactions, in possession of the *Holzlehen* property again, which he had first bought in 1577.<sup>36</sup> However, either the purchase was not realised or at some point Scherlehner purchased *Holzlehen* back, because after his death in 1604, the inheritance proceedings determined that the older son would receive *Hof Scherlehen* and the younger one *Holzlehen*, while his seven daughters as ceding heirs received a compensation in money and goods.<sup>37</sup>



35 SLA, Sonnenburg VfB 13, 1595–1596, no fol., 8.4.1595.

36 It is possible that he downsized again due to old age. It was probably the same Urban Niderweg and not his son, as I have not found an inheritance case for him. There was a *Maierhof* called *Mayr zu Niederweg* in the Mühlwald Valley, but the proprietors were called Mayr rather than Niderweg, so a connection to Urban Niderweg could not be verified. A *Maierhof* was the largest type of holding, former demesne lands, but the term *Maierhof* developed into the name of the holding, see Stolz, *Rechtsgeschichte*, pp. 206–207.

37 SLA, Sonnenburg VfB 17, 1603–1607, no fol., 27.3.1604. The difference in size between the two properties was balanced between the successors with movables, livestock, grain and debt repayments.

This entangled case shows how a small group of people was involved in selling, buying and exchanging entire *Höfe* in the same area. Some *Höfe* even circulated between the same people. Whereas it is possible to establish a kin relationship between Scherlehner and his brother-in-law Schweingras through Scherlehner's half-sister Margareth, the same cannot be said for the other people involved. They were all more or less neighbours, but no kin relations are mentioned in the documents or are identifiable by cross-linkage. It is striking that some *Höfe* changed hands after less than one year in possession. Financing such transactions seems not to have been an issue, and debts and mortgages were moved with the properties from seller to buyer by contract. Sometimes payments as high as 300 Gulden were even made in cash. Also, most transactions were made by propertied persons, presumably with the exception of Schweingras. In this case, it is therefore unlikely that land ownership was a means of achieving higher social status. How can this case study be explained and contextualised? What made such dynamic land transfers possible?

### Representativeness

The level of entanglement and frequency of transactions suggests, at first sight, that this case is exceptional rather than representative of a regional pattern. However, high numbers of purchases and exchanges can be found in other regions as well. In the court district of Sonnenburg, purchase contracts make up a significant part of the whole sample. In Sonnenburg, 30 % of all extracted cases for the period 1541–1600 and 1610–1612 were land purchase contracts, and about 5 % land exchange contracts (see Table 1). Exchange and sales contracts together make up 35 % of all extracted cases, which include inheritance proceedings, widow(er) contracts, guarantees on marriage portions, wills, and other contracts pertaining to property transfers. The 185 documents negotiating succession, such as *inter vivos* transfers and inheritance, constitute only a slightly lower proportion: 29.2 %.<sup>38</sup> This points to the major importance of succession and inheritance, especially when taking into account that not all cases of succession were copied into the court books.<sup>39</sup> The fact that the proportion of exchange and sales contracts is

38 The majority of widows' compensation contracts were negotiated on the same day as the inheritance compensation of siblings and the settlement of succession. I therefore did not include widows' compensation contracts in that number.

39 The quantitative results are initial results; all percentages are rounded up. That not all cases of succession were copied into the court books (or, in some cases, that the contracts were compiled and then bound into a book) can be seen with some references to *post mortem* transfers that are not traceable. The number of transfers after death is therefore probably higher than the numbers suggested by the court books.

not exceptional for Central Europe in this period is shown in similar findings by Birgit Heinzle in this volume: 30.4 % for the Styrian estates Aflenz and Veitsch.<sup>40</sup>

**Table 1** Number and percentage (rounded) of types of cases in Sonnenburg, 1541–1600, 1610–1612<sup>41</sup>

Type	Number	%
Leasehold	36	5.7
Exchange	32	5.0
Purchase	191	30.1
Transfer, <i>inter vivos</i>	50	7.9
Inheritance cases	39	6.2
Inheritance compensation siblings	96	15.1
Compensation widow	74	11.7
Compensation widower	18	2.8
Guarantee on marriage portion	35	5.5
Wills	54	8.5
Repurchase	9	1.4
	634	100

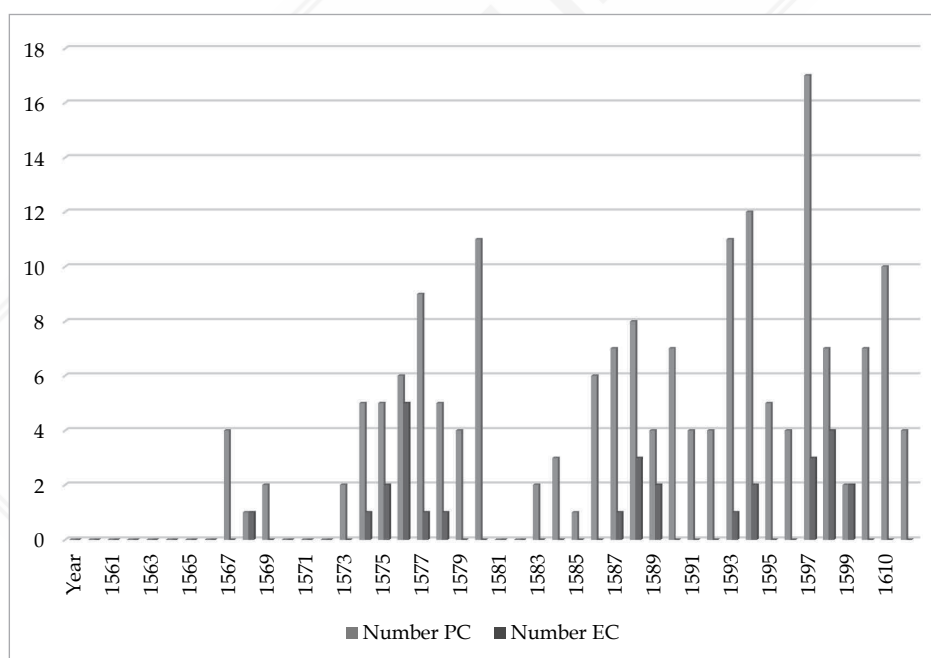
The purchase deeds from the court of Sonnenburg cover a wide range of real estate, from cottages, houses, gardens, fields and meadows to *Höfe* and even parts of *Höfe*. The exchange contracts seem to be a phenomenon of peasant land transactions in this area, as they concerned mainly *Höfe* and pieces of land, with the exception of three cases in the villages of Sonnenburg and Pflaurenz where houses without farmland were part of the transaction. In the town of Brixen, however, I could find only one such deed. Here, a vineyard was exchanged for a house with garden.<sup>42</sup> The case described, or the network of transactions, is representative in the sense that it demonstrates a mixed practice, with the use of exchange contracts alongside purchases and leasehold agreements. This fits with the results of the whole sample, where more than a third of all extracted cases were purchase and exchange transactions. This points to a frequent activity on the land market, confirmed by similar chains of interlinked sales and exchanges in

40 See Heinzle in this volume, Table 1. However, there is a striking difference between the proportion of wills here and the proportion presented by Heinzle, but especially also by Thomas Ertl's case in Vienna around 1400 (approx. one third of the entries are wills), see Ertl in this volume.

41 SLA, VfB Sonnenburg, A 742, 1540–1558; 1559–1563 missing; A 742, 1564–1573; VfB 1–4, 1573–1581; 1582–1583 missing; VfB 5–15, 1584–1600; VfB 18, 1610–1612.

42 SLA, Brixen Stadtgericht VfB 61, 1574, fol. 187v–189r, 14.6.1574. In the surrounding rural area of Pfeffersberg, three *Höfe* were exchanged.

the sample, where holdings were transferred several times within a short time period. Figure 1 illustrates the rising frequency and number of purchase and exchange contracts (PC and EC) towards the end of the period under study. This mirrors a rise in the survival and registering of written contracts, yet we might also wonder whether this could point to changes relating to debt management, where property transfers were used to defer debts or generate cash, or to speculation on the land market, or whether it was linked to mobility, either spatially to another (in many cases better) property, as discussed by Tomáš Klír, or into different sectors.<sup>43</sup> It can also be seen that both instruments were used throughout the period under study but with a higher proportion of exchange contracts in the 1570s. What distinguished purchases from exchanges? Did they have distinct characteristics, and what was their legal basis?



**Figure 1** Number of purchase and exchange contracts, court district of Sonnenburg, 1560–1600, 1610–1612<sup>44</sup>

<sup>43</sup> See Klír in this volume, esp. Table 11. There is not enough evidence to link this to population growth in this area. I would like to thank Shami Ghosh for his helpful pointers here.

<sup>44</sup> The gaps indicate missing years. SLA, VfB Sonnenburg, A 742, 1559–1563 missing; A 742, 1564–1573; VfB 1–4, 1573–1581; 1582–1583 missing; VfB 5–15, 1584–1600; VfB 18, 1610–1612.

## Purchase deeds

The purchase deeds extracted from the Sonnenburg court books contain the date of the purchase, information on the seigneurial consent, the names, sometimes occupation, and place of residence of the selling and buying parties, the type of property with a brief description, its location, any dues and obligations on the land, the boundaries, the negotiated price and the payment terms. Not all deeds contain the same amount of information. The later deeds in the seventeenth century, for example, contain a higher density of detail except for the payment terms. Sometimes the contracts describe the context of the sale, such as inheritance cases, insolvency, or whether the sale stemmed from an earlier purchase or exchange. The land sold and the entire wealth of the buyer acted as a guarantee for the seller. In the presence of at least two, usually three to four witnesses, the deed was sealed by the judge or his representative, copied or bound into the court book, and the original was kept by the buyer at home. The old deeds were transferred with the land to the new owner, functioning as an additional guarantee, and the seller relinquished all previous entitlements guaranteed by the deeds to the new owner. This was also described in Scherlehner's purchase deed when he bought back his *Hof* in 1581.<sup>45</sup> Thus, the deeds offer varying but valuable information on the personal, legal and financial background of the transaction. Unfortunately, however, the deeds do not give information on the size of the property.

Buyers and sellers had to pay the court fees (for drawing up the deeds and expenses) and land transfer fees (*Ab- und Aufzugsgeld*). However, they are only mentioned in passing without giving the actual value, so it is impossible to analyse whether those costs hampered access to the land market. Some deeds mentioned whether both parties had to pay the land transfer fees in equal parts, or whether only the buyer had to pay them. One purchase contract from 1670 stated that it was hoped the fees would not be payable because buyer and seller were verifiably related.<sup>46</sup> This was in keeping with the law code, according to which transfers between kin were exempted from the land transfer fees. The law also specified the value of the fee: below a purchase price of 50 Gulden no fees were payable, up to 100 Gulden 3.3 %, and above 100 Gulden 1.67 % of the purchase price had to be paid to the sovereignty.<sup>47</sup> This potentially amounted to a significant income for the sovereignty, in this case the abbess and convent of Sonnenburg.

45 SLA, Sonnenburg VfB 4, 1580–1581, no fol., 5.4.1581: “Gwerschafft wiert hierin mit Überantwortung der alten Brieflichen Gerechtigkhaiten gelaist, daran sich khäuffer Wolbenüegt unnd dem Verkäuffer aller deren Gwerschafft ledig und loß Zeln thuet”.

46 SLA, Sonnenburg VfB 39, 1669–1670, 172v–174r, 7.9.1670.

47 Stolz, *Rechtsgeschichte*, pp. 204–205; TLO 1573, 5.6, *Ab vnd Aufzug*.

### Exchange contracts

I have found very little on land exchange contracts in the historiography on early modern Europe. However, this is different for medieval studies, where far more work on exchanges has been done, revealing their broad dissemination throughout medieval Europe.<sup>48</sup> They were a common instrument, even once the monetary economy had developed. In terms of economic practice, it is significant that in medieval understanding there was no obvious legal difference between exchange and purchase contracts, whereas social and economic differences are evident.<sup>49</sup> The contracts analysed for the court district of Sonnenburg confirm this view, although the *Tiroler Landesordnung* does not contain a specific paragraph on land purchase or exchange contracts in its final version of 1573. The contractual practice allows a closer look into the use of exchanges and purchases. Exchanges were based on objects of either the same or differing values, in which case it was necessary for one party to equalise the difference in value between the exchanged objects and pay an additional amount. Technically, the exchange then becomes a purchase.<sup>50</sup>

The case study confirms this: the contractors estimated the value of their property, probably based on former purchase contracts, and on the basis of this the difference was calculated and settled to be paid. In the 29 exchange contracts I found (between 1568 and 1612), payments were negotiated between 20 and 1,200 Gulden, and the values of the exchanged properties were not equal. Instead, the respective land holding was used as collateral and less capital was needed to settle the equalising 'purchase' price. This represented an advantage to both parties involved, as significantly less money or credit was moved. Only in one case was it stated that no payment was needed, since soil was exchanged for soil (*Erdreich um Erdreich*).<sup>51</sup> In form and content, therefore, exchange contracts resembled purchase deeds, but they differed in terms of the social practice, such as advantageous use of collateral and, as will be shown later, the timing of the transfer.<sup>52</sup> As historical documents, exchange deeds have the advantage that they convey the whereabouts of both parties, in contrast to purchase deeds, where the seller's whereabouts are not revealed. Dana Štefanová arrives at similar results for early modern Frýdlant in Northern Bohemia. She finds exchanges of farmsteads with payments adjusted for the differing size and value of the properties and with the same conditions as in purchases.<sup>53</sup> Štefanová takes the presence of exchange deeds as one

48 Fees, Depreux, *Tauschgeschäft*; see also cases mentioned in Ertl, "Small Landlords", p. 24.

49 Emmanuel Huertas emphasised this at the workshop in Pavia.

50 On eighteenth-century definitions, see Zedler, *Tausch*, col. 430–431, and on the nineteenth century, Krünitz, *Vertrag*.

51 SLA, Sonnenburg VfB 8, 1589, no fol., 9.9.1589.

52 Birgit Heinze, for example, does not distinguish between purchase and exchange deeds in her analysis, see her contribution in this volume.

53 Štefanová, *Erbschaftspraxis*, pp. 92–93.

indicator for the existence of a land market, because the parties negotiated the adjusting price, and I would agree with this. But, the exchange transaction as a social and economic practice is also particularly revealing. The presence of exchange contracts may indicate a comprehensive form of the land market with multiple practices and actors, commercial and familial alike. However, all transactions, commercial as well as familial, rested on the prevailing concept of ownership.

### The concept of ownership

In Europe, multiple property rights existed and were sometimes subject to different regional variations; in fact, the very definition of 'ownership' differs widely across European regions. To understand the practice of ownership or property, it is crucial to make interregional comparisons. Thus far, the lack of precise definitions of local property rights has proved a hindrance to comparative research.<sup>54</sup> For the German-speaking territories, Katrin Gottschalk has synthesised the legal premises for the succession of ownership and offered an exemplary analysis evidencing the multiplicity of ownership rights, but also their interrelatedness with tenure as well as with inheritance rights.<sup>55</sup> In the County of Tyrol, as in other areas, land use was linked with dues and obligations, as it technically remained under the ownership and authority of the landlord (tenure). Only in very few cases did peasants 'own' some land. When Hans Mayrhofer in the Mühlwald Valley, for example, sold half of his alpine meadow to his brother in 1592, he characterised it as *frei aigen*, meaning the land was his own, unattached to sovereign entitlements (allodial property).<sup>56</sup> Mostly, however, the sovereignty owned the property, and the peasant possessed a *Hof* or the craftsman the house and garden. According to the rentals for the Mühlwald Valley, annual rents and dues had to be paid to the sovereign in cash and kind. However, some renders could be commuted into cash, a practice that has been legally sanctioned by the Tyrolean law code since 1532.<sup>57</sup> With this, hereditary land tenure (*Baurecht*) dominated, which gave the tenure holders

54 The need for precise definitions of property rights in different geographic regions was one important result stemming from the conference *Trading Peasant Land* and was emphasised by Emmanuel Huertas. See also Cerman, "Social Structure", Béaur, Schofield, Chevet, Pérez Pícazo, *Property Rights*.

55 Gottschalk, *Erbe*, pp. 90–92.

56 SLA, Sonnenburg VfB 11, 1592, fol. 201, 24.9.1592. On 'full ownership' and allodial property see Gottschalk, *Erbe*, p. 91.

57 TLO 1532 and 1573, 5.21; Stolz, *Rechtsgeschichte*, p. 204. For Mühlwald, this can be seen in the marginalia of the rentals, TLA, Stift Sonnenburg, Fasz. XXIII, Pos. 2, Urbar 1562: Urbare 108/60, Mühlwald 1562, no fol.; Fasz. XIX, Pos 5, Urbar 16. Jh: Urbare 108/54, Weißenbach, Lappach, Mühlwald (probably 1621 f.), no fol. It could be that this is characteristic for this specific area. For Untermoi, for example, a court record survives from 1577, where the landlord is demanding all outstanding rent payments in cash, indicating that here the dues and rents had already been commuted into

far-reaching rights over the disposal of their property.<sup>58</sup> However, all changes, such as sales, needed formal seigneurial consent. On this condition, the property was free to be possessed, cultivated, sold, exchanged, leased and inherited – with the exception of testamentary bequests, which were limited by law.<sup>59</sup>

This kind of hereditary land tenure had already established, by the late Middle Ages, property rights for peasants that enabled a fairly secure practice of property transfer, and probably facilitated greater flexibility within the land market.<sup>60</sup> In the case of Sonnenburg, for example, the seigneurial consent of the abbess of the convent of Sonnenburg had to be obtained. The wording would be, for example: “exchange with foreknowledge and gracious consent of the Reverend ruler Lady Catherine Abbess of Sonnenburg as seignory of the hereafter mentioned property” (“Vertauschen unnd verwexlen [...] mit Vorwissen unnd gnediger bewilligung der Hochwürdigen in Gott Fürstin unnd Frawen Frawen Kathrina Äbtissin zu Sonnenburg als über hernachbemelte Paurecht ordenliche Grundherrschaft [...]).<sup>61</sup> How difficult it was to obtain this consent is impossible to tell, as cases where consent was not granted do not appear in the court books. Given the high frequency of land transactions, though, denials of such consent might have been few. Also, the area under study is characterised by a relatively weak lordship that focused on the collection of dues; moreover, the fees connected to transactions formed part of the convent’s income, so that consent was probably not often withheld.<sup>62</sup>

### Value and size

Unfortunately, as mentioned above, we do not have sizes or acreages in the sixteenth- and seventeenth-century sources. In the case study presented, some contracts specified, for example, whether one holding was larger and therefore estimated at a higher

cash payments. Sonnenburg VfB 2, 1576–1577, no fol., 12.3.1577. On such mixed rents of cash payments and renders, see Ghosh, “The Imperial Abbey of Ellwangen”, pp. 197–198.

58 Palme, *Entwicklung*, p. 29; Schennach, “Geschichte”, pp. 9–30. However, restrictions remained regarding testamentary bequests. The *Baurecht* is similar to the *Kaufrecht* described for Upper Styria by Heinzle in this volume.

59 The law code differentiated between inherited and acquired wealth; only a third of inherited wealth and half of acquired wealth was freely devisable. TLO 1573, 3.3 § 1. For an international comparison of property law, see for example, Erickson, “Possession”, pp. 369–385.

60 Cerman, “Social Structure”, p. 71, where he states that strong hereditary property rights are regarded as one reason for more flexible land markets.

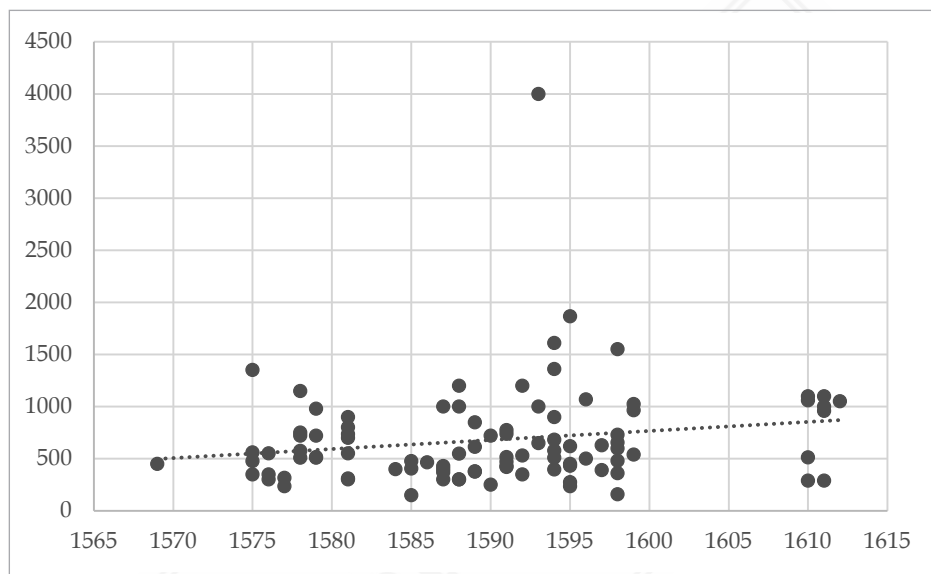
61 SLA, Sonnenburg VfB 13, 1595–1596, no fol., 6.3.1595.

62 Cerman assumes for Bohemia and Moravia, for example, that landlord consent was regarded as a formality and was only strengthened in Central Europe after the sixteenth century, Cerman, “Social Structure”, pp. 61–62. See also Béaur, Chevet, *Institutional Changes*, pp. 54–55; Schennach, *Gesetz*, pp. 80, 424.

price. Here, the *Höfe Holzlehen* and *Clam* were smaller, *Schweingras* larger, but *Scherlehner* quite large. To put the properties mentioned in the case study into context, I have extracted the given prices of *Höfe* sold in the court district of Sonnenburg for the periods 1568–1600 and 1610–1612 in Figure 2. The nominal values of the 95 *Hof* purchases ranged between 150 and 1,866 Gulden (there is one outlier, at 4000 Gulden). The median price was 547 Gulden, and the average value was 680 Gulden. In the Mühlwald Valley, 39 *Höfe* were traded at a median price of 630 and an average of 688 Gulden. Here, the prices ranged from 300 to 1,610 Gulden. According to these figures, the *Höfe Holzlehen* and *Clam* were worth around 300 and 200 Gulden respectively – much below the median values –, *Schweingras*, at around 500 Gulden, a little below, and *Hof Scherlehner*, at 900 Gulden, way above the Mühlwald Valley and overall median. One explanation of the high number of transfers of the *Hof Holzlehen* could therefore be its relatively low value and thus affordability.<sup>63</sup> The aim of such exchanges might also have been to acquire better located land with more favourable, sunny sites, yet without knowing more about soil quality and location, we cannot judge whether this was the case. However, property prices cannot be taken as proxies for size or quality of soil. Specific common rights were attached to each, as was the case with *Hof Holzlehen*. Price formation also needs to be analysed specifically. The value of *Holzlehen*, for example, fluctuated between 315 and 432 Gulden between 1577 and 1595. The large increase of 117 Gulden, however, remains an open question. It is not clear from the documents what it was that added so much value, or whether the value was calculated on the basis of specific negotiations or transferred stock and livestock. According to the literature, the inflation rate did not fluctuate enough between 1577 and 1596 to offer a satisfactory answer, which leaves personal negotiations and perhaps speculation as possibilities.<sup>64</sup>

63 According to Stolz, the term *Lehen* or *Lechen* was the name given to smaller holdings capable of having 2–4 cows. This would be contradictory in the case of Scherlehner, though. Stolz, *Rechtsgeschichte*, p. 206.

64 I will analyse the inflation rate specific to the area under study in my upcoming monograph. According to Dietrich and Schmelzer, though, no major changes in Tyrol between 1577 and 1596 can be established. See Dietrich, *Geschichte*, p. 32; Schmelzer, *Geschichte*, p. 30. I am grateful to Michael Adelsberger for the references.



**Figure 2** Nominal value of *Höfe* in Gulden, court district of Sonnenburg, 1568–1600, 1610–1612<sup>65</sup>

Based on the wording in the purchase deeds, it can be hypothesised that prices were agreed upon by the seller and buyer. But, in the Sonnenburg sample it becomes apparent that the negotiated real estate prices were mainly based on previous purchase deeds. Such deeds were copied into the court books but also kept at home. They are sometimes listed in probate inventories as proof of real estate property, and they probably formed the basis for the evaluation of the real estate. This means that in the absence of land registers, purchase deeds served as descriptions and guarantees of a property and records of its value, which consequently, in some cases, remained unchanged over a longer period. Interestingly, though, the trend line shows a slight increase over time, which means further analysis of price formation, inflation in this particular micro-region, the role of the negotiation between the purchase parties, and the influence of indebtedness is necessary.<sup>66</sup> Still, for such frequent purchases to be possible, not only mutual agreements on the value, but also a financial framework and credit market were needed that offered sufficient security for the selling and buying party and trustworthiness on both sides.<sup>67</sup> How were payments made and regulated, and how was financing secured in this region?

65 SLA, VfB Sonnenburg, A 742, 1564–1573; VfB 1–4, 1573–1581; 1582–1583 missing; VfB 5–15, 1584–1600; VfB 18, 1610–1612.

66 Štefanová, for example, stresses the role of individual appraisals, Štefanová, *Erbschaftspraxis*, p. 94.

67 Muldrew, “Anthropologie”, pp. 178–179; Muldrew, *Economy*.

## Payment: cash and credit

In two of the transfers described in the case study, the buyers settled in cash. In a period characterised by a shortage of cash, this is significant. Cash settlements are described in several of the deeds extracted from the court books, which calls for a reconsideration of the availability of cash in this period and area, as well as a reconsideration of the level of commercialisation. As mentioned above, some of the rents were due in cash or could be commuted into cash, which points to its availability as well as its use. In addition, several local and regional markets were held in this area, and trade with grain and livestock, and services provided by rural craftsmen, inn keepers, day labourers and servants might have generated and necessitated cash.<sup>68</sup>

In most purchase and exchange contracts in the Mühlwald case study, the first down payment was either made in cash immediately or due shortly after the completion of the sale, followed by annual payments or by a promise by the buyer to settle the outstanding debts of the seller. This was common practice in sixteenth- and seventeenth-century purchase contracts in this court district and in other areas as well.<sup>69</sup> It is not always recorded whether the cash payments were received on time, however. Only in some cases were receipts added to the copy of the deed in the court book. The payment terms were secured on the transferred property and the wealth of the buyer, technically guaranteeing the seller an entitlement on the property until it was fully settled. Where the buyer agreed to pay the debts of the seller, those debts would similarly have been secured on the sold property in the form of a mortgage (*Verpfändung*). In Untermoi, for example, *Hof Alfreid* was sold and exchanged many times; in 1594, it was sold for 510 Gulden, and the buyer agreed to pay by settling the seller's debts of 391 Gulden – about 77 % of the purchase price.<sup>70</sup> Thus, the seller avoided insolvency, and with the sale he was able to meet all his liabilities by transferring them to the buyer. But he also lost his *Hof*. Land transactions could therefore also be an indicator for financial difficulties, although their origin, whether they stemmed from agricultural crisis or familial obligations, would still have to be established.<sup>71</sup> Interestingly, in the

68 An analysis of the availability of cash and the question of whether cash was actually used as such or for accounting will be part of my upcoming monograph project. Margareth Lanzinger suggested the necessity of considering livestock trade, and I am grateful for her suggestion. Additional evidence can be found in probate inventories, where financial assets and liabilities contain information on traded goods, grain, livestock and services (outstanding wages). There were several local markets, and Bruneck, as a regional market town, was accessible for the holdings in the Puster Valley and the Mühlwald Valley. On rural commercialisation, see also Ghosh, "The Imperial Abbey of Ellwangen", p. 204, and Ghosh, "Rural Economies", p. 265.

69 Similar practices are described by Heinze for Aflenz and Veitsch in Upper Styria (see her contribution in this volume) and Štefanová, *Erbschaftspraxis*, pp. 101, 105–106, for the estate Frýdlant in Northern Bohemia.

70 SLA, Sonnenburg VfB 12, 1593–1594, no fol., 19.7.1594.

71 Béaur, Chevet, *Institutional Changes*, p. 51.

exchange contracts, agreements to pay existing debts as part of the property surcharge were infrequent, and in our case study, no such case appears at all. In cases of resale, the remaining payments were assigned to the new buyer. This flexibility could lead to quite complicated payment terms. But how was a high number of transfers involving large sums possible in practice?

### Securing transactions: pledge or mortgage

All purchase and exchange contracts were based on legal regulations. In this sample, all contracts refer to the territorial law (*Landesrecht*) of the County of Tyrol and also to local customary law, such as the “tradition and customs of the abbey of Sonnenburg” (“*Sitte und Gebrauch des Gotteshauses Sonnenburg*”). This is how the contractors gave their settlement a legal foundation. In addition, in all transactions, the property functioned as collateral or *Unterpfand*. Purchase, inheritance and widow’s contracts, as well as leasehold contracts, show that in all transactions the ‘paying’ party had to pledge his or her entire wealth as a security (*Fürpfand*),<sup>72</sup> and therefore that the land was mortgaged. For example, by law, a husband had to pledge his property to secure the marriage portion of his wife,<sup>73</sup> or the successor to an estate had to pledge all his belongings, movable and immovable, to secure the other heirs’ entitlements.<sup>74</sup> Correspondingly, in purchase and exchange contracts, the buyer or equaliser pledged his or her purchased property, but also his or her total wealth. For example: “upon pledge of said Dionisus Scherlehner’s purchased property, goods and chattels, and all other of his and his heirs’ immovable and movable, current and future possessions, none excluded” (“*bei Phannndthaffter Verbindung obangeregter sein Dionisin Schörlehners an sich erkhaufften Paurecht Haab unnd Guet auch alle andere sein und seiner Erben ligenden und varenden Gegenwürttig und khonnfftig Haab und guet khaine davon außgenommen*”).<sup>75</sup> In all cases, the property pledged also represented the property of the prospective heirs who would inherit the obligation, giving extra future security to the seller or lender. In addition to this security on the loan, the contract was witnessed, sealed by the territorial sovereignty and copied into the court book. The original was kept by the buyer, usually at home. But who facilitated purchases and exchanges?

72 Grimm, *fürpfand*.

73 TLO 1573, 3.1.

74 The Tyrolean law code decrees the same for guardians administering the property of their foster children, for which they were liable with all their movable and immovable property. TLO 1573 3.46: “*bey Pfandthaffter verbindung aller jrer Ligenden vn[d] Varenden Güter*”.

75 SLA, Sonnenburg VfB 4, 1580–1581, no fol., 5.4.1581. The text follows the expressions of the law code almost literally.

## Facilitating transactions and credit

It is possible that the geographic as well as legal neighbourhood, the court and kin played a decisive role in facilitating sales and credit relations. The involvement of the community in a wider sense also springs to mind when considering Muldrew's concept of how market transactions were conducted in early modern societies. He demonstrated that trust and creditworthiness were crucial for sales and purchases, and therefore that local communal ties were as important as price formation and competition.<sup>76</sup> In our context these ties can be seen in the credit relations, the witnessing of the deeds, the kinship relations and the handover of the properties and movables. Was this wider community also part of the facilitation process?

*Neighbourhood:* Geographic vicinity and belonging to the same community could be one factor in the accomplishment of land transfers. This vicinity is certainly the case in our case study: the *Höfe Scherlehner, Holzlehen, Clam* and also *Rederlehner* all appear in the rentals (*Urbare*) of the court district of Sonnenburg from 1562 and 1621. They are all situated in the Mühlwald Valley and in the same locality, and were thus neighbouring properties.<sup>77</sup> *Hof Schweingras*, although located just across the Mühlwalderbach, belonged to the bordering court district of Taufers. However, it belonged to the same parish of St Gertrud. This is not always the case in the purchase contracts of the whole sample. The proportion of buyers coming from outside the locality of the sold property is 34 %, and the proportion of sellers is 13 %. A higher proportion of buyers from another place or court district is not surprising and points to the practice of property owners selling their property directly. This did not necessarily mean that buyers came from far away; in many cases, a different court district was in the vicinity, as we have seen. Geographically, we can say that most sales were conducted between buyers and sellers in the vicinity; legally, however, a third of the buyers came from a different, albeit close, community. This could be described as geographic proximity and legal distance between buyers and sellers. The purchase and exchange contracts specifically mention the relationship of neighbour – meaning a propertied person whose property was in the neighbourhood or adjacent to the traded property – in about 6 % of cases, which means that a not insignificant number of transactions was possibly initiated by neighbours (see Table 2). This is not surprising, since people within a village or community were well aware of the financial and property situation of the others. But was vicinity sufficient to publicise intended sales and procure required credit?

*Court:* It is possible that the court and judge, or the legal representative in the area, had the role of an intermediary. Such a role has been studied for aldermen and notaries in the Low Countries in the context of credit registration, for example. However,

76 Muldrew, "Anthropologie", p. 178.

77 See esp. SLA, Bozen-Inspektorat für Kataster, Kastralmappen, Abtei Mühlen, Blatt 5 (Schweingras); Abtei Mühlwald, Blatt 10 (Hölzel), Blatt 15 (Klamm), Blatt 16 (Schörlechn) (1858).

Gelderblom, Hup, and Gelder have concluded that here, rather than actively linking the parties involved, aldermen and notaries had a more passive role in recording loans.<sup>78</sup> The judicial administration in Tyrol had similar functions to those of the notaries and gradually replaced the notary system in some parts.<sup>79</sup> At the *Gericht* in Sonnenburg, for example, matters of low justice (civil law) were negotiated, as well as non-adversary proceedings and the processing of deeds. The Mühlwald Valley had a legal representative (*Anwalt*) of the court to ensure that everyone had access to the court via him in spite of the distance to the village of Sonnenburg, where the court was located. He would have been informed about intentions to sell or to buy, about indebtedness (all bonds were copied into the court books) and the need to sell. With transfers crossing the borders of court districts, he would have been involved in a wider network. Court officials might have announced intentions and facilitated sales, but providing access to the court itself was much more relevant. Word would have got around within the neighbourhood or district and spread even further afar with market activities. Furthermore, judges and office holders were involved in the land market themselves as well (see Table 3). But, transactions would still have had to be concluded at court and the necessary consent obtained from the landlord.

*Kinship:* Kinship could have also played a role in facilitating land transfers, visible in credit relations or land transfer between kin. In an initial analysis, I coded all land sales according to the recorded relationship between buyer and seller: whether they were from the same nuclear family, related but not clearly defined (one example is ‘cousin’ or *Vetter*, an expression that did not define a precise relationship), whether they were related by marriage, were neighbours, or had the same name.<sup>80</sup> Where no such relationships were recorded, they were coded as probably unrelated. However, we cannot establish their actual relationship, as we do not have a family reconstitution. Samuel Nussbaum discusses the methodological problems in the context of the “land-family bond” debate and the wine-growing villages near Vienna extensively in this volume; these show how definitions of relationships differ based on the sources used. Another problem in the Sonnenburg sample becomes apparent: apart from it being impossible for us to definitively establish a kin relationship if it was not mentioned, kinship was, even for the contemporaries, sometimes hard to define; references from court proceedings show how declared heirs had to prove their relationship before the court by consulting witnesses, a procedure called *Sipsahl* (the computation of the exact degree of kinship) or *Kundschaft* (investigation).<sup>81</sup> According to the law, the court would only

78 Gelderblom, Hup, Jonker, *Public*, p. 186. For Paris, see Hoffman, Postel-Vinay, Rosenthal, *Priceless Markets*.

79 Schennach, *Gesetz*, p. 87 and on *Gerichte*, pp. 76–88.

80 This methodology was derived from Zvi Razi’s suggestions and caution, and adds neighbours, since their status was relatively strong in early modern Tyrol. Razi, *Erosion*.

81 *Computatio graduum civilis* in Zedler, *Universal-Lexicon*, vol. VI, col. 882.

resume its proceedings once that relationship was verified and a guarantor was named. However, some cases show how, in order to avoid further dispute, the court resumed the proceedings once a guarantor was named, even though written or witnessed proof was lacking.<sup>82</sup> Being kin almost equalled an entitlement and was not regarded in the same way by all involved. This might suggest a more fluid understanding of kinship.

An initial analysis of the relationship between seller and buyer is nevertheless illuminating. Table 2 shows that the majority of purchase transactions, 67 %, were between people where no relationship was given in the records and who were probably unrelated. About 14 % of sales were between members of the nuclear family and 23 % between related parties overall (nuclear family, by marriage and related). The proportion where a relationship is given is slightly higher than Birgit Heinzle's findings for Aflenz and Veitsch (20 %), but much lower than Samuel Nussbaum's findings (52 %, relatives and spouses) and Johannes Kaska's results for sales (44.9 %, see their contributions in this volume). These proportions indicate where relationships were clearly defined and thus point to intra-familial transfers. However, the actual proportion could be higher, given the uncertainty of the description in the documents. In the Mühlwald case study specifically, only Scherlehner and Schweingras were related by marriage, and they were also within the same neighbourhood. The other transaction partners were more or less neighbours, but it has not been possible to establish a relationship (yet). The analysis of the 29 exchange contracts is particularly interesting, as 24 % of exchanges were concluded between related parties and therefore almost the same proportion as for purchases. This points again to a similar practice for exchanges and purchases. In contrast, Štefanová found that in her Northern Bohemia sample, exchanges were only concluded between non-kin.<sup>83</sup>

**Table 2** Relationships between buyer and seller, Sonnenburg 1568–1600, 1610–1612<sup>84</sup>

	All	Nuclear family	Related	Related by marriage	Neighbour	Prob. unrelated	Same name
<b>Purchase</b>	177	24	8	9	11	118	7
%		13.6 %	4.5 %	5.1 %	6.2 %	66.7 %	4.0 %
<b>Exchange</b>	29	1	5	2	1	20	0
%		3.4 %	17.2 %	6.9 %	3.4 %	69.0 %	0.0 %

82 TLO 1573 3.26. This can be seen in several cases, for example, SLA, Sonnenburg VfB 1568–1573 A 742, no fol., 22.4.1572, where the deceased wife left her husband but no children behind. Her sisters claimed heirship but could not prove it. The court accepted their claim on the grounds that they had a guarantor and one of them was named in the will.

83 Štefanová, *Erbschaftspraxis*, p. 95.

84 SLA, VfB Sonnenburg, A 742, 1564–1573; VfB 1–4, 1573–1581; 1582–1583 missing; VfB 5–15, 1584–1600; VfB 18, 1610–1612.

It should be added that the probability of being related in such a small population was relatively high. Still, it is noteworthy that the court records do not always stress an existing kin relationship. The information on the price also suggests that intra-familial and non-kin transactions were not treated differently, as the price negotiation was based on previous deeds. However, differences might have existed in the agreed terms of payment.<sup>85</sup> Court officials ensured accessibility to the court and formal conclusions of transactions, while neighbours and kin could have been intermediaries in facilitating transactions. The probability of such a role was quite high, given the information available to the court, the proximity of the neighbours, and the probability of being related – even if this was not always specified.<sup>86</sup> The effect was a geographically concentrated market of land and credit. The close involvement of the community may have acted in both ways, though: opening up opportunities and keeping property transactions within a social realm in order to restrict changes in social structures. What do we know about the social structure of the contracting parties?

### Social status and gender

A very preliminary analysis of the occupational structure of the purchase parties may provide some insight.<sup>87</sup> In only 15 % of the 387 male buyers and sellers of the 191 purchase contracts between 1549 and 1612 are the occupations of either the buyers or the sellers given.<sup>88</sup> The mention of occupation coincides with the fact that the occupation ‘peasant’ (*Bauer*) is not given in the documents and is not used as an expression. This recording practice can also be observed in the church registers, where the peasants’ occupation is generally not written down. However, the majority of those selling *Höfe* were – although not defined as such – probably peasants. The implication of this is that the majority of the population at this time and in this area were peasants, and that they were participating in the local land market.

85 Béaur, Chevet, *Institutional Changes*, p. 46; this was explored in Janine Maegraith, “Financing Transfers. Buying, Exchanging, and Inheriting Properties in Early Modern Southern Tyrol”, paper presented at the 45<sup>th</sup> Annual Meeting of the Social Science History Association in Chicago, Illinois, 21.–24.11.2019.

86 Similarly, see the results of Kaska’s analysis of Lambach’s land transactions in the context of partible inheritance in this volume, where he points to spatial proximity as a factor; in addition, Birgit Heinzle emphasises the participation of community members in roles such as witnesses or appraisers in her analysis of Aflenz and Veitsch in this volume.

87 Some buyers and sellers appear in more than one case. I have not adjusted for this, as they were active in multiple land transactions in their social role.

88 In many contracts, buyers or sellers acted in groups, which results in a higher number of sellers and buyers than actual contracts.

**Table 3** Occupation of sellers and buyers, Sonnenburg 1549–1600, 1610–1612

	All	Office hold- ers	Merchants, innkeep- ers	Crafts- men, millers	Servants, day labourers	Occu- pation given	No occupation given
<b>Buyers</b>	199	9	7	16	2	34 (17 %)	165
<b>Sellers</b>	188	2	2	16	4	24 (13 %)	164

Consequently, occupations were more likely to be given if buyers and sellers were not peasants. This is reflected in what was bought and sold – *Höfe*, individual pieces of land or houses – and where occupations are mentioned. Occupational denominations are more likely in village contexts, for example, 18 of the buyers and twelve of the sellers with occupations given were from the villages Pflaurenz and Sonnenburg, and village craftsmen constitute about 55 %. Craftsmen and millers traded mainly with houses, occasionally arable fields, and hardly ever with a *Hof*. Their high proportion is remarkable; it not only indicates their dependency on houses and workshops and some agricultural by-employment, but also that they had disposable income to finance such transactions. Conversely, the Mühlwald Valley only appears in seven cases: a smith and a shoemaker each bought a cottage; an innkeeper bought and sold half of a *Hof*; a tanner from Lappach bought a house, a workshop and a garden; a day labourer sold a cottage to his neighbours, one of them an innkeeper; a tailor sold a house and a garden, and an innkeeper an alpine meadow. Here, where occupations were given, no *Höfe* were traded. The merchant buyers were from towns, Bruneck and Brixen, and so was one of the innkeepers. Here, office holders are probably overrepresented, since their denomination might have been given more consistently. However, it is notable that they were far more present as buyers, at 26.5 %, compared to as sellers, where they constituted 8.3 %. They acted as investors, especially in individual pieces of land. The participation of day labourers and servants in the land market was significant: this amounted to about 10 % (where occupations are given). Again, the majority of those buying *Höfe* were most probably peasants. Sellers and buyers reflected more or less the local social structure of the district, with a possible majority of peasants, a significant share of village and rural craftsmen, innkeepers, and some merchants and office holders, in many cases buying real estate pertaining to their occupation or as investments. The major involvement of rural craftsmen and peasants, as well as the lower social strata, in the land market could indicate a social change that took place after the late medieval cases Thomas Ertl analysed, where he found that peasants were only marginally involved, the majority being the nobility and then the urban classes.<sup>89</sup>

89 Ertl, “Small Landlords”, p. 26.

When looking at the gender distribution of buyers and sellers, a rather one-sided picture evolves, with a low, albeit not insignificant, proportion of women participating in the transactions – about 6 % (Table 4). Looking at different property types, however, reveals a more differentiated picture: women were more involved in the purchase of houses and cottages (13 %), selling them (14 %) and buying them (12 %) – the proportions here relate to all cases where houses, cottages and adjoining gardens were traded. But, while women sold pieces of land such as fields and meadows, in 19 % of such cases they did not buy land, and they hardly ever sold or bought *Höfe* (2 %). In all categories, men dominated the land market distinctly.

**Table 4** Gender of seller and buyer in the court district of Sonnenburg, 1568–1600, 1610–1612.

Type 1 = House, house and garden and/or field, Cottage with/without garden, Barn, Mill;

Type 2 = *Höfe*; Type 3 = Field, meadow, plot, vineyard with/without press

	Type 1	Type 2	Type 3	Total
<b>Total</b>	49 (27 %)	98 (55 %)	32 (18 %)	179 (100 %)
<b>seller f</b>	7 (14 %)	3 (3 %)	6 (19 %)	16 (9 %)
<b>seller m</b>	35 (71 %)	86 (88 %)	24 (75 %)	145 (81 %)
<b>seller couple</b>	4 (8 %)	4 (4 %)	2 (6 %)	10 (6 %)
<b>seller group</b>	3 (6 %)	5 (5 %)	0	8 (4 %)
<b>buyer f</b>	6 (12 %)	0	0	6 (3 %)
<b>buyer m</b>	37 (76 %)	87 (89 %)	31 (97 %)	155 (87 %)
<b>buyer couple</b>	6 (12 %)	11 (11 %)	1 (3 %)	18 (10 %)
<b>buyer group</b>	0	0	0	0
<b>buyers and sellers f</b>	13 (13 %)	3 (2 %)	6 (9 %)	22 (6 %)
<b>buyers and sellers m</b>	72 (73 %)	173 (87 %)	55 (86 %)	300 (84 %)
<b>buyers and sellers couple</b>	10 (10 %)	15 (8 %)	3 (5 %)	28 (8 %)
<b>buyers and sellers group</b>	3 (3 %)	5 (3 %)	0	8 (2 %)

One reason why women were more involved in the trade of houses and cottages could be the purchase price, affordability and availability. A look at the purchase prices reveals that, with a median of 77 Gulden, buildings were more affordable than *Höfe*, although their sale prices spanned a wide range between 13 and 510 Gulden. Women purchased buildings in a smaller price range between 20 to 160 Gulden but with a slightly higher

median of 84 Gulden.<sup>90</sup> Women therefore invested in houses but probably had fewer financial means to buy land. This could point to impartible inheritance practice in this area that preferred sons as successors and where women rarely inherited land but were compensated with their inheritance shares in money or credit. It could also indicate the consequences of separation of marital property, which was mandatory in Tyrol. This possibly perpetuated a property distribution resulting from this inheritance practice; consequently, women had less landed property in this court district.<sup>91</sup> Property separation also explains, why there were fewer instances of married couples acting as joint buyers or sellers than in areas with joint marital property. Birgit Heinzle, for example, has found that, for the estates of Aflenz and Veitsch in Upper Styria, where the majority of couples chose joint ownership, couples made up 68 % of buyers and 34 % of sellers.<sup>92</sup> In Heinzle's case, married couples made use of the joint resources and both held the title to the land. In the Mühlwald case study presented here, women were involved as co-buyers and wives of Balthas Schweingras and of Hans Mesner, but they did not hold the title to the land; this would stay with their husbands, as is laid down in the Tyrolean law code, according to which the title of a property bought by a married couple was to remain with the husband or his heirs, while his widow was to receive a compensation payment.<sup>93</sup> The corresponding practice can be found in several cases in Sonnenburg. Significantly, though, the results show a slightly higher rate of women in Sonnenburg buying real estate independently – 3 % compared to 1.6 % in Aflenz and Veitsch – which might point to separation of marital property as being a legal opportunity for women to purchase houses and cottages in particular. While the sample shows broad participation in the land market across almost all social strata, from day labourers, craftsmen and peasants through to merchants, the analysis also reveals a gender imbalance that limits the otherwise broad scope of societal involvement in the land market.

### Practicality of transfers

The legal, social and quantitative context seems to have provided a foundation for relatively flexible land transactions – with the exception of women who participated as sellers or buyers, although much less so than men. Notwithstanding, the scope of the involvement in the land market is remarkable. But what remains a mystery is the

90 For a full discussion of women's participation in the Sonnenburg land market, see Maeraith, *Fenced in or out?*.

91 Maeraith, *Gender Imbalance*. For the eighteenth century see, Lanzinger, "Marriage Contracts"; Lanzinger, *Women*; Hagen, Lanzinger, Maeraith, "Verträge als Instrumente", pp. 193–194.

92 Heinzle, "Gemeinsam oder getrennt?", p. 33, and her contribution in this volume, Table 4.

93 TLO, 1573, 3.42 § 3.

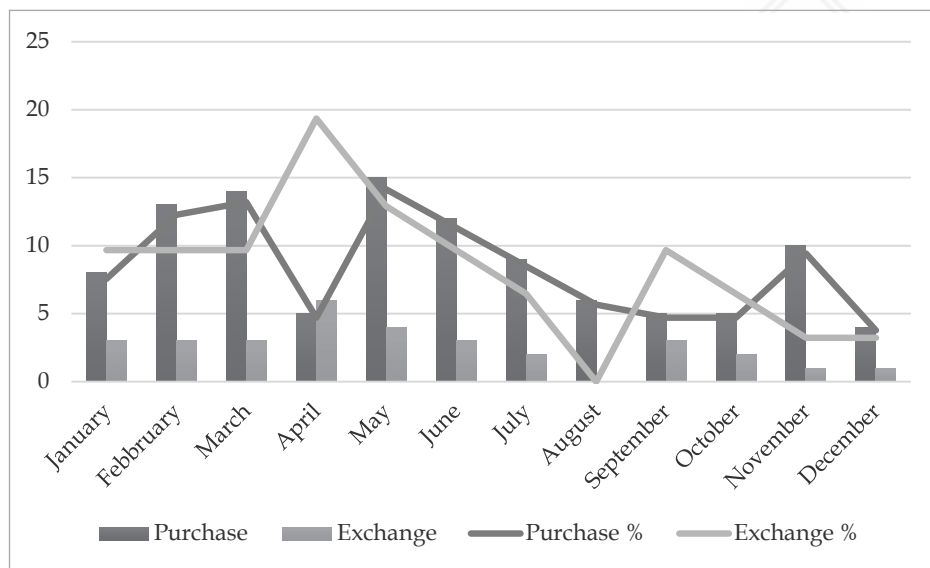
practicality of such a high frequency of land transfers.<sup>94</sup> Would such transfers not collide with the annual cycle of agricultural work? The analysis of all purchase deeds in the Sonnenburg sample shows a fluctuation almost aligned with seasonal agricultural labour needs (Figure 3): far fewer transfers were finalised in the months of April, a time when, with the melting of the snow, agricultural work would resume and remain intensive throughout spring. The peak in May, although a labour-intensive time, could possibly be explained by the occurrence of the “May market”, an annual fair on the day of Saint Pancras, an occasion frequently used for financial transactions and payment terms.<sup>95</sup> Following this, the number declined again towards the harvesting time between July and October.<sup>96</sup> Transaction dates of purchases seem to have been influenced by the agricultural year and financial terms. However, it could take several months for the process to progress from the purchase negotiation, to consent by the sovereignty, and then to the completion of the purchase, although this is not always visible in the deeds.<sup>97</sup> However, we must assume that the date of the handover was not always foreseeable, adding to the difficulties in agricultural practice and also indicating that the decision making in our case study might have taken place a lot earlier, thus making the timing even more significant. Interestingly, the occurrence of exchange contracts runs almost contrary to the purchase deeds, and this becomes especially clear when looking at the proportions. Although the small sample shows an erratic distribution over the year, the peak in April and again in autumn is striking. Exchanges during agriculturally busy periods could point to the nature of the transaction: usually two entire *Höfe* were exchanged so that the respective new proprietor, his family and possibly also his agricultural servants could resume work immediately. Post-harvest time would also have been preferable due to some disposable agricultural income.

94 On practicalities in cultivating land, see also Kaska in this volume.

95 The court records frequently refer to the *St Pankratius* May fair, 12 May; see Hye, “Bruneck”, p. 423 with a brief mention of St Pancras as a smaller annual fair.

96 On the seasonal work cycle, see Cole, Wolf, *The Hidden Frontier*, pp. 127–136; Viazso, *Upland Communities*, pp. 108–112.

97 The purchase deeds in Brixen frequently refer to the date of the agreement (*Abrede*) and the date of the consent, with varying times between them.



**Figure 3** Number and percentage of purchase and exchange deeds per month, Sonnenburg 1569–1600, 1610–1612

Nonetheless, especially as regards the purchase deeds, the question remains open as to how a changeover was organised. It is noteworthy that the *Höfe* were often sold together with the movables, farming equipment and sometimes even livestock. The existing hay, straw, and fodder was usually also left to the new proprietor. In some cases, the ‘usage’ or growing yield in the fields was sold along with the property.<sup>98</sup> This would have made a changeover more feasible. However, in one case, in the resale of *Hof Scherlehen*, it was stated that the former buyer had brought his movables with him and that he intended to take them away again. Two households merged and had to be separated again. Given the complicated and risky nature of frequent transactions of *Höfe*, what could the incentives for such repeated purchases and repurchases have been?

### Yields and profit?

Even in our relatively detailed case study it is hard to establish whether the participants made any profit. In the case of Urban Niderweg, it seems he paid more to purchase *Holzlehen* back in 1595, and Scherlehner could have made some profit between 1577 and

<sup>98</sup> SLA, Sonnenburg VfB 4, 1580–1581, no fol, 24 August 1581; the buyer shall receive the grain yields currently growing on that *Hof*. In contrast, Štefanová finds for Northern Bohemia that movables were usually taken along in exchanges, Štefanová, *Erbschaftspraxis*, p. 92.

1595. However, we cannot judge on the basis of negotiated values alone. We also cannot calculate annual yields or income. We do not have acreages, and we have no information on how much annual income a *Hof* made. In this area, impartible inheritance practice prevailed, and in the inheritance contracts the compensation of the ceding heirs is calculated on the basis of the property's value, existing bonds and debts, and probably income, whereby the foundation of this calculation, such as the value itself, is not given.<sup>99</sup> To give an example: after the death of Hieronimus Kofler and his wife Margretha in the Mühlwald Valley, the inheritance proceedings commenced in December 1574. The couple left three sons and three married daughters behind. It was decided that the eldest and the youngest son should become joint successors to the father's *Hof* Kofler. For this, they had to assume all liabilities on the property, and they had to compensate their siblings with their inheritance shares. The brother received 267 Gulden and the sisters 247 Gulden each, minus what they had received as a marriage portion, amounting altogether to 1,008 Gulden. The terms of payment were quite demanding: half was to be paid on Saint Martin's day in 1575 and the other half in 1576. But, we do not learn how much the daughters were to receive after their marriage portions were deducted and thus how high the payments were to be. The proceedings, therefore, do not give the amount of the liabilities and no estimated value of the *Hof*, although the range can be deduced from the pay-outs; this does not, however, shed any light on the possible yields of the *Hof*.<sup>100</sup>

We therefore do not have enough information to deduce the annual yields and income of such properties. Successors to a *Hof* often found themselves heavily indebted because of the compensation payments due to ceding siblings and sometimes to the widowed mother or stepmother.<sup>101</sup> Hence, we cannot tell how much annual income, or even profit, a farmer could have made to pay off debts, for example. It is possible that some farmers were able to make profits, probably through a mix of farming and financial transactions and investments, but some were left with debts and were either downsizing with sales and exchanges to smaller properties or selling in order to free up capital and settle their debts.<sup>102</sup> This would give real estate the quality of financial re-

99 In contrast to the court district of Schlanders, where partible inheritance practice entailed meticulous calculation of the respective inheritance shares. See Janine Maegraith and Johannes Kaska, "The Influence of Inheritance Practice on Land Transfers in Early Modern Tyrol: Expectations and Reality", Paper presented at the 4<sup>th</sup> biennial conference of the European Rural History Organisation (EURHO) in Paris 2019, 12 September 2019. On the inheritance practice in the court district of Sonnenburg, see Lanzinger, Maegraith, "Konkurrenz".

100 SLA, Sonnenburg VfB 1, 1573–1575, no fol., 13.12.1574.

101 This is also true in areas of Southern Germany, see Ghosh, "Rural Economies", pp. 266, 269.

102 Different management styles of *Höfe*, estimates of possible yields, and the link between land and credit will be explored in my upcoming book, bringing together results from the research project.

serves. Perhaps frequent sales helped to shift the number of unpaid obligations around and maybe even reduce them by freeing up capital?<sup>103</sup>

## Conclusion

What does this tell us about a possible early modern 'land market' in this area? It seems that early modern Tyrol had a dynamic land market, with many commercial land transfers often linked to credit. The documents show extensive use of different legal instruments, such as purchase and exchange contracts, leasehold and inheritance, *inter vivos* transfers, bequests and, of course, obligations (*Schuldbrief*) by all social groups and occupations.<sup>104</sup> Land transfers were mainly financed by a mixture of down-payments and instalments, or by credit or the assignment of debts. In land exchanges and purchase deeds, not only the respective real estate was collateral; as additional security, the entire property of the buyer was mortgaged. However, the seemingly problematic practice of pledging one's entire wealth did not seem to inhibit the activities on the land market in early modern Southern Tyrol. The contract terms suggest that it was not a problem to transfer the mortgage with the property to a new proprietor. Legal restrictions, such as the aforementioned pledge (*Pfand*), court fees or land transfer fees (*Auf- und Abzugsgeld*), can be regarded as substantial but might not have had an effect as inhibiting as expected. It was rather the case that the strong legal foundation made these transactions feasible and gave buyers and sellers security: it seems the regulations and restrictions facilitated an active land market, especially as the debts on real estate could be moved with the land to a different proprietor. The same could be said for the need for seigneurial consent, which, together with the sealed contract, acted as additional security on the loan and transfer. A relatively weak lordship in a small territory also meant that few limitations on the land market existed.<sup>105</sup> With the exception of the participation of women, which was limited due to informal institutions such as inheritance practices and separation of marital property, land transfers were practised by a broad social spectrum of the population in the area under study, and they did not seem to have been hampered by impartible inheritance.

The main requirements and facilitators of a high frequency of land transfers were capital (money, assets, land), kin relations, local networks, access to the court or legal

103 Ehmer, Reith, *Märkte*, p. 23, and Nussbaum in this volume, who speculates on increased land mobility due to mortgage encumbrances.

104 See also Béaur, Chevet, *Institutional Changes*, p. 28, who argue that this practice could verify the existence of a market.

105 On differences in manorial control, see Brakensiek, *Farms*, p. 220. By contrast, he shows that in Eastern Westphalia in the eighteenth and the beginning of nineteenth century, the land market was in fact controlled by the landlords and that the need for seigneurial consent (often from the King of Prussia) was hampering the market, pp. 226–227.

representative, possibly the court as intermediary, and good and reliable agricultural servants to guarantee land management. Unfortunately, though, the latter hardly appear in the documents.<sup>106</sup> Legal instruments, such as exchange contracts with mutual collateral, made the land market more flexible and financing easier – although the conditions remained the same as for purchase contracts, fees, security and seigneurial consent were necessary. In addition, some urban investments appear in the dataset as well. This apparently dynamic land market leaves many questions open, but it could also help to change our view of the early modern Central European countryside. It throws into question the older historiography on Tyrol by Otto Stolz and Hermann Wopfner, amongst others, who emphasised the idea of the impartibility of *Höfe* and the continuation of the family line on those *Höfe*.<sup>107</sup> It calls for a broader comparison with Northwestern Europe and an analysis of the differences in the nature and development of land markets. The emergence of land markets was subject to (micro-)regional and temporal differences and to different legal, institutional, social and economic contexts, which begs not only for an international but also for an interregional comparison, for countries such as England might also reveal stark regional diversity.<sup>108</sup> It also confirms the need for a more comprehensive understanding of the land market that incorporates commercial as well as familial transfers, as discussed at the beginning of this contribution. In this sample too, these were not always distinguishable; furthermore, all contributions in this volume point to an entanglement of intra- and extra-familial transfers. A binary view, as discussed in the context of the “land-family bond” debate, overlooks complex interconnections between commercial and familial transactions.

Instead, the Mühlwald case study has shown that it might be useful to suggest a different concept based on the specifics of court districts, the entanglement with other court districts, and interregional comparison, focusing on the integration of different factors such as spatial vicinity (neighbourhood), proximity to urban centres and markets, accessibility to the courts, and the question of who facilitated transfers and financing options. Kin networks should be considered, and their significance analysed in view of the regional population density. For example, in a small population with low population density, kin relations were highly probable among transaction parties. In light of this, a land market could not exist without intra-familial transfers, which Levi has pointed out already in his study on Santena.<sup>109</sup> On the other hand, frequent trading between seemingly closed circles of people within the neighbourhood could point to the objective of keeping the local social order unchanged. Fewer sellers and buyers

106 References exist in leasehold contracts, for example, or in individual cases where servants’ wages were due. These show up in lists of debts, in probate inventories, etc.

107 For example, Stolz, *Rechtsgeschichte*, pp. 436–438.

108 This has been stressed by Cerman, “Bodenmärkte”, pp. 147–148. For an exemplary comparison of microstudies of different German-speaking regions, see Brakensiek, *Farms*, pp. 218–234.

109 Levi, *Erbe*, p. 91.

from outside the area would have meant fewer social changes at the local level.<sup>110</sup> This might add an element of intent or control that needs to be explored. Then again, it might say something about the community, and we would have to ask whether there were different reasons for such frequent transactions other than commercial or familial ones. That there might have been, is already implied by the need to transfer movables and livestock to make a transaction viable. In order to determine the framework, the legal context and definition of property rights, the social institutions, gender relations or community relations, financing opportunities and credit networks must be analysed too. Arguably, this is a comprehensive approach, but it could make interregional comparisons possible and has been successfully put to the test.<sup>111</sup>

Given that many links between credit and land transfers can be found, it is important to incorporate the study of credit relations into the analysis of the land market.<sup>112</sup> This entails, at the same time, considering the nature of these credit relations. In this area, many credit relations were based on kinship, with obligations arising from deferred inheritance compensation payments and marriage portions resting on the property of the husband (or wife). Consequently, the land market has to be seen in the light of credit and kinship networks as well, and cannot be viewed in isolation from these links.<sup>113</sup> This again throws into question not only the existence of, but also the distinction between, purely 'commercial' and 'non-commercial' transactions. Instead, as suggested by Markus Cerman, this calls for a different method of explaining variations in land markets, one that is focused on the distinct institutional and legal constraints of land markets and regional variations, dissolving the distinction between 'commercial' and 'non-commercial' transactions.<sup>114</sup> In the area and period under study, for example, the land market was an assemblage of multiple networks shaped by kinship, neighbourhood and trade, with a firm legal basis and opportunities, and characterised by a weak lordship and relatively strong property rights that enabled the involvement of a broad spectrum of the society – but also with institutional hindrances in the case of gender differences.

110 Brakensiek, *Farms*, p. 231.

111 Apart from the workshop in Pavia, see, for example, Béaur, Schofield, Chevet, Pérez Pícazo, *Property Rights*.

112 Briggs, *Zuiderduijn, Land*.

113 See also Muldrew, *Afterword*, p. 312.

114 Cerman, "Bodenmärkte", pp. 130, 148.

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