

Legal spaces and gender order as social processes in a trans-regional perspective
Negotiating and stipulating property in urban and rural contexts of Southern Tyrol
from the fifteenth to the early nineteenth century

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This research project analyses the influence of applicable law on the organization of society. During the transition from the late medieval to the early modern period, attempts to unify law and in some cases even to create it anew became more frequent. This was due to the initiative of rulers and subjects alike. As such, new legislation was always confronted with old common practice which only in part and only in some areas was equivalent to applicable law.

Today's South Tyrol is particularly well suited for an analysis of such an area of tension between legal norms on the one side and legal practice on the other. This is because it is situated on the borderline where two legal cultures meet. The use of both Italian and German law can be verified in this area early on. One of the research project's hypotheses is that this dual legal culture might be the reason for the fact that in spite of unified written law in Southern Tyrol, different interpretations and practices survived into the nineteenth century. To be able to trace this development, the research project will look at a period spanning from the fifteenth to the early nineteenth century.

On the level of written law and legal practice the research project focuses especially on gender relations. The specific legal authority allocated to both genders structures the relationship between women and men. How much they were each allowed to negotiate or stipulate independently could expand or limit their scope of action and therefore their sphere of influence within society. Consequently, negotiating and stipulating are two central concepts at the borderline of law and practice. They are central for the two legal aspects of the research project: marriage property and inheritance law. Especially during the early modern period until the transition to the nineteenth century, marriage constituted the main societal institution in which the positions and roles of women and men have to be regarded as interdependent. Through canon law and lay legal practices and statutes, marriage managed the relationship between the sexes, formed the basis for economic life and was the locus for the transfer of resources such as money and property. The other main legal area is gender guardianship. Guardianship reflects the old legal idea originating from Roman law which assumes an inability of women in appropriately judging the consequences of legal actions such as contracts. It is therefore inseparably linked with gender relations as well as with the agency, the ability to contract and the legal capacity of women.

Gender is here understood as a multi-relational category. Relations between women and men are to be linked with their respective social status (belonging to an aristocratic, urban or rural group), as well as marital status (unmarried, married, separated or widowed). In practice, the research project looks at two different levels. Firstly, legal norms enable us to understand the perceived ideal of social relations in a given time. The negotiation processes for those norms reveal the opinions of the participants. To study both aspects, the territorial law codes of Tyrol of the years 1526, 1532 and 1573 will be looked at together with their later attempted amendments. Their importance for and role in shaping marriage and inheritance related ordinances and their role in regulating gender guardianship will be analysed and compared. The second aspect looks at the basis of civil law documents such as marriage contracts and appertaining documents, at the realization and implementation of these norms in legal practice and at the differences within social groups as well as in different parishes, towns, ecclesiastical and monastic territories in Southern Tyrol. The aim is to explain the presence and persistence of characteristics of marriage property rights which makes Southern Tyrol appear as a transition area between the Mediterranean and northern legal areas: separation of property as preferred practice; the increasing infrequency and different denominations of the *Gegengabe* (gift from the groom to the bride in return for her marriage portion); and the missing legal entitlement of sustenance for widows (*Leibzuchtrecht*) although specific contractual solutions were stipulated on a case-by-case basis – which are close to systems inspired by Roman law.

The overall aim of the project is therefore to define how the specific organization of law in the area of today's South Tyrol was achieved during the early modern period. The area of Southern Tyrol is in this context understood as differentiated within and in a trans-regional perspective in relation to its neighbouring areas. On the basis of an analysis of the legal practice we would like to assert how the organization of law took effect socially, especially when looking at its implication on gender relations and order. This should result in a geographical *mapping* of the main parameters of the analysed fields of law such as marriage property, inheritance and guardianship in the area of today's South Tyrol.