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(dir. Maria de Lurdes Rosa)

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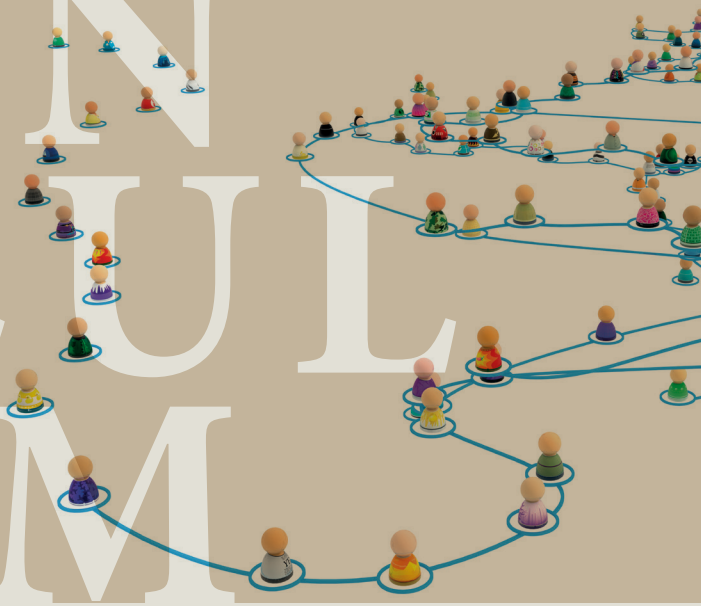

PRIVILEGE, MEMORY AND PERPETUITY: ENTAILS AND ENTAILMENT IN EUROPE, CA. 1300-1800

Maria de Lurdes Rosa (ed.)

PROJETO VINCULUM

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ÍNDICE

PREFACE

Randolph C. Head

In recent years, changes in both historical methods and archival theory have transformed the way historians think about and work in archives. The history of archives was once the province of senior archivists, a few of whom wrote valuable comprehensive comparative surveys of European national archives. Today, the field of archival history brings together historians and archivists in new collaborations, often relying on theoretical approaches in the human sciences such as systems theory and post-modernism. Scholars trained both in archival methods and historical research, like the editors of this volume, are especially well-placed to participate in these stimulating developments. Equally, areas of study for which the production, preservation, and use of formal records were a constitutive element, ranging from Inquisition studies and administrative history to the history of social elites, have been especially productive when viewed through the dual lenses of historical archivistics and the history of archives.

The volume of essays presented here embodies such intersections. On the one hand, the object of study of the VINCULUM project in Lisbon, directed by Maria de Lurdes Rosa, and of the essays in this volume, *entailment*, took place through, as well as being documented in archival practices. Entails were created by creating documents, they operated through the reproduction and circulation of records, and the conflicts they engendered resulted in additional documentary accumulation. The study of entailment therefore integrally requires close examination of specific documentary practices within Europe's evolving legal systems. On the other hand, entailment touches on a wide range of issues in the economic, social, and cultural history of European elites. Indeed, it would not be

amiss to say that the practices of entailment described by the authors here contributed to profound shifts in the nature of property and kinship from the late Middle Ages to the Modern period, and provide rich insights into the ways that law, political power, economic dominance, and record-keeping became intimately intertwined through the project of extending lineages into the future. Paralleling the emergence of modern state administration and the development of durable, usually patrilineal, family complexes, entailment provides a fresh window on momentuous social changes in early modern Europe.

Methods to prevent familial assets from being dissipated – whether by inheritance divisions or spendthrift heirs – date back to the Roman Empire, although the Latin *fideicommissum* rested on practices that (despite some resemblances) were far different from the entails, *mayorazgos, morgadios* and *Fideicommissa* that emerged in European law after 1500, as noted by Jean-François Chauvard. Equally, medieval Western inheritance customs offered strategies to preserve key properties for some kinship groups, such as the *Ganerbe* described by Margarethe Lanzinger, or the 13th-century Spanish *mayorazgos* noted by Isabel María Melero Muñoz. The entails discussed in this volume differ from such earlier phenomena in several ways, above all in that they created a body of (theoretically) inalienable property and rights, held by a potentially immortal legal entity to which the current possessor possessed only rights of usufruct. Strikingly, the new 'dead hand' of entails mirrored some of the most criticized aspects of the medieval dead hand of the Church, even as they transmitted property into the modern era of property as capital.

The possibility of inalienability through time, moreover, required written descriptions of the entailed property that imposed limitations on its future possesors: to create an entail was also to create a documentary complex, although such complexes varied from region to region. This requirement for documentation, in turn, helped formalize what kinds of assets were subject to entail, and thus could be treated as property in the first place. Entailment practices participated in and traced the profound shift from property as dependent on feudal privilege to property as an abstract asset that transformed Europe's political economy between 1400 and 1900.

As the articles here reveal, the implications of entails ranged far beyond economics and law. Entailment played a profound role in elite family dyamics and the understanding of kinship, since it separated privileged entail holders from dispossessed siblings and cousins. Most often this also involved a gender differential that deprived heiresses of claims on their ancestors' goods, even in the absence of living brothers. Entails also thrust issues of symbolic and cultural capital to the fore: some forms of entail, especially earlier on, required that possessors take on the arms and even names that the founder had decreed, while other entails comprised not only landed property and financial instruments, but libraries, artworks, and various feudal forms of titl. Finally, entails of various kinds displayed shifting attitudes towards time and the future: whether established for generations or for perpetuity, each entail sought to freeze time at the founder's death, even as entails collectively contributed to political mobility and social change.

European intellectuals and rulers generally disapproved of entailment, even as they were making or approving them. Especially in the 18th and 19th centuries, entails appeared to violate new principles about the free movement of capital, and to limit monarchical or state sovereignty by creating lineages with autarchic resources not subject to rulers' control. Most European monarchs began to demand the power to approve new entailments, and required that they be publicly documented in order to prevent financial abuses, such as using inalienable property to secure loans. As many of the authors here observe, litigation over entails was pervasive and produced vast caches of documents, even as statutes sought to clarify the rules for entailing property. Eventually, most European states abolished entailment altogether, though remnants persist to the present, and other forms of fictional possession, such as trusts and LLC companies, continue to bedevil political authorities and fiscal policy.

The essays presented in this volume not only expand on and provide a vital comparative context for the archivally sophisticated work undertaken by the VINCULUM project on Portugese entailments, but also represent an important comparative view on an aspect of elite political economy that reaches back to antiquity and forward to the present.

INTRODUCTION

Maria de Lurdes Rosa

This book responds to one of the main concerns of the VINCULUM project: that of situating the subject of entailment historiographically and theoretically, departing from the problematising state of the art contained in the projects's Grant application, and all the while enriching it — even contradicting it — by resorting to different perspectives, structured through comparative analyses spanning space and time. Accordingly, it brings together texts relating to a key theme of the project, envisaged from the outset as one to be developed collaboratively between outside researchers and members of the team: the study of the presence of entailment in the European territorial space between the 14th and 17th/18th centuries. It was understood that this line of enquiry, essential for a fuller appreciation of the scientific problem at hand, would have to rely on contributions by specialists from various areas, who would enrich the team's findings, centered as they are on the documentation relating to the territories of the Portuguese kingdom and empire within these chronological boundaries.

The preparation of the volume proved a dynamic process, involving at first a collection of topic proposals and extended summaries; the resulting papers were then distributed a few months in advance to all the participants, and finally presented and debated at a face-to-face meeting held in July 2023 in Ponte de Lima, in the North of Portugal. The exchange of ideas fostered by this meeting proved rich and fruitful for everyone involved, and the texts that it produced afford an important contribution to the aim of the project: namely, to draw up a preliminary map of perpetual entailment of property and its inheritance as it undoubtedly existed

throughout late-medieval and early-modern western Europe, even if chronologically differentiated and unevenly influential; and to better situate the deep diffusion of the phenomenon in the Iberian areas and their colonial territories.

The book is composed of eleven chapters dealing with the subject in different regions of Europe: France, Italy, the Austrian area of the Habsburg Empire, Hungary and Spain. While the relationships between these areas are multiple, if not always clear, as the texts on the Austrian and Hungarian zones make clear, such differences point to a diversified panorama, with solutions suited to different contexts, and permanently evolving. The characterisation of entailment as a static reality, archaic and adverse to progress, is thus clearly contradicted, and the path is paved for its historiographical reevaluation. We shall now proceed to a brief analytical description of the different contributions, to later close with suggestions as to ways forward.

Elie Haddad's chapter describes and analyses the phenomenon of entailment among the French nobility of the central centuries of the Ancien Régime. Here, the solution takes the form of "fideicommissary substitutions" and is relatively restricted, both in time and with respect to the social groups involved. The reasons for this state of affairs afford the central thread for his enquiry, which identifies as key factors the variety and strength of the legal contours of the transmission of property and succession, as well as the strong action of monarchs in limiting this type of practice. Fideicommissary substitutions were used as an instrumental and malleable solution, without any rigidity regarding patrilineal or agnatic succession; their role was subsumed to the conservation of the much more relevant institutional unit of the "House" — the magnetic pole congregating inherited goods, the dwelling house, the domestic space and the extended family group around a family name and a coat of arms. This explains, among other things, the emergence of a distinctive parameter with regard to the fideicommissary substitutions under analysis, which clearly differ from other cases studied in the book, especially the Iberian ones – the non-existence of archives as such, with the documents relating to entails typically classified among other categories or dispersed. This is most notable with respect to the

conception of entails as institutions, as hypothesised by the VINCULUM project. The limits of entailment in the area under study prove therefore significant in this context, gaining strength especially when they reinforced practices of favouring the heir and fostered the integral conservation of property in accordance with existing customs, or flourished in contexts where royal policy that favoured them. This is a trend especially clear in the 18th century, a comparatively late period in light of most of the other areas studied in the volume, and even then favouring the highest echelons of court nobility. The power of the House and the strength of the ideology of blood contributed to the sidelining of other social and legal devices, not favouring an institutional empowerment.

The Italian area is discussed at length by Jean-François Chauvard, in a felicitous synthesis based on his in-depth research into Venice and his extensive knowledge of the historiography of fideicommissi in other regions of the peninsula. A complete picture is drawn of the most common form of fideicommissi in the area under consideration, both in terms of its characteristics (objectives, functioning, relationship with authorities and ultimate aims) and the evolution of the institution. An attention to early discourses framing the institution reveals the insertion of the historical perspective into a political framework, which contaminated subsequent analyses, in a perfectly symmetrical trend with the Iberian Peninsula — resulting in a great deal of intertextuality when it comes both to writings against and in favour of the practice. In this sense, and having taken into account the most recent years of research — of which the 2012 volume of the *Mélanges de l'École Française de Rome: Italie et Méditerranée modernes et contemporaines*, co-coordinated by the author of the chapter, is a fundamental milestone — the proposal to view entails as "total entities" is innovative and promising. Far beyond legal institutions or obstacles to economic development, the entails of the Italian area gain from being analysed from an integrated and global perspective: "(...) trusts transcended mere inheritance practices. Thus, they were integral to the values and structures of Ancien Régime society, elevating the family by conflating it with its possessions. They served to reproduce social elites, impeded real estate circulation by generating effects detrimental to their preservation or growth, and clashed with other legal systems such as dowry, taxation,

and credit. What is more, they compelled the state to arbitrate between conflicting interests — trusts versus heirs, heirs versus creditors — and to engage, through law and justice, in their co-management, revealing them to be fluid institutions. Indeed, trusts emerge as totalising entities, whose management was as much a family affair as a state concern."

The central territories of the vast Austro-Hungarian Empire are analysed in the chapters by Margareth Lanzinger and Florian Andretsch — both offering a broad framework for the practice, including a historiographical and archival review and an in-depth analysis of its use by the nobility of the archduchies of Upper and Lower Austria. The historical process is surveyed between the two poles of the first known occurrences, in the mid-16th century, and the limitations exerted on fideicommissi from the mid-18th century onwards. Margareth Lanzinger characterises them as institutions with a strong political slant in the hands of the central power, rather than as forms of structuring nobiliary kinship — the families that founded them, with imperial incentive and authorisation: protecting borders and financing imperial power, particularly within the context of military efforts against the Ottomans. This proves especially clear with regard to a little-studied reality — the non-noble trusts founded by prominent merchant families — affording an interesting parallel with the essential role of entailment in the social ascent and protection of merchants and senior royal officials in the Iberian kingdoms, especially those from new-christian families. For his part, Andretsch fully characterises the general conditions and "modalities" of Austrian fideicommissi, providing valuable elements for comparison with other areas, and demonstrating the affinity between them and Iberian entails, more so than in other regions of Europe. In addition, the roadmap for future research that closes the article can be clearly applied to comparative enquiries, the importance of which is becoming increasingly clear: the profound *raison d'être* of this practice, well beyond its affiliation with a specific model of society and polity; the economic impact of entailment; and the real effectiveness of fideicommissi, ultimately resting on a difficult balance between the drive to strengthen the cohesion of family groups and the price of doing so, considering the conflicts fostered within the tight framework of rules governing the institution both among those whom it benefitted and among those it excluded.

The study by Zsuzsanna Peres focuses on the same area, whilst revealing important specificities, namely the confluence of various influences on the phenomenon of entailment in the late medieval and early modern Hungarian kingdom. After characterising the fideicommissi according to the law of 1687 and the legal framework developed for an already existing phenomenon, Peres details the process that led to its formalisation, in which the 1674 decree of King Leopold I and the personal efforts of the Palatine prince Pal Esherházy played a determinant role (starting with the protection of his family assets, as well as those of the high aristocracy which he headed). Behind these specific acts lies a wider process, connected with the diffusion and adaptation of models suitable for protecting the assets of the Austrian nobility, of which several cases are mentioned, some directly related to the Hungarian aristocracy. They show that the use of the word *maioratus* tends to prevail in documents in which the preservation of the family's honour is the main reason for the foundation — a prime example being the will of Prince Esterházy himself — even if its relationship with the Iberian *mayorazgo* is somewhat complex, as the author points out in her analysis of contemporary legal authors. The fideicommissi thus established, which quickly became essential for the structuring of aristocratic families and their property, did not however constitute the sole form of property entailment available in Hungary. Accordingly, the last segment of the text is dedicated to *aviticitas*, instituted by royal decree in 1351 and regulated in greater detail in 1514 in the legal compilation *Tripartitum*, but based on much earlier customary practices and regulations. While they coincided in several respects, such as the immobilisation of property and its protection against debts, the emphasis on communal ownership by the family group and the latter's power over its management constitutes a significant difference in relation to Iberian entails, namely those in which the power exerted by founder of the family line over the rest of the group was very strong — and in fact the foundational act itself subtracted a considerable part of the inheritance from the heirs' possession, often the richest or at least the most symbolically relevant. A continued comparative analysis between the Hungarian and Iberian cases will perhaps prove a promising avenue of research.

The remaining six chapters focus on the Iberian world, clearly attesting both to the relevance of the phenomenon of entailment in that area and

to a historiographical interest that has been growing over the last two decades. The texts by Isabel Melero and Judit Gutiérrez/Juan Ramón Núñez Pestano are perfectly exemplary in this respect. Respectively for Castile and the Canary Islands, they present enveloping states of the art, followed by problematising syntheses highlighting avenues for future research. In the case of Castile, Melero emphasises two issues: the role of *mayorazgos* in the social rise of the region's elites and the strong litigiousness underlying entailment. This latter dimension is illuminated by a copious amount of judicial documentation — the sheer quantity of which is revealing — which makes it possible to measure the distance between the stated ideal of succession and the reality of the conflicts that often surrounded the headship of the line of descent — here often showcasing the preponderance of female agency. The author's final question about the importance of large-scale studies, both within Castile and, comparatively, for the whole of Europe, corroborates the working hypotheses of the VINCULUM project and undoubtedly merits development.

The specificity of the Canary Islands in terms of the organisation of property affords the starting point for Judit Gutiérrez's/Juan Ramón Núñez Pestano's text. Contradicting current notions that entailment in this context was an early trend and lay at the origin of the predominance of larges estates, the in-depth research produced by recent historiography indicates a later chronology for the spread the phenomenon, sometime between the end of the 16th and the mid-18th centuries. The authors emphasise the need for deeper study of the movement's final phase, paying particular attention to the transfer of property and to the high concentration of land ownership that it seems to have fostered. Two specific themes form the centre of the article. On the one hand, the definition of a corporate identity for entails, in which two pioneering parameters in entailment analysis are highlighted: gender and forms of succession giving rise to conflict. On the other hand, the social impact of entailment, considering the transformation of the rural landscape, conflicts with subordinate groups resulting from the local establishment of wine-producing *haciendas* (almost all of which were entailed), and the role of slavery, a path hitherto practically unexplored. In the same vein as the author's other studies, the relationship between the existence of *mayorazgos* and the

creation and conservation of family archives is analysed — again, a path in which promising avenues for development are pointed out. The author closes the chapter with a question that is central to the investigation undertaken by the VINCULUM project, also encompassing the Portuguese Atlantic islands and colonial Brasil until the end of the 17th century: can one speak of "entailed societies"? Once again calling for further research, Gutiérrez and Núñez point to the impact of entailment on family structures and on the division of land and the familial transmission of assets, which must be analysed in conjunction with other transformative forces active in the final centuries of the *Ancien Régime*.

Combining a historiographical review with summaries of the regions under study, these chapters double as a welcome introduction to the following four, which, without neglecting historiographical introductions, focus on the study of key internal aspects of Iberian entailment, bringing new perspectives to bear on the subject: the relationship between entailed and free property (Jular) or the documentary production aimed at protecting entailed properties (Villagrasa-Elías); the accumulation of *mayorazgos*, for Roullet, as a key to analysing the relationship between lineage and house, and, for García Ríos, illustrating the effects of such a practice on the consolidation of a grand titular house.

Given the weight — and often the sole survival — of the documents related to the entails, the ownership of free estates by families also possessing entailed assets is difficult to grasp. In fact, it is typically only through the foundational documents and subsequent acts regulating succession and alliance, as produced by the entail administrators over generations that we are able to glimpse the existence of free property — all the more so given that, commonly, only one third of such assets could effectively be entailed at any given moment. The agglutinating nature of the institution, with the very frequent obligation to entail the *legítima* (i.e, each heir's legally due portion of the free possessions) by each successive administrators, and the internal practices of concentrating inheritances, concur to render the analysis more complex, and it is essential that the parameter of document conservation and transmission is taken into account. This set of questions is dealt with by Cristina Jular and Raul Villagrasa-Elias

in two complementary chapters, based on the *Scripta manent* project and the digital platform created as part of it.

Cristina Jular approaches these issues through the lens of the Fernández de Velazco, lords of a titled houses, Constables of Castile and Grandees of Spain, who afford a particularly suitable case study by virtue of their enormous wealth and well-preserved documentary production. Her chapter emphasises the importance of using the family archive as the basis for a perspective able to link assets and their management to archival practices, questioning the role of the archive in historiographical construction. The intense internal management, in a mixture of tensions and complementarities, of assets of both types by the Velasco family is very clearly emphasised, and the written record underlying it is drawn to the fore. Deepening the analysis of the written practices, and after undertaking a historiographical review of entailment in Castile, Raul Villagrasa-Elias looks at some specific codices relating to the entailed assets of the House of Osuna, as gathered at the end of the 17h century in response to legal troubles that befell the House. The "digital proposal" drawn up as part of the project *Scripta manent* is presented as a way of systematising the information contained in these (and other) codices, multiplying the channels for accessing the documentation and allowing for a more effective and documented knowledge of the evolution of the House's entailed assets.

The problems generated by the accumulation of entails, more pressingly for administrators obliged to bear specific arms and/or a surname, was an early concern in the development of the institution. Bartolomé Clavero describes the lengthy elaborations of the *tratadistas* on the subject, reacting to the Pragmatics of 1534 which, with regard to accumulation, established a maximum value – in fact rejecting the imposition, which in practice was also not widely applied either. At the same time, in the foundational documents whose emphasis is more pronouncedly aristocratic, there is a whole series of instructions in the event of a union — allowing it, circumventing the exclusion of surnames and arms, as well as establishing alternative heirs, namely second sons. In a context of strong endogamy among the social groups with the greatest assets, in which alliances were planned in such a way as to prevent their alienation — not only among the aristocracy, titled or untitled, but also among the mercantile and

administrative elites — the formation of what Antoine Roullet calls "majorate conglomerates" was inevitable. The significance of these entities and the way in which the protection they provided to the secondary branches of the lineages interacted in the process of transition between the lineage and the house is the central theme of the author's chapter, based on case studies of the sets of entails accumulated by the Zúñiga and Sotomayor families between the 14th and 17th centuries. A relatively linear transition between these two models of aristocratic familial organisation is set against the backdrop of a vast area, little studied or even acknowledged by current historiography, in which such "majorate conglomerates" are seen to play a central role. Family conflicts and solidarities, marriage policies and family discipline(s) are elements of a dynamic game, intertwined with contingent circumstances, requiring us to question the perception of simple evolutionary processes. The basic issues illustrated in this chapter are important for an extensive study of Iberian entailment; in the Portuguese reality studied by the project, entails established for second sons (or, to a lesser extent, daughters) were quite common, as were divisions by different sons of the often multiple entails concentrated in the person of the *morgado*. The relative plasticity of the "conglomerates" also echoes the ductility of the succession regimes established in the institutional documents, whose characteristic severity with the respect to the observance of primogeniture was realistically tempered by the inclusion, whilst hierarchical, of a potentially infinite number of relatives. In fact, both within the succession clauses stipulated for each individual entail and in the practice that was followed with respect to conglomerates, departing from the rules governing each, we can sense in these operations an "organisation of inequality" — or, to phrase it more accurately, a "hierarchisation of inequality" within a corporate entity other than the house. As a working hypothesis, we would say that this hierarchisation served, first and foremost, the corporate entity that was the entail.

The closing chapter, by José María García Ríos — anchored in micro analysis, resorting to prosopography and cross-referencing a vast array of sources — proposes to construct a "possible interpretative model that helps us to understand to what extent the use of entailed property and the accumulations of entails end up being a differential factor in the political, military, economic and social consolidation of the Marquises of Mondéjar

in Granada in the 16th and 17th centuries". In fact, as he charts the history of the entails founded and accumulated by the Marquises of Mondéjar, the author provides a clear illustration of the manner in which successive generations played with the rules set out by the entail's foundational documentation in order to cement their dominance; concomitantly, we are given to see how, during the 17th century, its inability to manage family conflicts, in tandem with the frequent demographic accident that was the lack of heirs, fostered a decline of the House's power in the region of Granada.

Having presented the various chapters and their contributions to the project's wider research, we are left with the task of signaling some promising paths that remain open ahead. Firstly, we stress the relevance of expanding the analysis to other geographical areas. This applies first and foremost to the Iberian Peninsula, considering the different regions where inheritance law and customs intertwined with the novelty that was the *mayorazgo*, which we know mainly in its Castilian version and derivatives; among other European regions, England is of great importance in terms of the history of entails and fideicommissi, even if their durability was always been much more strongly conditioned by public powers than was the case in the Iberian area. It is no less important to extend the research to the areas colonised by the Iberian kingdoms, particularly in Latin America. In fact, the preparation of this book was based on an exhaustive survey of the studies dedicated to all the geographies considered; this was followed by invitations to the authors of these studies, unfortunately without significant response. This somewhat disappointing experience reinforced the idea that the topic swas worth to be relaunched according to renewed perspectives. The vast majority of studies dealing with the subject of entailment for the various areas covered in this book are concentrated in the final decades of the 20th century and the first decades of the 21st century; they were developed along the two divergent strands of the history of law and (less frequently) the history of property. On the other hand, especially in Spanish historiography, there are many studies, for the most part monographic, on houses, families or regions, in which entailment appears as one of several aspects; if this allows for a comparative analysis, the information on entails generally is not developed in great depth. The studies contained in this volume, like the other books

produced by the VINCULUM project, will, we believe, foster a renewal of interest in the topic. Finally, it would be essential to compare the "European" entail (in its multiple configurations) with similar institutions in other geographical, social and cultural areas.

Secondly, the importance of thematic approaches must be stressed. These include the major issue of the institutional configurations assumed by families, touched by all the chapters in this book, which finds a clear historiographical formulation in Antoine Roullet's text on what he terms the "lineage-household". In fact, a key point here is the definition of concepts in the wake of Joseph Morsel's work on “lineage”, prompting the need to investigate their evolution both within the scientific field and outside it, and to map out their mutual influences. If the notion of "body", "corporate entity" and "corporate society" — which, admittedly, also has a history in need of writing — is not yet commonly applied to institutions such as entails, the studies gathered in this book clearly highlight the legal configuration of succession and transmission as engendered by entails and fideicommissi. The legal litigation and the multiple attempts by royal powers to legislate on the subject of entails are nothing if not an outcome of the institutional nature of these formations. How they ultimately shaped familial configurations — resorting to a very broad term, so as to avoid falling into a complex historiographical discussion –, whether fostering an evolution from “lineage” to “house” or even creating a specific form of "entailment kinship", are central topics to investigate.

Other avenues can be explored: namely, how cultural and mental context may have contributed to the diffusion of entailment (a factor that seems to have been especially relevant in the Iberian context and which, in the case of the pious charges presupposed by entails, was reinforced in areas most impacted by the Catholic Counterreformation, with its insistence on the importance of funeral suffrages); the role of economic factors, so central to Bartolomé Clavero's thesis on the development of the Castilian *mayorazgo*, and their influence on the long-term immobilisation of property in the respective economies (whilst taking into account the creation of strong nuclei of property, exemption from debts and taxes, and the role of symbolic elements in maintaining the material *status quo*); the

creation of archives, a historiographically new and very distinctive fact, which gave rise to and emphasised the institutional nature of entails; finally, the failure of the model, which begins its inexorable decline at the end of the chronological window set for the VINCULUM project — i.e. at the beginning of the 18th century. Challenges are thus manifold, and the aim is to pursue them. We believe that this book and all VINCULUM project's team work have contributed to scientific progress, which is, after all, a never ending (Hi)story."

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The discussions leading to this book took place in the Portuguese town of Ponte de Lima, in Alto Minho, extreme north of the country. In the inspiring setting provided by several manor houses, whose history and present existence are to a large extent owed to the entailment system, in contact with owners who try to keep a peculiar ecosystem alive, an adventurous and somewhat romantic endeavor took place. One might term it a kind of deferred anthropological inquiry, carried out on the dead and their representatives – both people and houses – each in their own way allowing us a better grasp of our object of study. Was this scientifically naive? Were the perceived continuities real or merely subjective? I believe only each of the authors can answer. If subsequently – science rest assured – the writing of the texts moved from such dreamlike contexts to a sober academic one, the meeting in July 2023 was all the while a wonderful time. I wish therefore to express my gratitude to the persons and local institutions that contributed to it – the Municipality of Ponte de Lima (vice-president Paulo Sousa), the Municipal Archive (Cristiana Freitas), and the proprietors who received us (Miguel Ayres de Campos, Francisco Calheiros, Clara Pereira Coutinho, Rosário Sá Coutinho and José Adolfo de Azevedo). My final gratitude goes to Randolph C. Head, colleague and friend, companion of a long, learned and most of all, pleasant journey through History and Archivistics, who kindly agree to wrote the Preface.

Fideicommissary substitutions in Ancien Régime French nobility (16th –17th centuries)

Élie Haddad
(CNRS, Centre de Recherches Historiques, EHESS, Paris)

Abstract: Compared to other European countries, fideicommissary substitutions, a legal form of fiedicommis specific to the French kingdom, remained a relatively minor phenomenon in the French nobility. It did not lead to long-term unavailable estates, except in the very specific case of dukes and peers, and it did not lead to any specific organization of the archives of noble houses. To understand this peculiarity, this article combines a reflection on the law and its uses, on monarchical policy towards the nobility, on the evolution of the second order, on property transmission practices within families, on how noble houses were though, and on the system of noble kinship. All these phenomena underwent profound transformations during the second half of the 16th century and into the 17th century. It did not prevent the use of fideicommissary substitutions, which gradually became a marker of nobility, but limited and somewhat altered them.

Keywords: Fideicommis, substitutions, early modern France, nobility, archives, kinship

Introduction

"In this government [monarchy], substitutions which preserve the estates of families undivided, are extremely useful, though in others not so proper", Montesquieu writes in *De l'Esprit des Lois*[1]. Lawyer Barthélémy Joseph Bretonnier adds: "There is no subject in jurisprudence more important than that of substitutions; however, there is none more tangled, and which causes more and more tricky lawsuits (...)"[2]. Both statements are representative of how fideicommissary substitutions were viewed in the kingdom of France at the end of the Ancien Régime: considered as "the foundation of the most illustrious Houses & most precious to the State, since they preserve possessions which perpetuate their splendor & service"[3], they were at the same time a risk, since they rendered part of the patrimony unavailable, and could thus harm creditors. They were also a source of conflicts within families. These were the factors justifying the reform introduced by Chancellor d'Aguesseau in 1747.

These considerations have long set the tone for historical and legal analysis of substitutions. However, we need to take some distance if we are to understand the role of this form of fideicommis in the kingdom of France during the 16th and 17th centuries in general, and amongst the nobility in particular[4]. When compared with other European countries, the relatively limited nature of this practice in the second order is striking as is the marked desire of the monarchy to regulate and limit it: this is a very different situation from the Venetian system, where public supervision created an interdependence between the State and noble families[5]. It is also very different from the Spanish majorates or from

1 "Les substitutions, qui conservent les biens dans les familles, seront très utiles dans ce gouvernement [la monarchie], quoiqu'elles ne conviennent pas dans les autres" (Montesquieu, 1748/1753, livre V, chap. IX, t. 1, p. 86). All other translations are mine. Many thanks to Sébastien Le Pipec (EHESS), who helped me to translate this article.
2 "il n'y a point de matière dans la jurisprudence plus importante que celle des substitutions ; cependant il n'y en a point de plus embrouillée, et qui cause des procès en plus grand nombre, et plus difficiles (...)" (Bretonnier, 1783, p. 365).
3 "la base des Maisons les plus illustres & les plus précieuses à l'État, puisqu'elles y conservent des possessions qui en perpétuent la splendeur & les services" (Thévenot d'Essaule de Savigny, 1778, p. ix).
4 For a historiographical analysis, see Haddad, 2012.
5 Chauvard, 2018.

Portuguese practices that structured transmission in noble houses[6]. To comprehend this peculiarity, one ought to consider the law and its uses, monarchical policy towards the nobility, the evolution of the second order, property transmission practices within families, how noble houses were thought, and the system of noble kinship. All these phenomena underwent profound transformations during the second half of the 16th century and into the 17th century, which crystallized under the reign of Louis XIV. As a result, the social meaning of fideicommissary substitutions was altered.

1. Fideicommissary substitutions, legal practice and monarchical politics

1.1. Legal definition of fideicommissary substitutions

From a legal point of view, fideicommis in the kingdom of France took the form of specific indirect and gradual substitutions. These complex substitutions first appeared in written law countries in the 12th and 13th centuries, but did not become widespread among the nobility of Languedoc until the 16th century[7], and were probably introduced rather late, towards the end of the fifteenth century, in customary law provinces. Substitutions made it possible to call one person to receive the benefits of a disposition, such as an inheritance, in the place of another. Simple substitutions, which instituted a second heir or legatee in the event that the first one was unable to collect the disposition made in their favor, are not the subject of this article: such simple substitutions were quite commonly used across all social categories in the event of a childless death, to impose on an heir a particular behavior or provision, or to replace them with another person deemed more capable. Those did not fall in the category of fideicommis substitutions.

6 Clavero, 1974; Dedieu, 1998; Rosa, 1995. For further comparisons, see the classic article by Cooper, 1976, and Chauvard et al., 2012.
7 Petitjean, 1975; Augustin, 1980.

These took the form of indirect substitutions involving at least three people. The first, known as the substituent, is the person who, by contract or will, creates a specific provision whereby they entrust a second person, named the instituted, for receiving a property on the condition that they retain and return it, upon their own death, to a third person, previously designated by the substituent. The fact that the substituent can choose an order of succession, thus multiplying the potential substituted over several generations, brings gradual substitution in line with other forms of fideicommis in Europe. Jurists themselves took the devolution of the French Crown as a model – indeed, they described the Salic Law as a gradual and perpetual substitution from male to male.

Yet practice is less straightforward than legal theory, and substitutions made by private individuals often did not fit neatly into the categories of simple or indirect substitution: depending on the condition issued and the surviving heirs, they may have been one or the other. What's more, since substitution is the result of an individual's will, the question of how that will was to be interpreted could spark disputes. The stakes were high, since any gradual substitution entailed, in addition to an order of succession, the unavailability of the estate, which it was thus illegal to sell, alienate or mortgage.

1.2. Law, customs, jurisprudence and fideicommissary substitutions

Indirect substitutions originated in the practice of notaries in written law countries, and were initially governed by precedent before becoming the subject of commentaries by jurists and then of royal legislation. Magistrates' decisions, in the event of family trials, were based on different sources and required their discernment[8]. The law at that time cannot therefore be thought as a homogeneous whole, firstly because of the plurality of legal traditions in different places, and secondly because of the way in which the exercise of justice was conceived in the 16th and during

8 Renoux-Zagamé, 2003.

part of the 17th century. Customs made no mention of fideicommissary substitutions: only practice introduced them in these regions. Here again, it was the precedents resulting from trials that guided judges' decisions.

A number of jurists worked to provide a framework for the thinking of judges and the practice of notaries on this issue. Fideicommissary substitutions were discussed in France as early as the 16th century by Cujas and Dumoulin, while commentators on customs reflected on their effects, following the example of René Choppin, a former lawyer and famous jurisconsult, in his commentary on the Custom of Paris in 1614[9]. However, it was not until the middle of the 17th century that jurists dealt with fideicommissary substitutions at length. They referred first and foremost to the work of Marc Antoine Peregrinus, professor of law at the University of Padua, who died in 1616[10]. This work is always cited, whether by Jean-Marie Ricard, a lawyer at the Parliament of Paris who died in 1678[11], or a century later by Claude-François Thévenot d'Essaule de Savigny[12].

The debates focused in particular on the number of degrees that might be authorized in indirect substitutions. Dumoulin, after much hesitation, decided against any limitation. Some wanted to extend substitutions to ten degrees, while others wished to restrict them to one hundred years[13]. Another very important point was the question of conjectures. It was recognized that substitutions arose from the will of the testator without the need for them to use a specific formula. It was therefore necessary to interpret the clauses of the donations and many jurists accepted that a simple substitution could be understood as a fideicommissary one in certain cases, for example if the substituted were male children, if the family was noble, or if the substitution concerned great seigneuries. Conjectures potentially extended the scope of indirect substitutions, giving them a markedly noble character, and opened up the possibility for a noble family to protect itself from creditors by alleging a conjectural fideicommmissary substitution. Lastly, the nature of the assets that might be substituted was another point of heated debate.

9 Choppin, 1662 [1614], livre 2, titre IV.
10 Peregrinus, 1595.
11 Ricard, 1661.
12 Thévenot d'Essaule de Savigny, 1778.
13 See Ricard, 1661, pp. 179–181.

However, let us bear in mind the limits of a purely legal approach to the transmission of property in the early modern period. Family arrangements, particularly in the upper classes, could dispense with customary rules to some extent, provided that they were not challenged by heirs who might have considered they had been disadvantaged[14]. Customary law itself was silent on many aspects, and only applied in the absence of specifications by private individuals[15]. This left considerable latitude for family arrangements, to the point that, although not accepted by many customs, or even forbidden as in Auvergne, fideicommissary substitutions were used by some families, notably amongst the nobility[16]. Nevertheless, changes in the role of law and in the conception of legal norms occurred in the course of the 17th century, tending towards a more rigid framework for family practices in matters of succession. Monarchical politics played an important role in this process, which influenced the implementation of gradual substitutions.

1.3. A restrictive monarchical policy

One of the main issues that prompted the monarchy to intervene in the ruling of substitutions was to guarantee that creditors be aware of which of the properties were substituted: the aim was to protect them against mortgaged land or property that they would not be able to seize because it was substituted and therefore inalienable. In 1553, an edict promulgated by Henri II required the publication, insinuation and registration in the registries of the bailliages and sénéchaussées of all wills comprising substitutions, within three months of the testator's death. Article 57 of the 1566 Moulins royal Ordonnance reiterated this provision, which was later reaffirmed in 1690 and 1712.

In order to restrict substitutions, it was possible to limit the number of degrees authorized and the legal form in which they could be established.

14 Haddad, 2011.
15 Derouet, 1997b; Assier-Andrieu, 1982.
16 See the example of the Auvergne nobility developed by Solignat, 2012.

As early as 1560, the Ordonnance d'Orléans opted for a drastic limitation to two degrees, an option confirmed by article 57 of the Ordonnance de Moulins six years later, which furthermore restricted all previous substitutions to four degrees. In practice, these measures were little followed. In 1629, the ordonnance prepared by Chancellor Marillac stipulated that the two degrees would be counted per head and not per generation. Two brothers would therefore have counted as two degrees, but only the parliaments of Metz and Dijon recorded this provision. Finally, legislation sought to limit the types of property that could be substituted. All these measures were designed so that creditors might not be unpleasantly surprised if faced with invalid mortgages.

The second challenge for the monarchy was to counter the power of the great noble houses at the end of the Wars of Religion. The continuity of these houses depended, in particular, on the possibility of transmitting their name and arms, along with the principal assets that constituted them, notably the fiefs of dignity. Such transmissions could take place via an heiress whose husband or one of the children took over the name and arms of the house without any male heir, or via a gift to a nephew or niece, always on condition that they would take over the name and arms of the donor. These agreements, settled in notarial deeds – wills, inter vivos donations, marriage contracts – were frequently accompanied by a gradual substitution in the event of failure of the designated heir or heiress. The charge of taking over the name and arms was so important and well identified as a method of perpetuating houses that it was accepted as part of the conjectures for deciding in favor of a fideicommissary substitution, even if the term had not been used by the donor.

The example of the House of Laval is instructive. In 1547, when Guy XVII died childless, the earldom of Laval passed to his niece (in fact, the daughter of his elder half-sister), Renée de Rieux. Her marriage contract with Louis de Sainte-Maure in 1540 included a perpetual charge to bear the name and arms of Laval in the event of extinction of the male line. Renée de Rieux immediately changed her full name into Guyonne de Laval and claimed to inherit the entire earldom, asserting that the charge of name and arms carried with it a substitution. In 1567, when Renée de

Rieux died, her nephew Paul de Coligny, son of her sister Claude de Rieux and François de Coligny, became Count under the name Guy XIX de Laval. The continuity of the House of Laval was ensured by this twofold, successive change in names[17]. This was nothing unusual in the nobility of the time. However, Guy XVII's sisters challenged Renée de Rieux, disputing the existence of a fideicommis and consequently requesting the division of the earldom. The magistrates of the Parliament of Paris, no doubt in agreement with the royal power, seized upon this affair in an attempt to weaken all powerful noble houses[18]. In chapter XVII of his *Traité de l'origine des noms,* published in 1681, Gilles André de La Roque, best known for his *Traité de la noblesse*, discussed the affair. Although he did not give the political background, he stressed that the land of Laval was indivisible and went with the first name of Guy assigned to the baron or earl who owned it. He pointed out that the trial had raised the general question of "whether there may be particular laws & statutes in the great Houses to bear the name and arms by substitution in countries with customary law, such as in the Maine where the land of Laval is situated, & whether it can be indivisible"[19]. The stakes were clear:

> "Those who hold in the affirmative, want that for the preservation of the great & illustrious Houses there should be particular Laws introduced in their favor, from which one cannot derogate; then that there is none other most excellent means to perpetuate the memory of the Noble families, than to practice the substitution used in the country of Written Law, so that the estate remains forever in the House, without never being able to be alienated"[20].

17 Walsby, 2007.

18 The case is reported at length by Peleus, 1638, pp. 98–105.

19 "s'il peut y avoir des Loix & statuts particuliers dans les grandes Maisons pour en porter le nom et les armes par substitution en pays coûtumiers, ainsi qu'en la coütume du Maine où est située la terre de Laval, & si elle peut être indivisible".

20 "Ceux qui tiennent pour l'affirmative, veulent que pour la conservation des grandes & illustres Maisons qu'il y ait des Loix particulieres introduites en leur faveur, ausquelles on ne peut déroger ; puis qu'il n'y a point de moyen plus excellent pour perpetuer la memoire des Nobles familles, que de pratiquer la substitution usitée dans le païs de Droit écrit, afin que les biens demeurent toûjours dans la Maison, sans pouvoir jamais être allienez".

For those who held the negative, "it would be a maxim of very pernicious consequence to allow family treaties to derogate from general laws and royal orders"[21]. The Laval case thus raised the question of the admissibility of gradual substitutions in customary countries, particularly in Maine. On April 9, 1595, the Parliament of Paris ruled that there had been no substitution, and that the sisters would inherit their share of the earldom. Beyond the political issues at stake for the Laval family, this ruling was a step in the direction of dissociating the name from the patrimony, the union of which constituted a noble house[22]. The judgement indicated that the charge of taking over the name and arms did not carry with it the heredity of property. In this respect, and contrary to La Roque's assertion, it had a much broader social scope than the perpetuation of the great noble houses alone. This judgement was part of a series of developments that modified conceptions of inheritance, limited the changing of names and arms, and entailed that the word "house" took on the meaning of patrilineage, which it had never borne before[23].

Of course, the process was far from immediate, and the legislation was not applied overnight: the archives are full of cases which show that the law was only poorly followed, and that, moreover, it was not considered retroactive. For example, fideicommissary substitutions introduced in the 16th century continued into the following century. This was the case with the substitution of the barony of Sérignan created in 1539 by Jean de Poitiers, seigneur de Saint-Vallier. In 1687, Louise Magdelaine de La Marck Eschaltard, a *'fille majeure'*[24] having the disposition of her rights, requested that this substitution be opened in her favor and exempted from the mortgages of the La Marck creditors, in accordance with a judgement handed down in 1635. She obtained satisfaction: the magistrates of the Parliament of Paris thus admitted that the substitution was still in force 150 years later, and made the property to which it related inalienable[25].

21 "ce seroit maxime de tres-pernicieuse consequence, de souffrir que les Traités des Familles dérogeassent aux Loix et Ordonnances generales" (La Roque, 1681, pp. 112-113).
22 Haddad, 2014.
23 Haddad, 2024.
24 "*Fille majeure*" was the expression to designate women who had reached the legal age of majority (30), were unmarried and able to handle their own affairs and exert their rights alone.
25 Archives Nationales (henceforth AN), T 159/1, March 17, 1687, judgement confirming the substitution of the land of Sérignan in favor of mademoiselle de La Marck.

It is true, however, that royal legislation tended to limit fideicommissary substitutions. In fact, notarial deeds sometimes contained clauses conforming to the number of degrees stipulated by royal legislation. Thus, in 1614, Antoine de Lamet donated his seigneurie of Le Plessis-Saint-Just and a number of other fiefs to Charles de Lamet, seigneur de Bussy, on condition that the latter may not sell, alienate or mortgage them. In the event of the death of the donee, the donated estate would go to his eldest son, "and the said eldest dying without children heirs procreated from his body in loyal marriage to the next eldest son, and so on from eldest to eldest as long as there are males, and if there is none to the daughters, and the said donator has substituted and substitutes all these eldest successively and in order and in as many degrees as he is allowed by the ordonnance"[26]. The clout of royal legislation became more pronounced as the legal norm was conceived as founded on the primary principle of a divine order from which human laws derive, and this norm also became the structuring framework for social relationships, shaped by monarchical power. As a result, the judge morphed into the guarantor of this divine order through human laws, which he was charged with applying, in contrast to his previous task of interpreting cases in conscience by drawing on the various sources of law and justice[27].

The acme of the royal policy on substitutions was the 1747 d'Agueseau ordonnance. In the meantime, an edict of 1711 had on the contrary granted dukes and peers the possibility of substituting in perpetuity the capital of their duchy and duchy-pairie with part of their income, up to 15,000 livres in annuity, without being subject to any debt or distraction. The monarchy thus legislated in the direction of a highly hierarchical conception of inalienable patrimony, reserved for the high aristocracy. Gradual substitutions, which were widely used by all social strata having assets, became a predominantly noble instrument, even a marker of nobility, and perpetual substitutions a privilege of dukes and peers.

26 "et ledit aîné venant à mourir sans enfants hoirs procréez de son corps en loyal mariage à l'aisné d'après et ainsy d'aisné à aisné tant qu'il y aura masles, et en leur defaut aux filles, lesquels aisnés ledit sieur donnateur a substitué et substitue successivement et par ordre et en autant de degrés qu'il luy est permis par l'ordonnance" (Bibliothèque Nationale de France [henceforth BNF], Pièces Originales 1630, dossier 37 888 [De Lamet], June 27, 1614, Lamet donation).
27 Renoux-Zagamé, 2003.

2. Uses of fideicommissary substitutions in the French nobility

2.1. Bilateral uses

From the 15th to the first half of the 17th century, the practice of fideicommissary substitutions was not marked by strict patrilineal transmission, which would make each noble family emulate the rule of devolution to the French throne. Individuals tinkered with the three main terms of gradual substitution (eldest heir, male heir, direct line or collateral line, or even foreign house), favoring one over the others according to their plans, and at the same time modulating the order of succession, which did not necessarily conform to male primogeniture[28]. Even in the case of a preference for the agnatic line, a substitution via a daughter was most often provided for, and was usually accompanied by the responsibility of raising the name and arms. In 1495, Guillaume Gouffier chose his son Arthus as his principal heir, to whom he bequeathed the seigneuries of Boisy, Roannais, Maulévrier and Oiron. To ensure the continuity of this batch of fiefs bearing dignities, he substituted them by establishing an order of succession between the children of his second marriage. He began with Arthus' brothers, in order of birth, and continued with the sisters, again in the same order. He went even further, extending the substitution to his second wife, Philippe de Montmorency, and to the daughter of his first marriage, Magdelaine, who was already married[29].

Up until the beginning of the 17th century, substitutions could take bilateral forms, even with a matrilineal preference. They could also be collective. On June 12, 1474, Pierre Beaujehan wrote up his will appointing his daughter Catherine Beaujehan, wife of Pierre Thomassin, as his heir. Following her death, he substituted Guillaume, Jehan and Pierre Palmier, children of Catherine's first marriage. Catherine, in her own will, named Pierre Thomassin as her heir, who dictated his testament on May 26, 1479, making his son Claude his heir and, should he die without male children,

28 Augustin, 1980.
29 AN, T 153/67–68, May 15, 1495, will of Guillaume Gouffier.

substituting his two daughters. Finally, Geoffroy de Saint-Barthélemy instituted his daughter Antoinette, wife of Messire Claude de Thomassin, as his heir, substituting her for the first male son to be born, on condition that she bore the name and arms of the testator[30]. Despite the growing preference for men heirs, such practices can be found late in the 17th century, particularly in women's wills. In August 1692, Marie Molé, widow of Georges de Monchy, Marquis d'Hoquincourt, bequeathed all her property to her daughter Marie Thérèse Geneviève Madeleine de Monchy d'Hoquincourt, with the exception of the legitimate portion, which was to belong to her son Éléonord Louis d'Hoquincourt, Abbot of Bohéries, in accordance with the customs in which the properties were located. On January 20, 1694, she added that should her daughter die unmarried or childless, she established that her son was to withhold the income from her property and to substitute the estate for his children if he married, and if not, or if he had no children by legitimate marriage, she would substitute the estate for her own nephews, the sons of her sister, the Marquis and Count of Flamanville[31]. From a kinship point of view, this was therefore a bilateral substitution.

Also, there were matrilineal substitutions, where men were only called upon in the absence of daughters. Thus, in 1559, Jeanne de Vitry, widow of Jean de Paillard, gave her granddaughter Marguerite Budé, wife of Pierre de Saint-André, a seigneury as a dowry. In the event of Marguerite's death without issue, she substituted her brother Guillaume, and in the event of the latter's death without issue in turn, she substituted her brother-in-law, her husband Jean de Paillard's brother named Jacques, and the latter's issue[32]. We should also note the frequent presence of gradual collateral substitutions made by ecclesiastics or laymen, uncles or aunts, for their brothers, sisters, nephews, nieces or cousins. On March 28, 1552, Jean d'Humières, childless, drew up a will in which he gave his brother Louis his lands and seigneuries. If Louis had had no children, his third brother Jacques was to be substituted[33]. In 1619, an agreement was reached between the children of Olivier de Faudoas and Marguerite de

30 BNF, Dossiers Bleus 632, dossier 16861 (Thomassin), f° 2-3.
31 BNF, Pièces Originales 1992, dossier 45 677 (De Monchy), August 31, 1692, will of Marie Molé.
32 Croguennec, 1984, p. 151.
33 Croguennec, 1984, p. 151.

Sérillac concerning the division of their property, in particular the seigneury of Sérillac. This had been substituted on April 18, 1551 by Jean de Sérillac, their maternal great-uncle, in favor of his sister's children[34].

In addition, the nature of goods being substituted became much more extensive: movable and immovable property, juridically-defined fictitious real estate, annuities, offices, tangible and intangible assets, debts, easements and usufructs. In her will on January 31, 1651, Éléonor de Lorraine, duchesse de Rouannais, bequeathed all her movable property to her grandson Artus Gouffier, duc de Rouannais, and should he die without heirs, she decided that 100,000 livres was to be given to her youngest son, Louis Gouffier, comte de Gonnord[35]. In 1628, Charles François Dormy, aged 77, bequeathed his office of secrétaire du roi and the lands he owned to his nephew, his brother's youngest son, on condition that he would keep it and pass it on from male to male, always preferring the one capable of owning it, being a lay man and unmarried[36].

These few examples illustrate the complexity and variety of gradual substitutions implemented within noble families in the 16th and 17th centuries. When they were collective, they protected the patrimony from creditors and could even promote equality between heirs. On the other hand, when they were individual, they favored one heir to the detriment of the others[37]. Often, the complex conditions of inheritance were determined by the position of the donor, the position of the donee, as well as demographic and matrimonial realities. In most cases, the projects behind these substitutions were not aimed at reinforcing the existing inequality of inheritance within the nobility, nor at reinforcing male preference – which of course does not mean that these two phenomena were not structural realities at the time.

34 BNF, Carrés de d'Hozier 247, dossier Faudoas, July 18, 1619, Faudoas agreement.
35 AN, T 152/13-14 January 31, 1651. Articles from the will of Éléonor de Lorraine, duchesse de Rouannais (copy dated August 1727 followed by a later request and a notice from Gouffier's council dated August 29, 1727).
36 AN, Y 175, f° 146, September 28, 1628, will of Charles François Dormy. I owe this reference to Robert Descimon, whom I thank.
37 Descimon, 2012, p. 397.

2.2. Ensuring the continuity of the house

There were two kinds of justification for substitutions in notarial deeds. Sometimes the substituent aimed to help the donee maintaining their rank or making their living easier. For example, in 1671, Catherine de Roncherolles, widow of Timoléon Gouffier, seigneur de Thois, gave 400 livres of annuity at denier 16 to Alexandre Gouffier, her grandson, and his successors, for whom she substituted Jean Timoléon, Léon and Charles Gouffier, brothers of the donee, and their descendants, line by line, to the exclusion of all other parents, ascendants or collaterals. This donation was made "to facilitate the means for the said lord donee to subsist and act in his affairs until time brings him a more ample estate, whether by succession or otherwise"[38].

More often, it was a question of guaranteeing the continuity of a house. As stated above, a house combined a heritage, a residence, a domestic space and a family group under a name and coat of arms. Most often, this name was that of the line's identifying seigneury, but sometimes it was the family name, which may have derived from the name of a fiefdom previously owned. By clearly designating a noble family group, in a socio-centered perspective, the notion of *house*, even when it refers to a kinship group, has a real character, in the legal sense of the term: its existence is mediated by property that ensures its continuity through people[39]. In the 16th and early 17th centuries, the assets that bore the identity and name of the house were, as far as possible, protected and followed a predominantly male line of transmission. This did not rule out the passage of these assets through a woman in the absence of a male[40]. As a result, gradual substitutions often involved land, and particularly fiefs of dignity.

A remarkable expression of the importance accorded to the complex formed by name, arms and property can be found in the 1627 will drawn up by César de Balsac de Dunes, maréchal de camp of the king's armies.

38 "pour faciliter audict sieur donataire les moiens de subsister et agir en ses affaires en attendant que le temps luy ayt amené un plus ample bien, soict par succession ou autrement" (AN, T 153/83, April 17, 1671, Roncherolles / Gouffier donation).
39 Grossi, 1992.
40 Haddad, 2014; Lévi-Strauss, 1979, 1983.

"Considering that none of the said name of Balsac has male children and wanting to satisfy the great and good friendship that he has always carried and bears to messire Léon d'Illiers sieur de Chantemesle his nephew, the eldest son of dame Charlotte Catherine de Balsac his first sister, in the hope that he will see the name, House and arms of Balsac d'Antragues, which is otherwise extinguished and lost, revived in the person of his nephew"[41], he gave him the seigneuries of Malesherbes and Marcoussis, which he inherited from his deceased niece. He also passed on to him the earldom of Granville and the barony of Dunes, which he possessed through the substitution opened in his favor after the death of Charles de Balsac, his first cousin, as well as the barony of Gyé, with the condition "that the said donee and the substitutes hereinafter named will take the names and arms of Balsac with the quality of sieur d'Antragues and Dunes and will sign in all acts 'de Balsac Dunes d'Illiers', without the said sieur his nephew being able to alienate, sell, mortgage nor divide the properties to him donated". César de Balsac then introduced a very detailed substitution procedure. If the donee had male children born in lawful wedlock, the land was to go to the eldest, and if the latter had no descendants, to the second, "and so on from male to male, and will be required to bear the name of Charles Cezar de Balsac sieur d'Antragues et de Dunes". In the absence of a male, the property would belong to the eldest daughter, otherwise to the youngest, and so on from one to the other in order of birth, on condition that the husband and their children would bear the name de Balsac sieur d'Antragues et de Dunes. If there were no descendants, the property would go to Henry d'Illiers, seigneur de Beaumont, the donator's nephew, to keep it for his own eldest son. But "none may claim the present substitution unless he first takes the name and arms of Balsac with the name of the seigneurs of Antragues"[42]. The insistence leaves no doubt as to what was at stake for the donor: the name and assets of the houses constituted by the lands

41 "considerant qu'aucun dudict nom de Balsac n'a enffans masles et voulant satisfaire à la grande et bonne amitié qu'il a tousjours portée et porte à messire Léon d'Illiers sieur de Chantemesle son nepveu, fils aisné de dame Charlotte Catherine de Balsac sa sœur germaine, sur l'esperance qu'il a de veoir renaistre et revivre en la personne de sondict nepveu le nom, Maison et armes de Balsac d'Antragues, lequel aultrement s'en va esteint et perdu (...)".

42 "que ledict donnataire et les substituez cy apres nommez prandront les noms et armes plaines de Balsac avec la qualité de sieur d'Antragues et de Dunes et signeront en tous actes de Balsac Dunes d'Illiers, sans que ledict sieur son nepveu puisse allyenner, vendre, ypotecquer ny diviser lesdictes choses ainsy a luy données" (AN, T 167/4, June 16, 1627, testament César de Balsac).

of Entragues and Dunes formed an identity complex, threatened with extinction, which had to be perpetuated. César de Balzac himself had continued the house of his cousin d'Entragues, and his intention was that his name of Dunes, associated with the barony, survived as well, even through a daughter heiress who would pass on the name and related assets to her husband or one of her children.

This concept of the noble house, based on identifying seigneuries, also existed in the nobility of robe. In 1640, for example, Charles Lejay, a member of the Grand Conseil, married Gabrielle de Lesrat. In the contract, Nicolas Lejay, First President of the Parliament of Paris, Baron of Tilly, Maison Rouge and Saint-Fargeau, donated his barony to his son, except the usufruct, habitation and revenues associated to it until Nicolas Lejay himself passed away,

> "and inasmuch as the said barony of Tilly, Maison Rouge and Saint-Fargeau, with its belongings and outbuildings, has been the work and principal expanse of the said lord donor because he has always intended that it should not be divided, to this end, he has substituted and will substitute to the future husband, the donee, his male children who will be born of the future marriage, together with the male children descended from the said males, in the said baronies of Tilly, Maison Rouge and Saint-Fargeau, successively and in as many degrees as permitted by ordonnances, all with the charge of bearing the name and arms of the donator, and he has prohibited and prohibits sale, alienation, and mortgage of the substituted goods, that will not bear any charge or debt, even matrimonial conventions, outstanding bonds, annuities or anything else"[43].

43 "et d'aultant que ladicte baronnie de Tilly, Maison Rouge et Saint-Fargeau, avec ses appartenances et deppendances a esté le travail et principalle despence dudict seigneur donnateur parce qu'il a tousjours eu desseing qu'elle ne feust point depecée, demembrée ny chargée d'aucunes debtes et qu'elle fust possedée par ceux de sa maison qui porteroient son nom et armes, a cest effect, il a substitué et substitue aud futur espoulx donnataire ses enfans masles qui naistront dud futur mariage ensemble les enfans masles descendans desd masles ausdictes baronnies de Tilly, Maison Rouge et Saint-Fargeau successivement et en aultant de degrez qu'il est permis par les ordonnances, le tout a la charge de porter et tous lesdicts masles et masles descendans d'iceux le nom et armes d'icelluy seigneur donnateur et a prohibé et prohibe la vente et alienation, engaigement et ypotecques desdicts biens substituez, ny departir iceux de toutes sortes de debtes ou charges, soit de douaires, conventions matrimoniales, obligations, rentes et de toute autre qualité qu'elles puissent estre" (AN, Y 180, f° 251, February 16, 1640, marriage contract Lejay/Lesrat). I owe this reference to Robert Descimon, whom I thank.

This high-ranking magistrate, at the pinnacle of the kingdom's most important sovereign court, developed a discourse on his house, articulated to his principal fief of dignity, entirely consistent with the one elaborated by the court and military nobility.

2.3. The archives' evidence

The production, holding, conservation, transmission and organization of the papers that today serve as archives for historians are anything but neutral processes. Deciphering their aims is one way of comprehending the rationale underpinning the construction of kinship groups at work in society[44]. In France, what strikes above all is the enormous mass of what has disappeared. The nobility of the 16th century made far greater use of the written papers than we would imagine today considering the archives. The written papers were caught up in the imperatives of power and dependence, in the need to pursue relationships of recognition, favor and alliance. There was a real stake in access to documents, from which arose relations between nobles, particularly within kin, a space of constant negotiation concerning inheritances, transactions, guardianships, the control over minors and their possessions[45]. A careful reading of the memoirs and archives of the 16th century offers a wealth of notations that show the far greater presence of the written papers than is commonly thought given that documents that were not deemed worthy of conservation were swiftly disposed of. The fact is all the more interesting that this was not at all the case in the great families of the Spanish or Portuguese nobility: on the contrary, they were characterized by the methodical conservation of the house archives, often determined by the existence of majorates which made a large part of the house patrimony unavailable[46]. The lack of conservation and transmission of a large part of the written production of nobility in France, as well as its dispersal, are elements that indicate the difficulties of structuring the houses over the long term, and the limited degree of their

44 For research perspectives in this area, Rosa et al., 2019, as well as Nóvoa & Rosa, 2018.
45 Neuschel, 2001.
46 "In fact, it is precisely the existence and longevity of entails, which were only extinguished in 1863, that largely explains the cohesion of many surviving family archives" (Nóvoa, 2019, p. 191).

incorporation: fideicommissary substitutions never entailed any logic of archive conservation.

After-death inventories bear witness to this. In fact, when there is one, it contains an inventory of the papers found at the place where the deed was drawn up, sometimes even the recapitulation of an inventory of papers made in a previous after-death inventory. In the 16th century, these family archives were often held in chests or bags[47]. Thereafter, cabinets were used more and more frequently. These inventories always mention marriage contracts, wills, annuities and outstanding bonds, and sometimes seigneury papers. Little else. They therefore did not exhaust all existing documents. Some of them disappeared in a later inventory of an heir or spouse because they no longer carried active rights or debts. In addition, the multiplicity of possessions and residences, and the use of secretaries and intendants of affairs, led to papers being scattered across various places.

The rationale used to classify the papers partially distinguished between personal rights, which related to the family but were separated according to whether they related to the community resulting from marriage or to rights stemming from lineage, and those relating to real rights, i.e. seigneuries. In practice, however, things were not quite so simple, and substitutions are a good indicator of this: they most often concerned land, and therefore real rights, and they supported the continuity of the house, which articulated a feature of kinship and a real substratum; but they were at the same time caught up in the personal rights of marriage contracts, donations and inheritance transmissions. For example, the after-death inventory of François Bonaventure de Harlay, marquis de Bréval, lieutenant-general of the king's armies, drawn up in April 1682, contains an inventory of the papers found in his residence. The first mentioned document is his marriage contract with Geneviève de Fortia in 1644, and the second a judgment of the Parliament of Brittany of July 7, 1663, rendered in favor of the Marquis against the creditors of the late Achille de Harlay and Catherine de La Marck his wife, father and mother of the deceased, married in 1581, by which a substitution of October 8, 1481 was opened in favor of the Marquis,

47 For example BNF, Pièces Originales 1990, dossier 45 677 (De Monchy), August 16, 1597, inventory after Monchy's death.

who, as a result, was maintained in his possession of Bréval. The next item is a bag labelled "Titles of the house of Harlay in which were found 31 pieces concerning the nobility of the family", which had already been listed in Geneviève de Fortia's after-death inventory. The 1481 substitution is only to be found in article 47 of the inventory of papers: it was established by Louis XI in favor of Louis de Brézé and concerned the seigneuries of Montlévrier, Nogent-le-Roi, Bréval and Monchannet, near Chartres[48]. The documents concerning fideicommissary substitutions are therefore divided between the papers concerning family transmissions and those concerning seigneuries. They were not necessarily grouped together, nor were they classified in any particular order. Although they were considered to be a means of perpetuating the house, fideicommissary substitutions neither structured transmissions nor dominated practices. How to explain this?

3. The limits of fideicommissary substitutions

3.1. Substitutions and family conflicts

The fact has been noted since the Ancien Régime, and is constantly repeated in historiography: fideicommissary substitutions, ensuring allegedly the perpetuation of houses, were a source of numerous and destabilizing conflicts[49]. Such statements may deserve examination before one could endorse them: the commentators of the time were mainly aware of what was happening in the prominent families, and the proliferation of complaints about quarrels surrounding substitutions was rather a phenomenon of the 18th century. Inheritance disputes did not wait for substitutions to occur. In wealthy families, it was rare for an inheritance not to give rise to a lawsuit: the problem was rather the time taken to resolve disputes. It would therefore be necessary to weigh up those caused by substitutions with those arising from ordinary successions, and assess whether

48 AN, MC, LIV 379, April 3, 1682, after-death inventory of François Bonaventure de Harlay.
49 See the example of the Du Vair-Ribier-Alleaume (Descimon, 2005).

the former were longer and therefore more costly than the latter: a rather impossible task for a historian.

However, two facts should be emphasized. Gradual substitutions, even if limited, often gave rise to disputes over the opening of the substitution in favor of a substituted, since the process prejudiced potential co-heirs and depended entirely on the realization or non-realization of anticipations made by the donor. In 1608, Jean de Thomassin sued his great-nieces, Éléonore and Catherine de Thomassin, before the parliament of Grenoble. At stake: the seigneuries of Moras and Murinez in Dauphiné, formerly owned by Messire Jean Robbe, baron de Mirebel, who had given them by will to his brother-in-law Jacques de Thomassin, Jean's brother, and after him to his male children. Jacques had an eldest son and universal heir, René, who died leaving two daughters, Éléonore and Catherine. Jean interpreted the substitution made by the donator as strictly masculine and therefore demanded that it be opened in his favor, which was challenged by the two sisters. Married to two prominent nobles, the sieurs de Villars and d'Averton, the two sisters used their privilege to bring the case before the Parliament of Paris, which Jean de Thomassin rejected because of the acquaintances they had in that parliament and also because "it is a question of substitutions which are more common in the court of parliament of written law and more favored"[50]. The matter was further complicated by the fact that Jacques himself had, in his will of October 18, 1551, instituted a substitution on some of his assets and issued different clauses concerning paternal and maternal assets[51].

In the case of perpetual substitutions, which were still recognized by the Parliament of Paris at the end of the 17th century, these conflicts were regularly replayed and moved from one line to another, or even from one house to another, as demographics changed and the substitution was carried out. As we have seen, in 1687, Louise Magdelaine de La Marck Eschaltard was in dispute with the La Marck creditors over the opening of a 150-year-old substitution.

50 "quil est question de substitution qui sont plus communes en court de parlement de droit escript et plus favorisées" (BNF, Pièces Originales 2833, dossier 62 920 [De Thomassin], undated memoir by Jehan de Thomassin).
51 BNF, Pièces Originales 2833, dossier 62 920 (De Thomassin), undated inventory of Jehan de Thomassin's production.

The second point is precisely the importance of creditors in substitution lawsuits. In the course of the 17th century, the weight of credit increased in the domestic economy of the nobility, as debts took on an increasingly important role in the patrimony. A large number of parties were then likely to intervene in lawsuits, making cases and their judicial settlements all the more complex. Studies confirm that the cost of litigation could weigh heavily on a household's business, particularly if accompanied by insurmountable family conflicts, which were then often replicated in the next generation[52]. However, it is not this conflictuality that explains why fideicommissi were less frequently used than in other European countries. Their main use amongst the nobles was to perpetuate their houses. However, changes in conceptions of the house, in transmission practices and in the conditions for applying gradual substitutions directly affected this use.

3.2. The patrilineage house

Fideicommissary substitutions imposing the condition of taking over the names and arms gradually disappeared in the course of the 17th century. The very meaning of the word "*house*" mutated and ended up referring to what we would call a patrilineage, though not implying the loss of all connections with the possession of property, but rather centering on the family name, the "nom de race" as it was then called. This phenomenon was accompanied by another major transformation in the choices families made regarding the devolution of their wealth, namely the concentration of assets upon the eldest male and female members of the family. In particular, this meant restricting the possibilities of marriage for younger siblings, who were more likely to remain single[53]. The result was a reduction in compensation practices from fathers and mothers towards their younger siblings who were married or wished to marry, but also on the part of uncles and aunts who, structurally, were less in a position to benefit a nephew or a niece[54].

52 Daumas, 1988; Chatelain, 2019; Perrier, 2009; Pagnier, 2023.
53 Eyméoud, 2023.
54 Haddad, 2021.

The dominant concept of the noble family therefore became patrilineage, which in practice was first and foremost an investment in direct patriline, generally along primogeniture. As a result, the practice of substitution changed, with masculinity prevailing to the extent that daughters were sometimes excluded from the possibility of being substituted. This was the case, for example, with the gradual substitution made by the earl of Sillery in 1722 in the marriage contract of his son, the Marquis de Puisieux, to Charlotte Félicité Le Tellier de Souvré. He gave her the manse of Sillery, the Marquisat de Sillery, the Vicomté de Puisieux and seigneuries in Champagne, with substitution from male to male and from eldest to eldest. However, in the absence of a male, the property was to revert to its freehold nature[55]. The house-patrilineage was the only reality defended and prevailed the line with no male left. The ideology of patrilineage, blood and race triumphed, which can be seen in transmission practices.

The example of the Potier de Tresmes, dukes and peers, illustrates some of the consequences of this evolution in the practice of fideicommissary substitutions. The aristocratization of the Potier family's behavior, in line with changes in the alliance practices of the high nobility, was marked by the use of fideicommissary substitutions based on male eldership, which materialized when the duchy-pairie was obtained. In 1670, it was substituted by René Potier. In 1703, Léon Potier accompanied the donation he provisioned to his eldest son with a discourse in which he stated his will:

> "to preserve the dignity of duke for his family and to give marks of his singular affection to Messire Bernard François Potier, chevalier marquis de Gesvres, his eldest son, first gentleman of the Chamber of the King in survivorship, and to procure for him the means of perpetuating by this way the Duchy of Gesvres in its entirety as the most precious good that may be in families, since its possession is always a mark of illustration"[56].

55 AN, MC, CXIII 297, March 30, 1722, marriage contract between Louis Philogène Brûlart, marquis de Puisieux, and Charlotte Félicité Le Tellier de Souvré.

56 "conserver la dignité de duc à sa famille et donner des marques de son affection singulière à Messire Bernard François Potier, chevalier marquis de Gesvres, son fils aisné, premier gentilhomme de la Chambre du Roy en survivance, et luy procurer le moyen de perpétuer par cette voye le Duché de Gesvres en son entier comme le bien le plus precieux qui puisse estre dans les familles, dautant qu'il les illustre toûjours par sa possession" (AN, MC, LXXXVI 475, July 9, 1703, Potier donation).

The donation was coupled with the renewal of the gradual substitution. The resulting immobilization of the landed patrimony meant that the women lost the possibility of passing down the land, of contributing to the substance of the house through the transfer of seigneuries: their marriage contracts would only contain dowries in annuities or in cash, which were not so much intended to ferment the Potier lands as to clear their mortgages, which in any case were part of a priority given to the conservation of the acquired landed estate. The practice of fideicommissary substitutions, by reinforcing the maintenance of patrimony within the patrilineage, required sufficient assets and available cash to give each child their share of inheritance and to endow a daughter; it implied receiving dowries in money or annuities. It ran counter the "divergent devolution" that characterized the kinship system in medieval and early modern Europe[57], in which daughters and sons inherited from their fathers and mothers. With these fideicommissary substitutions by male primogeniture, the eldest son inherited from the father, the *légitime* of the other children and the dowry of the married daughter being craved out from the maternal estate instead[58].

In the course of the 17th century, fideicommissary substitutions turned into an instrument used mainly by the nobility, whereas previously they had been more widespread in society. However, the archives do not seem to record any spectacular increase in this practice amongst noble families. The restriction of the number of degrees allowed for the vast majority of them, and the end of the practice of taking over names and arms, which were frequently associated with such substitutions, undoubtedly limited their interest, all the more so as other means made it possible to ensure inequality between children and preference for the eldest male.

57 Goody, 1985, chap. 2.
58 Descimon, 2012.

3.3. The multiple paths of inequality: transmission and inalienability of wealth

Customary laws, even those favoring equality, left room for multiple possibilities for establishing a significant advantage for the eldest. R. Descimon has listed the ways this inequality could be built up, and I will merely reproduce them here[59]. The first one was the *préciput d'aînesse*, which varied according to customs[60] . In western France, sharing was based on personal status. In the case of noble families, the eldest received a *préciput* (generally the principal residence), as well as the greater part (generally two-thirds) of the estate thus severed. The younger children shared the remainder: the more numerous they were, the less substantial their inheritance from their father and mother. In the customs of Île-de-France, Orléans and Picardy, the eldest son's advantage was based on the nature of the property: the eldest son inherited half or two-thirds of the fiefs, the other properties being shared equally between the offspring. In this case, the larger the fiefs, the greater the advantage to the eldest. Lastly, in the customs of the North-East and Massif Central regions, which were more influenced by Roman law, the head of the family had considerable latitude in deciding whether or not to give an advantage to one of his children, generally the eldest, provided he made provision for this in his will. The *préciput* granted to the eldest child when the succession included only a fiefdom was limited. All customs provided for children's *légitime*, i.e. a minimum proportion of their father's and mother's inheritance.

The second way in which inequality was created was through inter vivos gifts to an heir who relinquished this status in favor of that of donee. Obviously, it was not possible to reduce the *légitime* of other heirs in the direct line, but this was limited, under Paris custom, to half of the share that would have been received *ab intestat*. These donations were more numerous than fideicommissary substitutions alone. For example, on January 1, 1635, Louis Gouffier, duc de Roannais, peer of France, gave his duchy-pairie in advance of inheritance, without reserving anything,

59 Descimon, 2012.
60 Bourquin, 1997.

> "of his good will and desire, so moved by a singular affection and paternal love towards Messire Henry Gouffier, Marquis de Boisy, his eldest son, principal presumptive heir and legitimate successor, wishing to give him perfect testimony of this to inspire him more and more generous and virtuous actions whereby he can make himself commendable and noted in the service of the King, imitating the example and following in the footsteps of his ancestors, and in order to procure by all means his advance and increase both in goods and in honor and dignities, also because the said lord duke does not believe he can enjoy greater happiness in this world nor receive more desirable contentment than to see his name flourish and perpetuate itself in his posterity"[61].

The "avance d'hoirie" was a way of favoring a child by allowing him to benefit from their share before the succession was opened[62].

The third means of advantaging an heir, less employed in the upper and middle nobility, was to use the freedom of will concerning movable property, immovable conquests and a part of one's own property (the *quint* in the custom of Paris).

Finally, the fourth instrument available to families was the renunciation of paternal and maternal inheritance (either one or the other, or both). As the number of married children decreased, genealogies record the growing number of unmarried persons not placed in religious orders – adult daughters, knights of Malta, unmarried soldiers. It led to an increase in this type of deed, whereby an individual, generally a younger brother or

61 "de son bon gré & volonté, estant esmeu d'une singuliere affection & amour paternel envers messire Henry Gouffier, marquis de Boisy, son fils aisné, principal heritier presumptif & legitime successeur, desirant luy en rendre le parfaict tesmoignage pour le porter de plus en plus aux actions genereuses & vertueuzes par lesquelles il se peut rendre recommandable & signalé dans le service du Roy en imitant l'exemple & en suivant les traces de ses ancestres, et afin de procurer par tous moiens son advencement & accroissement tant en biens qu'en honneur & dignitez, aussy que ledict seigneur duc nestime pas pouvoir jouir d'un plus grand bon heur en ce monde ne recevoir un plus souhaitable contentement que de voir en sa posterité son nom florir et se perpetuer" (AN, T 153/64–66, 1er January 1635, Gouffier donation).
62 Derouet, 1997a.

sister, relinquished all rights inheritances due or to come. This is what Gabrielle de Mesgrigny did, for example, when, in 1686, she transferred to her older brother her part of the estates of her mother, Françoise Henriette du Mesnil, and of her grandmother, Louise de Pot de Rhodes[63].

What did fideicommissary substitutions offer in addition to these procedures? Three elements, I would argue: firstly, the possibility of planning a donation over time, and therefore, for a donor, of implementing a family project through the transmission of part or all of their assets; secondly, the possibility of having control over demographic misfortunes as much as possible to ensure the perpetuation of one's house; thirdly, the protection of the substituted estate from creditors. However, monarchical policy drastically restricted the number of degrees of substitution (except for dukes and peers), which made it impossible to develop a long-term project and gave fideicommissary substitutions little advantage over simple donations. In addition, changes in inheritance practices, in the conception of houses and in jurisprudence meant that the taking over of name and arms frequently associated with gradual substitutions no longer applied, thus removing one of their main advantages, namely the possibility of perpetuating a house through a wife. What remained was simply the possibility of rendering inalienable a portion of the patrimony, that on which the symbolic and economic investments of a patri-line were concentrated, safeguarding it from creditors and prodigal sons.

Conclusion

Familiarity with Parisian notarial archives from the Ancien Régime suggests that fideicommissary substitutions were more widely used among the nobility in the 18th century than before, while they declined sharply in other social categories. The result of monarchical policy, by granting an exceptional privilege to dukes and peers, was perhaps to make gradual substitutions a marker of nobility.

63 AN, MC, LIV 390, August 5, 1686, Mesgrigny share.

However, the use of this legal instrument remained limited. The reasons lie in both monarchical politics and social dynamics. Law became a guiding matrix for the organization of social life, much more so than customs had been. The monarchy sought to limit the power of the noble houses, while at the same time fostering a rupture between the court aristocrats, dependent on its favors, and the rest of the nobility. The continuity of the noble houses was based less on an ideal and material complex anchored in seigneurial possessions than on an ideology of blood. All these transformations contributed to limiting the utility of fideicommissary substitutions. Only dukes and peers mobilized them systematically, taking advantage of their ability to extend them ad infinitum over their principal fief of dignity. For other noble families, the primary interest in using fideicommissary substitutions was to preserve their principal possessions from creditors. But this protection was not without risk, for by rendering part of the patrimony inalienable at a time when debts were becoming a central element in the domestic economy, fideicommissary substitutions deprived the instituted of much of the flexibility needed for their management, while running the risk of causing manifold succession conflicts. Examples of financial difficulties linked to the existence of a fideicommissary substitution abound in the titled nobility of the 18th century, which is undoubtedly not unrelated to the mixed considerations to which they were subjected at the time.

Archival material

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Between Family and State: Entails in Early Modern Italy

Jean-François Chauvard
(Université Paris-1 Panthéon-Sorbonne - IHMC)

Abstract: This article offers an overview of the development of *fedecommessi* – a trust or entail established within a last will that prohibited the sale of property – in early modern Italy based on the fruits of a half century of historical scholarship. It begins by identifying the causes of their spread and development, outlining their economic and symbolic functions in aristocratic societies where family and property were inextricably intertwined. It then goes on to consider the normative characteristics of trusts, the type of goods that were subject to them, and their spread beyond the aristocracy into wider society. Finally, it focuses on the control exercised by political authorities, the limitations they sometimes imposed, particularly in the eighteenth century, and their role in the management of trusts, which proved to be more flexible than their apparent rigidity might suggest. Trusts emerge as totalizing entities, whose management was as much a family affair as a state concern.

Keywords: trust, entail, fedecommessi, Early Modern Italy, nobility.

Introduction

An entail, a private foundation or trust established within a last will, entailed specific conditions upon the transfer of assets by the deceased owner. These conditions typically included the prohibition of sale and the predetermined succession of beneficiaries over a number of generations.

The significance of entails in early modern Italy is apparent from multiple indicators. First, their importance is evidenced by the voluminous official documentation they generated, including wills, legal proceedings, and administrative acts. While property ownership naturally led to extensive documentary production in a society governed by written law, entails further augmented this volume of records due to their requirement for specialized procedures regarding transfer, alienation, and oversight. Consequently, as the number of entails increased, so too did the frequency of disputes brought before the courts.

The centrality of trusts is underscored by the theoretical debates they generated. Towards the end of the sixteenth century, these debates coalesced into a dispute regarding their *favorabile* or *odiosum* nature — to borrow Pellegrini's terms — a discourse centered on whether the transmission of wealth should prioritize familial interests or those of the individual heir. In 1673, Cardinal Giambattista De Luca dedicated Book 10 of his treatise, *Il Dottor volgare*, to the subject, elucidating the jurisprudence of the courts of Rome and Naples while offering his perspective on the utility of this legal instrument. With luminous clarity and economy, he wrote: "If the heir is of sound mind, a trust may prove unnecessary; if mentally unsound, no amount of protection can prevent the dissipation of property. Conversely, when constraints and prohibitions are stringent, dissipation becomes more expedient, leading to the impoverishment of the owner"[1]. During the eighteenth century, Enlightenment thinkers, including L.A. Muratori, G. Filangieri, A. Genovesi, C. Beccaria, A. Longo, P. Verri, and P. Neri, voiced strong criticisms of trusts, condemning an institution emblematic of the Ancien Régime society that was ultimately abolished during the French Revolution. Trusts encapsulated conflicting ideals: the liberty of offspring versus paternal testamentary dominance; egalitarianism among siblings versus the injustice of primogeniture; the fluidity of assets versus their stagnant immobilization; absolute ownership versus perpetual unavailability; and the rights of creditors versus an impervious patrimony. These critiques resonated with enlightened rulers in Piedmont, Tuscany, and the Duchy of Milan. Despite the far-reaching reforms enacted by certain states — such as the Kingdom of Piedmont-Sardinia

1 De Luca, 1839, p. 10.

and the Grand Duchy of Tuscany — at the close of the eighteenth century, and the abolition of trusts during the revolutionary and Napoleonic eras, the debates persisted. The authorization of new trusts following the Restoration sparked vehement objections from Sismondi, who viewed them as hindrances to state development and drivers of familial impoverishment[2].

The supervision of trusts by political authorities, a topic we will revisit shortly, is an indisputable indicator of the significant role these institutions have played in maintaining economic and social structures.

Like early modern legal scholars, nineteenth- and twentieth-century legal historians endeavored to summarize the legislation concerning trusts, tracing its lineage from the Roman *fideicommessum*, via the legal frameworks of ancient Italian states and the revolutionary and Napoleonic periods (which witnessed their abolition), to their partial reinstatement during the first half of the nineteenth century[3]. Since the 1970s, historians specializing in inheritance law and social history have focused on trusts in the context of social reproduction, transmission practices, and the economic behavior of the nobility[4]. Naturally, their research has necessitated selective focal points. Many scholars chose to analyze either a specific political territory or a particular family unit. Those concentrating on political territories emphasized the imperative of dissecting a coherent legal system. Consequently, studies have been conducted on regions such as the Kingdom of Naples[5], the Papal States[6], the Grand Duchy of Tuscany[7], the Kingdom of Piedmont-Sardinia[8], Lombardy[9], and the Republic of Venice[10]. Conversely, scholars delving into family histories leveraged private archives containing notarial and court records spanning

2 Sismondi, 1819.
3 Trifone, 1914, 1938; Tria, 1945; Besta, 1961; Caravale, 1968; Padovani, 1983; Vismara, 1975; Durante, 1989; Carbone, 1998; Di Renzo Villata, 1996; Treggiari, 2002; Rossi, 2009
4 Gambino, 1971; Romano, 1994; Chauvard et al., 2012.
5 Delille, 1985; Visceglia, 1988.
6 La Marca, 1998; Piccialuti, 1999.
7 Calonaci, 2005, 2012; Marchi, 2012; Puglia, 2004. On The Republic Of Lucca, See Galligani, 2009, 2014.
8 Genta, 1990; Bonzo, 2007.
9 Padoa Schioppa, 2003; Di Reaglie, 1988; Zorzoli, 1989; Santangelo Cordani, 2006; Di Tullio, 2012; Cogné, 2012.
10 Chauvard, 2015, 2017, 2018; Lanaro, 2010, 2012.

multiple generations[11]. J. C. Davis stands as a pioneer in examining the utilization of trusts in Venice, exemplified through the long-term patrimonial choices of the patrician Donà delle Rose family[12].

Additional scholarly attention has focused on two primary areas: the legislative and regulatory frameworks governing trusts established by different states, and the establishment of trusts through an individual's last will. The contentious nature of these entails has been explored, albeit to a lesser degree. However, their administration has historically been overlooked, prompting the present investigation[13].

In contrast to legal studies, comparative historical research on an Italian scale is lacking[14] and predominantly comprises syntheses of monographic works rather than original research, with each monograph employing distinct sources, methodologies, and inquiries. Additionally, the availability and nature of documentation varies significantly depending on the political context. Venice serves as an illustrative example. Trust-related documentation can be both abundant and elusive within its archives. Records of wills and legal proceedings pertaining to inheritance matters are ubiquitous across notarial, familial, and ecclesiastical archives. Virtually every magistrate encountered issues related to "conditioned" property at some point, whether due to dilapidation, requests to lift inalienability, tax implications, investment arrangements, inheritance disputes, or other legal entanglements. Yet despite the city's pervasive legal culture, systematic records of trusts — let alone an inventory of entail estates — are notably absent in Venetian archives. The reason is simple. Such records exist in cases where a reform of the trust system prompted the state to request that families submit their titles and property inventories, as exemplified by the Grand Duchy of Tuscany in 1747. This initiative enabled S. Calonaci to conduct a quantitative analysis of the proliferation and regulation of Florentine trusts from the late Middle Ages onwards[15]. Venice lacks such comprehensive documentation. The absence of a centralized registry for

11 Lorandini, 2019.
12 Davis, 1962.
13 Chauvard, 2018.
14 Gambino, 1971; Romano, 1994.
15 Calonaci, 2005.

wills and incomplete cadastral surveys further exacerbates this dearth of information. Unlike regions such as Tuscany, Venice did not engage in any systemic reforms governing the use of trusts before their abolition by the Revolutionary Municipality in 1797.

This paper conducts a comparative analysis drawing from diverse historical research to address three overarching questions: Why were trusts established? What were their normative characteristics and functions? How were they regulated by political authorities?

1. Purpose and Function of *fedecommessi*

First, it is essential to acknowledge the absence of a true continuity between the trusts delineated in ancient Roman law and those observed in medieval and modern contexts. The former primarily constituted a petition directed by the founder to the beneficiary, urging them to bestow a patrimonial benefit upon a third party, often one lacking legal capacity. Moreover, the family trust outlined in the Justinian Code restricted substitutions to a span of four generations. In contrast, the modern trust diverged from its ancient Roman counterpart in two fundamental aspects: the beneficiary assumed the role of the heir, and the transmitted property was rendered inalienable. The conceptual underpinnings of the modern trust, premised on the autonomy to dictate the order of succession, drew inspiration from the principles of feudal law, such as primogeniture (entailing devolution to the eldest son) or majorat (transference to the eldest male of equal lineage). Consequently, the concept of indivisibility within the family sphere (*inter familiam*) became intrinsically linked to the notion of inalienability outside of it (*extra familiam)*.

The emergence of trusts during the latter centuries of the Middle Ages stemmed from the convergence of two key factors: the formalization of testamentary practices influenced by notaries, and the consolidation of noble lineage, which predominantly revolved around property ownership.

Yet the circulation of assets was not prevalent within this transmission framework; instead, individuals succeeded one another in the possession of property. Ownership was not transferred; rather, individuals assumed positions within a fixed asset. When jurists of the late Middle Ages proclaimed "familia id est substantia"[16], they not only regarded property as a mechanism for ensuring familial continuity but also equated it with the family itself, establishing a parallel between essence and substance. The trust functioned merely as a vehicle through which the testator entrusted the task of preserving the "household", the Straussian notion encompassing both "material and spiritual heritage, including dignity, origins, kinship, names and symbols, status, power, and wealth"[17].

Trusts, in turn, played a role in fostering a consciousness of lineage. Through the establishment of an order of succession based on *conjecturae*, i.e., speculative anticipations regarding the family's future composition, trusts heightened the temporal dimension of kinship, which had been significantly shaped by genealogical culture. Moreover, they delineated boundaries by specifying which collateral relatives could assume the role of beneficiaries in the event of the extinction of direct descendants. Consequently, trusts had the potential to alter perceptions of kinship, expanding them beyond direct beneficiaries.

There were also anthropological reasons for the success of trusts. As M. A. Visceglia has shown, trusts fulfilled a "need for eternity"[18]. They forged a "bond of identity" across generations through a dual process of identification inherent in the logic of gift-giving: between the donor and the beneficiary, and between the donor and the object. The testator reclaimed what they had bestowed, embodying the paradox of "keeping-while-giving" elucidated by A. Weiner[19]. This implication was not lost on contemporaries, who lamented what they considered to be the vanity and vacuity inherent in the desire to perpetuate oneself through property and to extend control over descendants.

16 Saxoferrato, 1555.
17 Lévi-Strauss, 1983, pp. 1224–1225.
18 Visceglia, 1988.
19 Weiner, 1992.

The proliferation of trusts across Italy over the course of the sixteenth century was the result of economic and social transformations. As commercial activities waned in favor of land rent and social mobility dwindled amidst the consolidation of social hierarchies, the inhabitants of merchant cities focused on preserving acquired positions and consolidating wealth within familial circles. Whereas the *fraterna* system (undivided property management) was more conducive to commercial ventures, trusts proved more adept at safeguarding assets vital for sustaining family finances[20]. At the same time, the recourse to property inalienability can be construed as a safeguard against the repercussions of an increasingly liberalized economy where all assets were tradable. Consequently, trusts emerged as particularly apt mechanisms for shielding fortunes pivotal to familial sustainability. As G. Delille has shown, the feudal aristocracy of the Kingdom of Naples implemented measures such as property inalienability and heir reduction through primogeniture towards the end of the sixteenth century. These measures aimed to curtail the sale of fiefdoms and the influx of newcomers — a phenomenon encouraged by previous practices of enlarging the number of heirs and freely trading fiefdoms, concessions previously granted by the monarchy to the nobility[21].

In line with eighteenth-century criticisms, historians have generally viewed trusts negatively for their impact on the dynamism of the property market and the maintenance of property, which necessitated a "replenishment" that could be hindered by a lack of liquidity. However, working from the Lombard case, Di Tullio presented a more favorable perspective, emphasizing that trusts provided a stable legal framework enabling tenants to make long-term investments with assurances[22]. Cardinal De Luca's previously mentioned reflections offer an avenue to transcend a somewhat polarized view — whether effective *or* counterproductive — by examining trusts within the context of patrimonial strategies. This perspective links trusts to the capacity of actors in each generation to judiciously employ them according to the family's circumstances and objectives.

20 Raines, 2016.
21 Delille, 1985.
22 Di Tullio, 2012.

Thus, the symbiotic relationship between property and the family endowed trusts with both a cultural function, serving as a conduit for family identity, and an economic role, exercising protective measures over property rendered inalienable.

Yet trusts assumed an even more expansive protective function. They were viewed as a bulwark against biological uncertainty, by anticipating the continuity of lineages (their proliferation was correlated with plague epidemics); against political uncertainty, by mitigating the risk of arbitrary expropriation; against economic uncertainty, by withdrawing assets from the market; and against legal uncertainty, by constraining the options available in matters of succession and by limiting the selection of heirs specified in a will. In this context, trusts served as multifaceted instruments capable of addressing uncertainty across diverse scenarios. However, they could also engender uncertainty in property and credit markets.

2. The Normative Characteristics and Social Uses of *fedecommessi*

Early modern Italian trusts exhibited common characteristics that were influenced by notarial codification, interactions with primogeniture laws, and their gradual adoption by the nobility. However, the practice exhibited significant variation across states, each governed by its own political regime, legal traditions, and social structures.

Establishing a chronological account of the proliferation of trusts, even within the same state, is exceedingly difficult. One reason for this difficulty is the existence of legal mechanisms with analogous functions — namely, preventing property sales — that were not termed trusts at their inception but were retrospectively recognized as such centuries later. For instance, in Venice as early as the fourteenth century, property transfers were "conditioned" by wills. In 1301, Marco Bernardo di Otto directed the

disposition of "all his property in favor of his son Otto, his sons, and male descendants in perpetuity"[23].

Another factor preventing chronological precision is that the emergence of trust clauses in wills did not immediately translate into widespread adoption. Their dissemination was a protracted process during which various inheritance practices might coexist, even within the same family. The necessity of contextualizing a trust within a series of wills enabled J. C. Davis to construct a specific chronology for the Donà delle Rose family, delineating how this instrument was gradually adopted. Towards the end of the sixteenth century, prominent members of the family expressed reservations about trusts: Andrea urged his heirs to establish trusts only under urgent circumstances, while Leonardo, his younger brother — who remained unmarried and would later ascend to the position of doge — voiced skepticism about them in his 1574 diary entry. He feared that "conditioned" land would be undervalued compared to free land. In 1609, he resolved to establish a trust "for the conservation of the property and decorum of our household in order thus to prevent lack of consideration and the thoughtlessness of those who, neglecting the good government of others, would take little account in the future of its conservation by looking after their affairs carelessly"[24]. He also implored his successors to live virtuously and thriftily in accordance with their noble status, striving "to acquire some free goods which they can dispose of according to their will." This juxtaposition underscores the inherent contradiction within trusts: the aspiration to safeguard family wealth against negligent heirs juxtaposed with the imperative to accumulate wealth and replenish free property. The Venetian Pisani Moretta family embraced trusts, unlike their counterparts in the Pisani del Banco branch, which experienced remarkable prosperity during the seventeenth and eighteenth centuries[25].

23 Archivio di Stato di Venezia, *Archivio Bernardo*, b. 8, Proprietà Bernardo 1300–1797, n. n: "Testamento di ser Marco Bernadi q. Otton, dispone di tutti i suoi beni a favore di suo figlio Ottone, figli e descendenti maschi in perpetuo, potendi dottar le figliole discendenti da ditti maschi e ciò ad effetto che siano perpetuande conservati a sostentamento di essi figlioli e discendenti maschi e famiglia in perpetuo."
24 Davis, 1962, p. 119; Archivio di Stato di Venezia, *Notarile Testamenti*, r. 1250, III/60.
25 Gullino, 1984.

Despite these observations, there were temporal fluctuations and regional disparities in the proliferation of trusts. The sixteenth century witnessed widespread and vigorous development of trusts across most regions. However, new trusts continued to emerge in the subsequent centuries, even as the availability of free assets diminished. The adoption of trusts occurred earlier in Florence, spanning from the late fifteenth to the early sixteenth century, but later in Siena, beginning in the late sixteenth century. There, trusts took on a perpetual form (*ad infinitum*) within the city limits and a gradual one in the surrounding "Dominio" territory[26].

Although trusts were often associated with primogeniture, they served a diverse array of purposes. The case of Siena even suggests that contrary to prevailing notions linking trusts with wealth concentration, undivided trusts catalyzed a process of division and broadening of the bases of wealth.

In Venice and Milan, undivided trusts (*ad infinitum* and "dividuo"), which designated all male children as heirs, remained prevalent in the sixteenth century. Aligned with the patrician political system, this practice facilitated the establishment and consolidation of numerous independent lineages. To prevent fragmentation via inheritance, this practice was complemented by other strategies such as regulating marriages. Furthermore, the connection between substitution and property inalienability was not always as rigid as assumed. Instances of substitutions without inalienability, such as that introduced by Battista Visconti in Milan at the end of the fifteenth century, exemplify this flexibility[27]. In this patrician society, the transmission of social and political positions did not occur through trusts. Nevertheless, during the sixteenth century, there was a trend towards standardized usage and drafting of trust clauses, indicating a dissemination of models.

The diverse range of applications for trusts is further evident in the types of assets rendered unavailable. Recent historiography has revealed that nearly all forms of property could be subject to trusts, including real estate, movable property, and assets falling under the categories of *familia*

26 Calonaci, 2012.
27 Arcangeli, 2012.

(family property) or *pecunia* (market assets). Moreover, these categories exhibited considerable variability, as the items possessed an ambivalent status: collections of jewelry, paintings, sculptures, or coins contributed to the construction of family identity while also possessing market value convertible into currency. Although not explicitly classified as "solida materia" by Cardinal De Luca, book collections could be considered as such, forming part of the family's intangible heritage. Consequently, they were often not specifically addressed in testamentary dispositions[28]. The distinctions between real estate and movable property were similarly ambiguous. Although not the case elsewhere, it is noteworthy that Venetian law exclusively attributed the status of real property to houses located in Venice, while land holdings on Terra Ferma were regarded as movable property. Given that real estate constituted the substance of the family wealth and was designated for the sons, such a legal framework aimed at the community level to stabilize ownership structures and lineage transmission, with other assets typically being used to provide for daughters.

The *familia* was primarily impacted by the establishment of trusts and primogeniture, encompassing fiefdoms, lordships, urban palaces, country villas, and relics emblematic of family identity. Additionally, coats of arms, titles, and names were designated for transmission in the event of the male line's extinction, while collections of artworks and libraries were intended to be preserved alongside the testator's name. The compilation of unavailable *familia* items delineated a symbolic hierarchy of heritage dictated by seniority, lineage, or prestige. Similarly, the *pecunia* category (assets intended for circulation) was equally affected[29]. Public bonds, considered as real estate, could be included in a trust, thereby removing them from the exchange circuit and freezing their value indefinitely, consistent with Y. Thomas's notion that unavailable property was beyond appraisal[30]. In addition to public bonds and private loans, testamentary records indicate a diverse array of assets[31], including fishing rights, jurisdictions,

28 Raines, 2012.
29 Thomas, 1980, 2002.
30 Thomas, 2002.
31 Calonaci, 2005; Bonzo, 2007.

meadows, fields, processing sites (mills, ovens, presses, inns), resources (wells), tools, and equipment.

This diversity is accompanied by the widespread social adoption of trusts, which were not exclusively associated with the nobility in all regions. Wherever trusts were established, they could be created by heiresses aiming to pass on their family estates or assets to their descendants[32]. In Venice, trusts were documented among craftsmen and merchants; in Livorno, among Jewish merchants; and in the Sienese countryside, among the notable class. The central question revolves around understanding the varied significance that different social groups attributed to trusts. These arrangements often served immediate needs, such as addressing familial circumstances (such as children's incapacity, indebtedness, or the risk of dispersing essential trade assets). Trusts frequently evolved gradually, reflecting the challenge of planning beyond two generations. Even when intended to last indefinitely, they often struggled to withstand the passage of generations due to the magnitude of the inheritance or the nature of the assets. Motivated by the desire for perpetuity, a testator might also establish a trust to maintain the integrity of a specific set of objects, which might not necessarily constitute a formal collection but held personal significance due to their accumulation over the testator's lifetime or their personal production. Bernino provides an illustrative example of such a scenario[33].

One question remains: should the proliferation of trusts be construed as the imposition of a strictly aristocratic model from the upper echelons to the lower strata of the social hierarchy? The diversity of customs prevalent among the nobility cautions against perceiving this process as linear and uniform.

The interpretation of trusts varied among different segments of the nobility. In Rome, for instance, the three distinct noble groups (feudal, pontifical, and municipal) that emerged during the sixteenth and seventeenth centuries employed this legal instrument in different ways[34]. Among feudal

32 Laudani, 2012.
33 Ago, 2011.
34 Piccialuti, 1999, pp. 63–89.

families, the concept of dynastic lineage predated the adoption of trusts, which consequently saw slower adoption as it was likely deemed redundant, given the long-standing utilization of primogeniture within the oldest or baronial families. Conversely, pontifical nepotism was closely linked to trust employment, ensuring the inheritance of accumulated wealth by the cardinal-nephew's heirs. Lastly, within the municipal nobility, which comprised families of merchant origin that integrated during the sixteenth century, the utilization of trusts reflected their newly attained social status, a subjective sense of noble belonging, and the aspiration to preserve this status for future generations. The consolidation of local nobility was further bolstered by Benedict XIV's 1746 bull *Urbem Romam*, which delineated families eligible for municipal offices, thereby transcending traditional distinctions between feudal and urban nobility. The uniform adoption of trusts within these circles undoubtedly facilitated this amalgamation, contributing to the establishment of enduring dynasties. Thus, trusts played a pivotal role in the restructuring of aristocratic hierarchies.

The adoption of trusts by diverse social strata necessitated adaptation to address specific needs. For instance, in Siena, while the aristocracy embraced primogeniture during the seventeenth century, merchant communities continued to uphold the "dividuo" trust. This arrangement facilitated the establishment of multiple lineages and the collective management of businesses, akin to the longstanding practices among the urban patricians of northern Italy. For intermediary social classes, trusts served less to consolidate inherited wealth and more as a means to adopt a symbol associated with nobility. Embracing a trust represented a mark of distinction, prompting families to acknowledge their ancestral heritage. This impetus drove notable families of the Sienese countryside to adopt trusts — considered a noble attribute — during the seventeenth century. Despite this, there was no barrier to their appropriation by other social circles until 1747, when the prince reserved them exclusively for the nobility, thereby legally affirming a social convention.

3. Public Authorities and Trust Management

In any state, trusts were subject to public control. Trusts delved deeply into the foundations of kinship systems (in terms of inheritance and alliances), the equilibrium of social order (particularly the pre-eminence of the nobility), and property frameworks, rendering them inherently public concerns. As unanimously asserted by jurists, trusts could not evade sovereign authority, being subject to positive law[35]. In return, the state acknowledged a private act, often derogatory to customary law, in the name of testamentary freedom.

The role played by early modern Italian authorities remains open to interpretation due to variations in state contexts and the evolution of trust policies. Interpretation must avoid two fallacies: first, reducing the state's deliberate actions to mere instruments with which to control the nobility; and second, perceiving state intervention as merely following a social practice beyond its grasp. Influenced by eighteenth century progressive regulation by the state as it tightened its grip on aristocratic society, particularly with its commitment to the free flow of goods and property sovereignty, and its consequent abolition during the revolutionary period, linear interpretation, which views trusts as initially spontaneous and beyond sovereign authority's reach, should also be guarded against. Moreover, establishing a clear hierarchy in state intervention between regulation and arbitration (essentially, family policing) on the one hand, and expression of a restrictive, hostile policy towards trusts due to negative repercussions of excessive property immobilization on the other, proves challenging.

Hesitantly and with the occasional contradiction, states enacted legislation regarding trusts as they clashed with other institutions and norms. Trusts exacerbated uncertainty in the real estate market, as estate transactions could be invalidated. They undermined the credit market and public

35 "Che però anche appresso gli stessi Giuristi, li quali nell'altro caso, della prima e della diretta disposizione, attribuiscono la fazione del testamento alla legge di natura, sta ricevuto che li fidecommissi siano per una introduzione della legge civile, o positiva, e più probabilmente si crede che sai uma invenzione de' Romani più che dell'altre nazioni" (De Luca, 1839, pp. 15–16).

treasury, as the inalienability of property prevented seizure and debt collection. Furthermore, trusts could conflict with dowries, which were also inalienable. While dowries involved the circulation of goods outside the family, trusts aimed to preserve the agnatic lineage by enabling the substitution of individuals in property ownership. These conflicts prompted legislative intervention, resulting in varying responses across states and evolving over time based on shifting power dynamics.

The Roman example, extensively studied, offers valuable insights in this context[36]. Pope Clement VIII Aldobrandini's bull *Justitiae ratio* of June 25, 1596, empowered creditors to demand the sale of trust assets when they were only entitled to the usufruct, not the capital, as repayment. This bull was issued at a time when trusts were widely utilized, particularly among the feudal nobility, whom Papal authority sought to control by regulating their access to credit. Trusts also posed a threat to public finances, as the Apostolic Chamber held claims on the *Monte dei baroni* or on prominent families. In 1631, Pope Urban VIII promulgated the constitution *Romanum decet pontificem*, mandating the registration of trusts in the *Archivio Urbano*. This registration aimed to restore a balance between the rights of creditors and beneficiaries. On the one hand, it prohibited creditors and the Congregation of Barons from taking action against declared trust properties; on the other hand, it provided guarantees for creditors to access inventories. Additionally, if the document establishing the trust was not registered, the Congregation of Barons was authorized to seize the property.

Significant restrictions on trusts were primarily implemented in the princely states. In emulation of Castilian laws, the establishment of primogeniture in Milan required the prince's authorization. Restrictions on the number of substitution degrees (limited to four degrees) were introduced in Piedmont (1729) and Tuscany (1747), where trusts were reserved for the nobility, already regarded as a symbolic attribute and now elevated to a legal privilege. In Piedmont, the Constitutions of 1723 and 1729 delineated the Savoy monarchy's policy towards the nobility[37]. These Constitutions mandated the registration of trusts, restricted the types of assets

36 Piccialuti, 1999, pp. 63–89.
37 Bonzo, 2007, pp. 132–141, 161–169; Calonaci, 2005, pp. 68–76; Galligani, 2014, pp. 4–9.

eligible for inclusion, and notably confined trust utilization to the nobility to prevent merchants from immobilizing their capital. Consequently, the Piedmontese nobility found itself under surveillance and subject to the control of the Turin Senate, which was overseen by the monarchy. In Venice, legislation generally favored trusts, except in cases of dowries, which could be reimbursed from the husband's trust assets if free property was absent. Analysis of legal statutes and regulations reveals that the state indirectly perpetuated a climate of legal ambiguity to the detriment of buyers, creditors, and tax authorities, as it lacked the means to establish effective publicity for trusts[38].

What conclusions can be drawn from these examples? Three distinct models emerge. First, the papal monarchy model, which did not restrict the accumulation of ecclesiastical property or trusts, the latter of which became immune to debt seizure in the eighteenth century. Second, the model of princely states, which imposed significant restrictions on trusts, albeit belatedly, during the first half of the eighteenth century. Lastly, the Venetian model, which enacted measures against the accumulation of ecclesiastical property but never imposed restrictions on trusts. Venice was governed by patricians who merged their personal interests with public utility.

Finally, as Chauvard's analysis of the Venetian case has demonstrated, the state assumed a central role in the oversight of trusts. Trusts were never entirely immutable despite the prohibition on sale. The state delineated the conditions under which the inalienability of property could be lifted. The state's policy on trusts faced an apparent paradox: while systematically defending the institution, it also made accommodations with the principle of prohibition. How was the transition between availability and unavailability managed? Who held the authority to decide on such matters? How could an arrangement be simultaneously rigid and elastic without apparent contradiction?

To address these questions, it is crucial to note that the Venetian state applied distinct treatments to real estate and capital within trusts. The

38 Chauvard, 2018, pp. 145–160.

alienation of real estate first emerged in the sixteenth century for dilapidated "conditioned" properties that owners could neither sell nor restore, thereby negatively impacting the urban setting, the fiscal authorities, and the trust itself by altering its value. The lifting of inalienability initially pertained only to crumbling buildings that were a blot on the cityscape and a drain on the public fisc before being extended to other properties under the guise of utility, an ostensibly objective category that was nevertheless open to interpretation. The Great Council, the sovereign body, retained the prerogative to release what the testator had bound by granting a "grace".[39] Unlike in Tuscany or Milan, obtaining such requests in Venice was subject to stringent conditions. The notion of real estate rarely leaving the trust sharply contrasts with the image of subject capital — government bonds or individual loans — intended for circulation through reinvestment (i.e., new loans) but guarded against exiting the trust. In Venice, the Judges of the Procurator (Giudici del Procurator), who also participated in validating trust estates, oversaw a reinvestment procedure ensuring that the beneficial owner never directly handled the capital. These magistrates, identifying as "competent in matters of trust", reshaped the sovereign authority's arbitration position in family affairs, oscillating between mistrusting the usufructuary to preserve capital value and engaging in collaborative trust management with him[40]. This administrative endeavor compelled the magistrates to establish specific procedures and techniques for identifying individuals and properties, with the Venetian state thereby aiding trust companies and indirectly fostering administrative rationality.

The standard regulation of trusts relied on a collaborative approach between beneficiaries and the state, facilitated by the fact that members of the Court for the removal of inalienability could share a common interest with claimants. In Milan, for instance, there existed a convergence of perspectives between the Senate, concerned with preserving familial status and societal balance, and trust holders, who viewed public oversight as the most effective safeguard of their interests[41].

39 Chauvard, 2015, 2018.
40 Napoli, 2013.
41 Cogné, 2012; Marchi, 2012.

Requests for the reinvestment of tied-up capital shed light on the strategies employed by trust beneficiaries to liberate capital and manipulate the boundaries of unavailability. These requests prompted a reconsideration of the role of the heir-in-trust, who found himself navigating between the testator's wishes and the interests of future heirs. However, he could also serve as active administrator capable of reshaping the trust's contents without altering its overall value.

From the heir's perspective, the inalienability of a trust appears to be a versatile resource. Depending on circumstances, it could serve as a shield against creditors and facilitate property recovery or be petitioned for release provided it could be justified in the trust's interests. The debate on the *negative* effects of inalienability merits reconsideration in light of this adaptability. At the macroeconomic level, this internal management flexibility within the trust structure had no discernible impact on constraints in the real estate market or loan collection. Conversely, it nuances the notion that trusts were associated with limited asset development. On the level of familial patrimony, this flexibility challenges the notion that trusts impeded adaptation to economic conditions and dynamic asset management. Instead, it imposed a restrictive yet protective framework wherein beneficiaries, when equipped with capital, enjoyed significant leeway.

4. Restriction, Abolition, and Restoration of Trusts

Restrictive reforms and the standard regulation of trusts should not be viewed as diametrically opposed, as they were predicated on a collaborative relationship between heirs and the state. This collaboration was facilitated by the fact that members of the arbitration courts responsible for lifting property inalienability often shared common interests with the heirs. The legislator intervened both preemptively and reactively: upstream, by imposing restrictions on the conditions for establishing trusts, and downstream, by serving as the arbiter in asset management and disputes brought before the courts. The Regie *Costituzioni* of the Kingdom of Piedmont and

Sardinia (1723, 1729) and the legislation of the Grand Duchy of Tuscany (1747) reduced the number of substitution degrees to four, imposed the centralized registration of all assets listed in a trust to protect creditors' rights, and restricted the creation of new trusts to the nobility[42]. Further and tighter restrictions were implemented in certain states towards the end of the eighteenth century as part of a broader policy aimed at minimizing property immobilization, including ecclesiastical mortgages or *fedecommessi*.

In Piedmont, the Regie *Costituzioni* of 1770 manifested a desire for greater equality of treatment among siblings by authorizing the Senate to allocate an apanage to younger brothers based on their birth order and the annuity amount of the fief[43]. In the Grand Duchy of Tuscany, in March 1782, Leopold I decreed the extinction of *fedecommessi* after four successions and, in February 1789, prohibited the formation of new fideicommissary ties[44]. In Lombardy, Joseph II restricted their usage to public debt instruments, a measure also enacted by Francis III of Este in the Duchy of Modena[45]. This provision reflected the significant role played by public debt securities in the establishment of new trusts during the eighteenth century, and the state's interest in securing its debt within a system from which it could not be extricated. This was because the redemption of securities often resulted in a growing acquisition of new issuances.

While the National Convention in France (1792) abolished entails in favor of full ownership, the legislation of certain Italian states marked a shift where sovereigns began to perceive trusts less as a tool of noble politics and more as a hindrance to economic efficiency and complete ownership rights. It was one thing for King Charles Emmanuel IV of Piedmont-Sardinia to address creditors' concerns by facilitating the release of tied property (1796), imposing restrictions on existing trusts to four generations from the edict's enforcement (1797) and abolishing the feudal system while prohibiting new foundations (1797). However, it was another matter entirely to decree the immediate and total abolition of trusts without risking undermining the social foundations of the system[46].

42 Bonzo, 2007, pp. 132–141, 161–169; Calonaci, 2005, pp. 68–79; Galligani, 2014, pp. 4–9.
43 Bonzo, 2007, pp. 218–223.
44 Galligani, 2014, pp. 10–12.
45 Tria, 1945, p. 97.
46 Bonzo, 2014, pp. 22–29.

The republican regimes established by Napoleon Bonaparte dismantled the old legal order in the name of equality and opposition to privileges. The Civil Code, which included Article 896 prohibiting all forms of substitution, was introduced in 1806 in the Kingdom of Italy and subsequently extended to the entire peninsula in 1810, excluding San Marino and the islands of Sicily and Sardinia.

Following Napoleon's defeat in 1814, there was an attempt during the political Restoration to revert to the old system of entails. However, the legislation that was ultimately adopted represented a compromise between past and present, achieving delicate balance between the preservation of noble estates, respect for legal rights, and economic flexibility. The reinstatement of earlier trusts was deemed impractical, but new creations were authorized under strict conditions. These conditions included being reserved for the nobility, limiting substitutions to four generations, immobilizing a portion of the patrimony, and requiring sovereign authorization for the lifting of inalienability. Although C. Bonzo has extensively examined this transition away from tradition in the Kingdom of Piedmont-Sardinia until the abolition of entails by the Kingdom of Italy in 1865, further exploration is needed to fully comprehend its implications in other pre-unitary Italian states.

The abolition of legal privileges did not signify the eradication of the noble mindset that had inspired them. During the Ancien Régime, the transmission of property to a sole heir and the preservation of patrimonial integrity often did not necessitate coercive legal mechanisms, as evidenced by succession practices in rural areas, where such methods were crucial for keeping farms intact. Similarly, in nineteenth-century aristocratic circles, of the now defunct trusts could be supplanted by alternative practices — such as forming alliances with the upper bourgeoisie, implementing strategies like reducing and promoting endogamous marriages, limiting offspring, or showing favoritism towards the eldest son or heir — all aimed at safeguarding the family's patrimony. These practices were facilitated by minimal inheritance taxes and underscored the significance of familial obligations upheld by each member of the household community.

Conclusion

The history of entails in Italy spans the late Middle Ages, with echoes persisting into the present through cultural foundations. It is also a multifaceted narrative, as trusts held varying significance across social strata and received divergent political and legislative treatments across different states and regions.

In conclusion, this brief overview underscores that trusts transcended mere inheritance practices. They were integral to the values and structures of Ancien Régime society, elevating the family by conflating it with its possessions. They served to reproduce social elites, impeded real estate circulation by generating effects detrimental to their preservation or growth, and clashed with other legal systems such as dowry, taxation, and credit. Moreover, they compelled the state to arbitrate between conflicting interests — trusts versus heirs, heirs versus creditors — and to engage, through law and justice, in their co-management, revealing them to be fluid institutions. Indeed, trusts emerge as totalizing entities, whose management was as much a family affair as a state concern.

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Beyond Kinship Policy: Tracing *fideicommissa* in Sixteenth-Century Habsburg in the Context of Border Protection and Sovereign Financing

Margareth Lanzinger
(University of Vienna, Department of Economic and Social History)

Abstract: The *fideicommissum* was a distinctive legal institution in the early modern period, relevant in both familial and political contexts. In the Austrian territories, *fideicommissa* were introduced mainly by the higher nobility in the second half of the seventeenth and in the eighteenth centuries, coinciding with state building processes. There are, however, traces that go back to the sixteenth century, suggesting a different context of the creation of *fideicommissa*. Members of the lower nobility and wealthy merchant families were granted imperial authorisation for *fideicommissa* in situations where there was an urgent need to protect the borders against the Ottoman Empire or to raise money for military operations in this respect. At the same time, these *fideicommissa* were also used to exclude daughters from inheriting landed property.

Keywords: Landed property, legal disputes, marriage relations, merchant-bankers, social mobility.

Introduction

Land ownership constituted a significant part of the wealth *and* power of the early modern nobility but also of the patriciate[1]. The multifaceted practices of wealth distribution and wealth arrangements in these social milieus had implications in two respects: both for the organization of wealth and power within the noble or patrician families and kinship groups, and on the structuring of society through the various forms of political and economic power, not least in the context of early modern state-building processes[2]. The *fideicommissum* was a distinctive legal institution in various European countries in the early modern period, relevant in both familial and political contexts[3]. The interconnection between the family and early modern state building is all the more plausible as recent research on Austrian territories indicates that *fideicommissa* were introduced mainly in the second half of the seventeenth and in the eighteenth century, coinciding with the increasing expansion of 'state' administration and bureaucracy. During this period, *fideicommissa* were primarily founded by the higher nobility, who were involved in territorial administration and rule in various ways through offices and functions[4]. There are, however, traces that go back to the sixteenth century and suggest a somewhat different context. In general, there is still a lot of research to be done on *fideicommissa* in German-speaking areas.

In the first section, this article briefly discusses some crucial aspects and findings regarding early modern *fideicommissa* as well as the challenges for our research perspectives associated with the increasing verticalization of kinship as a result of rising primogeniture rules in the nobility. The core period of *fideikommissa* is the second half of the seventeenth and the eighteenth century, while the beginnings of this institution in the

1 Alfani & Di Tullio, 2019, p. 85; Asch et al., 2013; Sikora, 2009, pp. 32–41; Spieß, 1993; Winkelbauer, 2015. The exploration of the topic of the *fideicommissa* is part of the research project "Noble Siblings: Wealth Arrangements & Social Configurations", funded by the Austrian Science Fund FWF (P 34762-G) at the University of Vienna.

2 Sabean & Teuscher, 2007, pp. 1–16.

3 In Spanish *mayorazgo*, in English *entail*, in French *substitution fidéicommissaire*, in Italian *fedecommeso*, in German *Fideikommiss* but also *Familienfideikommis*, in the Habsburg Monarchy also *Majorat*.

4 Cf. the article by Florian Andretsch in this volume. On state building processes see Godsey & Maťa, 2022.

German-speaking territories can be dated to the sixteenth century. The main part of the article focuses on this century, which is much less well documented, both in terms of the available or identified source material and in terms of our knowledge of the underlying logics and policies. Especially older legal historical studies provide references to these early *fideicommissa*, which are discussed and briefly contextualised here. An important background to these legal historical studies was the aim to clarify the 'origins' of *fideicommissa* in the German-speaking world. Even if 'origin' narratives are not (or no longer) on the agenda of social history, dealing with them is part of a historiographical reconstruction, not least because this debates and publications played a prominent role in legal history and have influenced this field to the present day. The early *fideicommissa* mentioned in the studies of legal historians provide insights into specific contexts of the use of this legal instrument that are worthy of being included into the discussion. In fact, the search for traces led to hitherto less known circumstances of the comparatively early establishment of *fideicommissa* in the Habsburg context: namely border protection and the financing of sovereignty. What is particularly intriguing is the fact that members of the lower nobility and wealthy merchant families also played an important role.

1. Noble *fideicommissa* in the seventeenth and eighteenth centuries

The most important form of *fideicommissa* was the family *fideicommissum*[5], a specific type of landed property – often only parts of a family's total property holdings – usually characterized by three legal specificities[6]: firstly, in a document, mostly a will, the founders defined a complex

5 Apart from landed property, there were also monetary *fideicommissa*. The *Handwörterbuch zur deutschen Rechtsgeschichte* (*Dictionary of German Legal History*) defines a family *fideicommissum* as a "binding of the family estate in the male lineage based on a legal foundation". It states that it can be assumed that the nobility "in the interest of the *splendor familiae*" adhered to this "principle of the bound household estate" (Erler, 1971, pp. 1071–1073).
6 Beckert, 2004; Bonfield, 1983, chap. 4 and 5; Chauvard et al., 2012; Lanzinger, 2012; Reif, 1979; Spring, 1993, chap. 5.

of properties as a *fideicommissum*[7]. Secondly, they established an order of succession, generally – but with variations – primogeniture, either for a specific or unspecific number of generations or *in infinitum*[8]. The proprietor of such an entailed estate was entitled to its administration and usufruct, and was obliged to pass on the undivided complex of possessions to his successor. Thirdly, in addition to the prohibition of division, the *fideicommissum* could not be sold or pledged[9]. In this way, fathers secured the wealth of their families over generations by ensuring that, not least due to demographic vicissitudes, potentially difficult transgenerational transfers did not result in the division of landed property.

The main focus of interest in relation to *fideicommissa* is usually the nobility[10]. It was a heterogeneous group in itself. Fundamental was the distinction between the high nobility, which was directly subordinate to the emperor and enjoyed extensive privileges and autonomy, on the one hand, and the lower nobility, which had no legal power, on the other. This difference seems to be rather relevant for the establishment of *fideicommissa* in the seventeenth and eighteenth centuries. As Florian Andretsch has shown the founders of *fideicommissa* tended to belong to the high nobility in the rank of counts. At the beginning of the seventeenth century, they made up only around 10 per cent of the higher nobles in Lower Austria[11].

According to the current state of the art, *fideicommissa* usually – but by no means always[12] – followed and at the same time affirmed the logic

7 But also on the basis of contracts or statutes (Hübner, 1930, p. 339).

8 Duhamelle, 1998, pp. 246–255; Richter, 2009, pp. 272–276; Schraut, 2005, pp. 260–268; Lanzinger, 2019, p. 155.

9 Nevertheless, it was still possible to sell land belonging to a *fideicommissum*, but only with imperial permission, for example, to pay off debts. A *fideicommissum* could also be mortgaged to a limited extent (Schenk, 1953, p. 103).

10 See Chauvard et al., 2012, pp. 330–331; Haddad, 2012.

11 Cf. the article by Florian Andretsch in this volume; MacHardy, 2003, p. 253.

12 The results of the current research project "Noble Siblings: Wealth Arrangements & Social Configurations", show that *fideicommissa* in Lower Austria could also be taken over by daughters if there were no sons – thus breaking the logic of male primogeniture and purely male defined agnatic lineage. The project deals with the topic of *fideicommissa* as an integral part (https://noble-siblings.univie.ac.at/en/the-project/). See also Kallina, 1905, p. 182. In general, it can be said that the use of *fideicommissa* in Lower and Upper Austria, the regions at the centre of the project, proved to be much more varied than one would assume on the basis of the legal historical literature. Some families, for example, established more than one *fideicommissum* and were thus able to continue to distribute landed property among their sons.

of primogeniture and resulted in larger estate complexes that had to be stabilized over many generations. Ultimately, it was an instrument and legal institution that resulted in the perpetuation of social inequality[13]. This is particularly true for Austria and Germany, where *fideicommissa* continued well into the twentieth century[14]. Both territories have in common that the majority of *fideicommissa* were located in their eastern parts: among the German territories, *fideicommissa* were concentrated in Prussia and Saxony, among the Austrian lands in Bohemia, Lower Austria, Moravia and Silesia[15]. In general, the regional differences in the law and practice of *fideicommissum* were considerable.

The increasing number of *fideicommissa* can be seen as an indication of changes in the management, transfer and organization of family wealth[16]. This raises not only the question of the situational contexts in which a *fideicommissum* was established and the terms and conditions attached to it, but above all of the impact of *fideicommissa* on family and kinship configurations and their organization. How did changes in the transfer and arrangement of wealth affect family and kin configurations beyond the line between father and eldest son? This referred to a number of different relationships: in particular the relations between fathers and children, especially between fathers and sons, and between siblings: between brothers as well as between brothers and sisters. Such an approach implies a broadening of perspective, and there are good reasons for this: the "triumph of primogeniture", as Karl-Heinz Spieß calls it, cannot be dated before the second half of the seventeenth century, in the sense of its spread in the German small states[17]. This situation was preceded by quite different logics of transmission and distribution of property[18].

13 Beckert, 2004; On the interrelation between inheritance and inequality see Piketty, 2014; 2020.
14 Wienfort, 2011. An earlier article on *fideicommissa* in Habsburg and German territories was published in Italian in 2012 in the *Mélanges de l'Ecole française de Rome. Italie et Méditerranée modernes et contemporaines*. It focuses on the very long history of their end, but also contains some basic aspects of the topic (Lanzinger, 2012).
15 Mayenburg & Schmoeckel, 2005, p. 196; Wienfort, 2008, pp. 407–416; Dorn, 2005, p. 37; Inama-Sternegg, 1883, pp. 468–469.
16 Chauvard et al., 2012; Chauvard, 2018; Lanzinger, 2012; Sabean et al., 2007; Spieß, 2007.
17 Spieß, 2007, pp. 60, 69–71; Andretsch, 2019, and in this volume.
18 Clementi, 2023, part II.

It is therefore necessary to look not only at the eldest sons but also at cadets, the younger sons, and at daughters, as there was a variety of inheritance and property arrangements that existed in parallel, even within the same family or kinship group, and also alongside *fideicommissa*.

Noble sibling relationships were characterized by competing interests: positions within the family, father's or mother's favour, the allocation of wealth, marriage options, the size of the dowry, etc. Competition and conflict over positions of power and wealth, however, did not necessarily extend to all aspects of life. Sophie Ruppel uses the term "allied rivals" to express this important distinction. She concludes that there was a "wide variety of possible forms" of sibling relationships[19], including favouritism and dependency as well as the tension between conflict and peace[20]. Giulia Calvi and Carolina Blutrach-Jelín criticize the emphasis and priority given to the struggle for inheritance shares and dowries between siblings: "Emotional relationships among them go unmentioned as do networks of solidarity and support"[21]. We can assume that claims to and distributions of wealth shaped sibling relations in different ways, depending on how they were dealt with: whether inheritance provisions and wealth transfer between siblings were negotiable and balanced, or whether certain siblings – sons, the eldest son or a favourite – were preferred over the others. The question of situations and forms of reciprocity, cooperation and interdependence between siblings leads to an approach that is capable of dynamizing the negotiations and decisions, the scope of action and room for maneuver, as well as the spaces of conflict of historical actors while making interdependencies visible[22].

Although *fideicommissa* are often mentioned as important institutions in the context of the history of the nobility in the Holy Roman Empire[23], they are only rarely analysed in detail in terms of their effects on family

19 Ruppel, 2006, pp. 11, 16.
20 Richter, 2009, p. 238.
21 Calvi & Blutrach-Jelin, 2010, p. 695.
22 Ago, 1992, p. 264.
23 Richter, 2009, pp. 272–276; Sikora, 2009, p. 121; Spieß, 2007.

and kinship as well as on society in general[24]. More case studies[25] are required in order to gain in-depth insights into this "objet polymorphe et polysémique"[26]. As far as the Austrian lands are concerned, *fideicommissa* and the contexts and logics of their introduction, administration and kinship organization have hardly been studied in a comprehensive way from the perspective of social history, historical kinship studies and gender history[27]. To some extent, the considerable research gaps are also a consequence of the difficult source situation following the fire at the Palace of Justice in Vienna in 1927, which destroyed important sources for systematic research on early modern *fideicommissa* or made them inaccessible.

2. Tracing early *fideicommissa* …

According to various early modern regulations, there have been repeated endeavours to gain an overview of the existing *fideicommissa*. In 1674, Leopold I issued a decree that the "original dispositions" – the founding wills or contracts –, were to be deposited with the court for the protection of third parties and for greater legal security. This decree stated that it was a reaction to the fact that the holders of *fideicommissa* often treated them as their free property and mortgaged or sold them without permission[28]. With regard to state surveys, Karl Theodor von Inama-Sternegg, in an article from 1883, pointed out that it was ordered that fideicommissary estates be entered in the newly created land registers of the individual Austrian lands. From 1761 onwards, the provincial authorities were required to submit annual and, from 1765, quinquennial accounts of all fideicommissary assets, which continued until 1787. He mentions the files of the state administration, the court chancellery and the court chamber as

24 One exception is Heinz Reif's study (1979) of the Westphalian nobility. Since the 1970s, international research on the *fideicommissa* has focused on aspects of the nobility's economic activity, family strategies and social reproduction and practice (for an overview see Chauvard et al., 2012, p. 321).
25 E.g. Delille, 1985, pp. 31–81; Di Tullio, 2012; Chauvard, 2018.
26 Chauvard, 2018, p. 7.
27 Florian Andretsch started with this in his MA thesis (2019) and is continuing his research on this topic as part of the project "Noble Siblings: Wealth Arrangements & Social Configurations", already mentioned above (note 1 and 12).
28 *Codex Austriacus*, pp. 336–337.

relevant source material[29]. The question is to what extent the *fideicommissa* of the sixteenth century are evident here.

... in the archives and among the lower nobility

Austrian provincial archives hold source material on *fideicommissa*, but few of them date back to the sixteenth century. The Upper Austrian provincial archives have a *fideicommissa* archive dating back to the seventeenth century (185 boxes). The Lower Austrian Provincial Archives hold *fideicommissa* files (127 boxes). A survey has shown that they originate mainly from the context of repeated attempts to abolish them in the late nineteenth and twentieth centuries. In connection with this, it was necessary to record everything that belonged to it and to clarify who was entitled to claims and the extent of their claims. One context for these holdings could be the order issued by the Imperial-Royal Ministry of Justice in 1882 to survey the real and financial assets of Austrian *fideicommissa*[30].

The Styrian Provincial Archives also have *fideicommissum* holdings as part of their family archives, most of which date back to the seventeenth and eighteenth centuries, as far as can be deduced from the description of the holdings. But there is also a comparatively early *fideicommissum* from the sixteenth century founded by Adam von Lengheim. He was the only son from David (1) von Lengheim's first marriage. He appears in 1569 as collector and in 1575 as war paymaster of the Styrian *Landschaft*. He died in 1585 and established the first Lengheim *fideicommissum* in his will. This included the Lengheim palace in the Bürgergasse in Graz, which he had further extended, and the estates of Pertlstein and Kapfenstein, which his wife Helena von Weißenegg, widowed Lamberg, had brought into the marriage and which were situated on the border with Hungary – threatened by Ottoman invasions at the time. As his only son had died young, he appointed his half-brothers David (2), Wolf and Georg, from the later of his father's five marriages, and their heirs as *fideicommissum* holders.

29 Inama-Sternegg, 1883, p. 467.
30 Inama-Sternegg, 1883, p. 467.

The aim was to preserve the family inheritance in the male line "in such a way that each male child shall receive and use a part of it"[31]. Three generations later, in his will dated 5 August 1711, Georg Adam von Lengheim[32], a great-grandson of David (2) von Lengheim, created for his son Max Adam a "*majorat fideicommissum*" of all the estates around Graz[33].

This case can reveal some of the characteristics associated with the establishment of *fideicommissa* and at the same time point to changes in the course of the early modern period. The *fideicommissum* was established in a difficult situation, both demographically and in terms of the composition of the estate and in a family that did not belong to the high nobility. There was no son, and presumably no child of his own, but three half-brothers. A considerable part of the property came from the wife's family. Both of these circumstances had considerable potential for conflict. From a family and kinship point of view, this was a strategic decision to establish a *fideicommissum* that reflected the logics known from later periods. On the other hand, the Lengheim family did not belong to the higher nobility, but had an important function from an imperial point of view: protecting the Austrian border against the Ottoman Empire.

Among the early holders of *fideicommissa* in the Austrian hereditary lands, Inama-Sternegg mentions several noble families: the Thun family in Styria, Carinthia and Carniola from the sixteenth century, the Herberstein family in Styria from 1598[34], the Lichtenstein family from 1602 and the Wurmbrand family in Lower Austria from 1616[35]. The Lengheims are missing from the list – presumably because this *fideicommissum* no longer existed at the end of the nineteenth century and therefore did

31 Orig.: "zu überkhomen und zu genießen hat".
32 His sons Hans Adam and Otto Friedrich had been raised to the rank of barons in 1620. Schillinger & Freidinger, 2009, p. 57.
33 Steiermärkisches Landesarchiv, Fideikommissakten Lengheim; 52–54; Schillinger & Freidinger, 2009, pp. 52–54, 60–63, 77–79 (genealogies). As usual, this article describes the various generations genealogically and biographically on the basis of facts, but without asking what logics and effects were associated with the establishment of *fideicommissa*.
34 There are no family archives of the Herberstein and Thun families in the holdings of the Styrian Provincial Archives, archivis web – Beständestruktur (stmk.gv.at). An article from 1881 states that the Thun's *fideicommissum* was established through a "donatio inter vivos" (Kallina, 1881, p. 185).
35 Inama-Sternegg, 1883, p. 469.

not come into his view[36]. What kind of *fideicommissum* was established here? Although the will defined the male line as entitled, it did not specify an order of primogeniture. This only came three generations later[37]. The designation as a "*majorat fideicommissum*" in 1711 was associated with an order of primogeniture which was in line with a more general trend. At the same time, the term reflected the Spanish model.

Josef Morsel concludes that for the Lower Franconian nobility, which he has studied extensively, – "as certainly elsewhere" – there is "a constant effort to ensure that land and people over whom manorial power is exercised pass to the heirs considered legitimate". The earliest *fideicommissum* he has been able to find dates from around 1515, and was donated by a cathedral canon: a permanent pension was to be paid out of a man's fief for the two oldest laymen of the respective "stem and family" ("stamms und geschlechts") of Herbilstadt "to the honour and benefit" of the family. Morsel assumes that castles were primarily fideicommissary estates. He also mentions patronage rights, landed estates and tithes[38]. It is remarkable that patronage rights – which Morsel places in second place – do not appear in the literature used for this synopsis.

… in legal historians' publications and debates

Legal historians of the late nineteenth and the twentieth centuries were quite concerned with clarifying the 'origins' of the *fideicommissa* in Austrian and German territories. They developed various ideas and assumptions, asked about possible predecessors and tried to outline the chronology of this legal instrument. They discussed which succession regulation was to be designated as a *fideicommissum* as there were various forms: in terms of the intended duration and whether it was a strict order of primogeniture or more openly conceived. The classification of German-speaking legal history as Germanic or Romance and the mutual – ideologically influenced – demarcations inevitably permeated these debates. The categorization as 'oldest' and 'earliest' must, of course, always be questioned.

36 The Lengheim family archive is probably largely lost (Roth, 1962).
37 Schillinger & Freidinger, 2009, p. 63.
38 Morsel, 1998, pp. 304–306.

Among legal historians, the question of the beginnings is not off the agenda. In his comprehensive work on the nineteenth and twentieth centuries in Germany, published in 1992, Jörn Eckert includes a chapter on the origins of the family *fideicommissum* that begins with the statement: "The emergence and origins of the family *fideicommissum* have not yet been fully clarified."[39] The legal historians' perspectives are, of course, shaped by the research interests and logics of their discipline. The central – and closely interwoven – questions of the debates were when *fideicommissa* began to exist in the Austrian and German lands, whether comparable forms preceded them and, above all, where this legal instrument came from. The point here is not to confirm or reject their assumptions, but rather highlight the traces of early *fideicommissa* and their contexts they have left.

Reference is often made to Philipp Knipschildt (1595–1657)[40]. In his treatise *De fideicommissis familiarum nobelium...* , published in Ulm in 1654, with the German subtitle *Von Stammgütern*, Knipschildt drew a connection between the ancestral estates (*Stammgüter*) of the German nobility and the *fideicommissa* defined as Roman law[41]. This view of the origin of *fideicommissum* law in German territories did not go unchallenged[42]. In an article published in 1914, Herbert Meyer (1875–1941), professor of German law in Breslau, Göttingen and Berlin, called it a "mistake" to assume that "the entire German *fideicommissum* law was a foreign invention, an Italian import"[43]. As proof, he refers to the will of Count Eberhard zu Königstein dated 3 July 1527, which was confirmed by the emperor on 8 June 1528, as the oldest known German *fideicommissum* document. Meyer calls the document a "permanent endowment of ancestral property"(*Stammgutstifung*), which "was already described by the parties involved as a *fideicommissum* substitution at the time of its

39 Eckert, 1992, p. 27.
40 For example in the renowned *Handwörterbuch zur deutschen Rechtsgeschichte* (HRG): Ebert, 2008.
41 Knipschildt, 1654.
42 Meyer, 1914, p. 229.
43 Meyer, 1914, p. 233. He wrote that Knipschild's work was "full of contradictions" and that he had been dethroned by Franz Hofmann as the "creator of German fideicommissum law". Meyer, 1914, pp. 230–231.

creation". It is not clear from this wording whether the term "*fideicommissum*" is mentioned in the will itself, but it probably is not[44].

Eberhard zu Königstein had no children and thus appointed a son of a sister, Count Ludwig zu Stolberg und Wernigrode, as sole heir to his allodial estates and, with imperial authorization, to his fiefs. Should the nephew die without legitimate sons, his brother Philipp was to succeed him. Other male relatives are named as substitutes in the event that there was no male successor[45]. This should prove that there were testamentary dispositions based on German legal concepts that corresponded to the effects of a *fideicommissum*.

Among legal historians, however, Knipschildt is still recognized as influential on later codifications – also by Ursula Flossmann[46]. Her introduction to the *Austrian History of Private Law* (Österreichische Privatrechtsgeschichte), for example, which has appeared in numerous editions and continues to be used as a reference work, reflects on an older – and now much more differentiated – narrative that became classic in the nineteenth century[47]. She writes that attempts by the lower nobility to legally bind the family estate in the male line in order to promote the political and social standing of their family have been documented from the eleventh century. The family estates of the high nobility, the "ancestral estates" (*Stammgüter*), which had a specific legal status and where the law of the house or custom only permitted the transfer of property to agnates – as was customary among the high nobility –, served as a model for the lower nobility. In the Middle Ages, this was initially achieved through the establishment of so-called "Ganerbschaften" by means of a charter[48], which, as joint heirships, could only be cancelled with the

44 The significance of specific terminology is a fundamental question. Heinz Reif, for example, states that the majority of the Westphalian nobility, who passed on their estates according to the logic of a *fideicommissum*, had no legal document corresponding to a *fideicommissum* (Reif, 1979, p. 304).
45 Meyer, 1914, pp. 235–236.
46 Floßmann, 2005, p. 333, note 1.
47 Söllner, 1976; Fraydenegg und Monzello, 1979, p. 783; Eckert, 1992, pp. 27–89.
48 Eckert, 1992, pp. 58–63; for the knighthood, Schneider, 2019, pp. 42–49; for Hesse and Thuringia, Jendorff, 2010.

consent of all entitled parties, as Flossmann emphasizes[49]. *Ganerbschaften*, on the other hand, meant joint rule by several holders of manorial titles, that is, joint rule based on the principles of political – not necessarily confessional – commonality and equality[50]. This clearly distinguishes *Ganerbschaften*, which existed until around 1800, from *fideicommissa*.

With the reception of Roman law at the end of the fifteenth century, the practice of securing inheritance over generations had to be protected – from the perspective of legal historians – by linking it to a legal instrument of the *ius comune*. The appropriate tool was found in the *fideicommissum quod familiae relinquitur*, which was based on *fideicommissum* substitution and combined with the principles of the law of succession, in particular the idea of *successio ex pacto e providentia maiorum* – that is, through succession by contract and provision of the ancestors[51]. From this point of view, the *fideicommissum* was a "Romanist remodelling of Particular Law"[52].

It is more likely that different forms – *Ganerbschaften*[53] and *fideicommissa* – co-existed. Furthermore, from the perspective of historical kinship studies, the chronology on which the narrative outlined above is based follows assumptions put forward between the 1950s and 1970s by the medievalists Gerd Tellenbach, Karl Schmid and George Duby, that "a shift in aristocratic kin organization [...] that has since been considered one of the most significant ruptures in the development of European kinship" took already place "around the year 1000"[54]. Simon Teuscher and David Sabean propose, in contrast, an extended chronology of the verticalization of kinship as a critique of the older view. They assume that the enforcement

49 Floßmann, 2005, p. 332. The same narrative can be found in Hübner, 1930, p. 337.
50 Jendorff, 2010, p. 385.
51 Jendorff, 2010, p. 385. See also Hübner, 1930, pp. 337–339.
52 Söllner, 1976, p. 661. In his article on *fideicommissum* in the doctrine and legal practice of the *ius commune* between the sixteenth and seventeenth centuries, Giovanni Rossi attributes a Roman origin – "ascendenza romana" – to the *fideicommissum*. Traces of this legal instrument can already be found in the Middle Ages, particularly in the fifteenth century. Rossi speaks of the "golden age", the "stagione aurea", of the *fideicommissum* throughout Europe between the sixteenth and eighteenth centuries. This is because the *fideicommissum* was recognized as the most effective means of preserving family wealth, on which social status, political significance and a strong economic position and power were based. The prohibition of alienation and the obligation to pass them on in their entirety made them more effective than other instruments (Rossi, 2009, p. 184).
53 Schmidt-Funke, 2017, pp. 43–45.
54 Sabean & Teuscher, 2007, p. 4.

of primogeniture and the establishment of *fideicommissa* in the nobility was a long-term process that continued into the seventeenth century[55]. The idea of certain Germanic precursors in the Middle Ages and a later Romanization was also initially held by two important nineteenth-century jurists, but they then changed their minds. Leopold Pfaff (1837–1914) and Franz Hofmann (1845–1897), both specialists in Roman law, wrote a 50-page text on the history of *fideicommissa* as part of their commentaries on the Austrian General Civil Code of 1811, entitled *Excursus*, which was also published as a separate volume in 1884[56]. The context is that they – or mainly Franz Hofmann[57] – had come to new insights, and some of what they had previously said now seemed untenable. This applied both to the search for traces of *fideicommissa* in the Roman *corpus iuris civilis* and to the derivation from older German law. Pfaff and Hofmann now argued in favour of the "cosmopolitan character of older jurisprudence", the spatial expansion of the Habsburg dynasty and the resulting colourful mixture with "foreign elements", and called for the search for the beginnings of Austrian *fideicommissa*[58] to go beyond Germany[59].

The equal rights of all sons followed, in Pfaff and Hofmann's view, German law, while the right of primogeniture originated in French feudalism. The heyday of primogeniture orders began in the seventeenth century, as did that of the *fideicommissa*. These "phenomena" were apparently related, they were "children of the same spirit", as this was a question of preserving the *splendor familiae*. The lawyers, Pfaff and Hofmann argued, should now justify this new inheritance regime. And in doing so, they referred to French, Spanish and Italian treatises. According to

55 Sabean & Teuscher, 2007.
56 Pfaff & Hofmann, 1884, pp. 3–4.
57 In his article published in 1905 in the *Allgemeine Deutsche Biographie*, a biographical encyclopaedia, the jurist Ivo Pfaff, son of the aforementioned Leopold Pfaff and a student of Franz Hofmann, credits Franz Hofmann – and not his father – with the "discovery of the Spanish origin of the *fideicommissum*", which in his view was "greatly facilitated by his knowledge of the Spanish language" (Pfaff, 1905; Wesener, 1979). Unlike Leopold Pfaff, Franz Hofmann does not appear in the book on lawyers in Austria (Brauneder, 1987), but Gerhard Oberkofler mentions him in this volume as a friend of Leopold Pfaff, with whom Hofmann wrote the unfinished commentary on the Austrian General Civil Code, which Oberkofler considers "one of the most important works in the field of Austrian private law". Their involvement with the *fideicommissum* is not mentioned in this brief biographical sketch (Oberkofler, 1987, p. 199).
58 Pfaff & Hofmann, 1884, p. 4.
59 "Germany" often referred to the German-speaking world, including Austria, in the nineteenth century.

Pfaff and Hofmann, *fideicommissa* primarily served the lower, mediate (*reichsmittelbare*) nobility and sprang up "like mushrooms after the rain"[60]. Pfaff and Hofmann contrasted this with their new discovery: "The home of the family *fideicommissum* is Spain."[61] They referred to Spanish legal scholars and their works, as well as to the *Leyes de Toro* and the spread of *majorates* in Spain. Spanish families, they argued, had settled in Naples – then under Aragonese rule and later under Charles V – and with them the institutions and customs of Spain had come to Naples and spread further through mutual services and marriage relations between these families. There, *fideicommissa* were seen as a development of Roman law. However, there were clear differences. For example, the Roman *fideicommissum* lacked perpetuity, being limited to four generations by Justinian's amendment 159 – but this was about to change. In addition, Spanish law required the monarch's approval for the establishment of each individual *majorat*[62].

Accordingly, the first sentence of the article "Fideikommisse" under the heading "History", which Franz Hofmann published in the *Österreichisches Staatswörterbuch* (*Austrian State Dictionary*) in 1894, reads: "However obscure the history of this institution may be, it is at least undisputed that *one* of its roots is to be found in *Spain*."[63] He goes on to argue, against the background of the controversial origins of the institution among jurists of the time, that the *fideicommissa* in Italy were very different from the Spanish *majorates* due to the "lack of perpetuity" and the "fixed order of succession", and that their establishment was also fundamentally different. At the end of the section on the history of the *fideicommissum*, he concludes that the Austrian version "by and large [...] had the Spanish character" – as did court life under Charles VI (1685–1740). By referring to two *fideicommissa* as evidence of the Spanish connection he argues: the "statesman" Rochus Stella, Count of Santa Croce (1662–1720) from Naples, who came to Vienna in the entourage of Emperor Charles VI, had endowed a *fideicommissum* "with reference to the law of the grandees of Castile"[64].

60 Pfaff & Hofmann, 1884, pp. 6–8.
61 Pfaff & Hofmann, 1884, p. 15.
62 Pfaff & Hofmann, 1884, pp. 15–18.
63 Hofmann, 1906, p. 21, emphasis in the original.
64 Landau, 1889, pp. 359–361. He was a colourful and controversial figure. He was head of the newly created Secret Chancellery for deciphering diplomatic correspondence and served in the military of the Holy Roman Emperors Leopold I, Joseph I and Charles VI, as well as being an advisor, etc. Klotz, 2012; Stella, 2019.

Better known is the *fideicommissum* founded by the imperial ambassador to Spain, Count Hans von Khevenhüller (1538–1606)[65]. In 1605, on his return, he endowed the lordship of Frankenburg in Upper Austria with "a majorate of Spanish character"[66], in other words with a fixed order of primogeniture. According to Inama-Sternegg, he was the first to establish a primogeniture *fideicommissum* in Austria, based on the Spanish model[67]. The inheritance agreement (*Erbvereinigung*) of the brothers Karl Maximilian and Gundacker von Liechtenstein, sanctioned by Emperor Rudolf in 1607, dates back to 1606, in which they "wish to have subjected and do subject their possessions and estates to an orderly eternal strictissimo fideicommisso pro conservanda familiae et agnationis dignitate"[68].

Jörn Eckert argues in favour of the Spanish and Italian influence on the Austrian *fideicommissum* by pointing to the close dynastic ties between the Spanish and Austrian Habsburgs. Marriage connections in prestigious families were just as much a consequence as the presence of high-ranking military officers and officials from Spain and Italy in Austria and vice versa. Spanish was spoken in high society in Vienna and Prague in the seventeenth century. In addition, numerous Austrians studied law at universities in northern Italy. This may also explain why Austrian *fideicommissum* documents refer terminologically to the Spanish majorate. From an Austrian perspective, the heyday of the noble *fideicommissum* was in fact in the second half of the seventeenth century and in the eighteenth century[69]. The requirement to belong to the Catholic confession, or the threat of exclusion from holding a *fideicommissum* in the case of conversion, was a possible consequence of the Counter-Reformation. Such regulations can be seen as power strategies in a situation of political tension.

65 On the Khevenhüller *fideicommissum* see the contribution by Florian Andretsch in this volume.
66 Hofmann, 1906, p. 21.
67 Inama-Sternegg, 1883, p. 369.
68 Kallina, 1905, p. 181.
69 Hübner sees a clear increase after the Thirty Years' War in the German territories: the wealthy lower nobility in particular, but also the high nobility, used the *fideicommissum* as an effective legal instrument, especially for new acquisitions. Hübner, 1930, pp. 338–339; see also Söllner, 1976, pp. 660–665. Eckert (1992, p. 65) also picks up on this. The *fideicommissum*, according to the view expressed in this context, came to Germany from Austria and Flanders.

... among wealthy merchant families

In addition to the 'first' noble *fideicommissa* mentioned by the legal historians cited above, there were others in the sixteenth century under apparently different conditions: in affluent merchant families belonging to the patriciate[70]. Among merchants, *fideicommissa* appeared primarily in connection with the landed estates that the family had acquired with increasing prosperity, on the one hand, and with imperial need for money, on the other. Merchant *fideicommissa* include those of the relatively well-known Fugger and Paumgartner families – with an older branch in Nuremberg – in southern German Augsburg, who were also related by marriage. Britta Schneider has produced an illuminating study of the Fugger family, centred on continuities and conflicts in the period between 1560 and 1598, and thus on the generations affected by the establishment of *fideicommissa*. The Fuggers were a Swabian merchant family based in Augsburg from the fourteenth century, who became powerful as merchants, mining entrepreneurs and bankers in the first half of the sixteenth century.

Jakob Fugger the Rich (1459–1525), as Schneider states, had already formulated the beginnings of a family *fideicommissum*. Later, however, other members of the family were granted special privileges that enabled the sons to inherit more than the daughters. These stipulations ran contrary to the Augsburg municipal law of the time, which provided for equal inheritance shares for sons and daughters. For this purpose, Hans Jakob Fugger (1516–1575) received "a privilege *concessum circa Dispositionem Testamentaria c[oncernentum] Filiis et Filiabus*" from Emperor Charles V in 1546. In 1547, the Emperor authorized him to purchase a castle and bequeath it to his eldest son as a fideicommissary estate[71].

70 Reference should also be made here to the *fideicommissum* of the medical doctor Ehrhard Hedenegkh from Villach in Carinthia dated 10 June 1589. In his will, he decreed that his house and the land belonging to it must remain in his "name and lineage" – "namben und stamen" – that is, be passed on in the male line. None of his relatives were allowed to sell or pledge any of it. The descendants were only entitled to the usufruct of the income (Neumann, 1984, pp. 123–124).
71 Schneider, 2016, pp. 74–75. Hans Jakob Fugger was a son of Raymond Fugger, nephew of Jakob the Rich.

In 1548, Emperor Charles V also granted Anton Fugger (1493–1560)[72] a testamentary privilege which authorized him and his descendants – in perpetuity and regardless of any written rights – to give his daughters an appropriate maintenance, marriage portion and trousseau, in other words movable goods instead of landed property. A *fideicommissum* document was drawn up a few months later. Britta Schneider concludes that these two dispositions became the Fuggers' "ironclad family law", which subsequently formed the basis of the male succession[73]. The Fuggers were among the most prominent merchants to whom the Habsburg rulers turned for credit when their regular revenues were insufficient, especially in times of war[74]. At the end of the fifteenth century, Archduke Sigmund of Tyrol borrowed considerable sums from the Fuggers in return for the spoils of the Schwaz silver mines on favourable terms. Fugger money was also involved in the election of Charles V as emperor in 1519, and they also financed the Schmalkaldic War (1546/47). Anton Fugger lent the Habsburgs around 400,000 ducats from his personal coffers during the princely uprising in 1552[75].

Hans Paumgartner the Younger (before 1488–1549) ran the business while his father was still alive. He owned mines in Tyrol and bought others in Istria and Bohemia. Like his father, he remained active in wholesale trade, trading mainly in copper and silver, as well as cloth and spices, including saffron. He also engaged in financial and credit transactions. Here, too, the Habsburgs were increasingly among the most important borrowers. Hans Paumgartner became associated with the Fuggers through his marriage to Regina Fugger (1499–1553)[76], a niece of Jakob Fugger the Rich and sister of the above-mentioned Anton Fugger. In 1535, he acquired three castles and was raised to the rank of baron in 1543. He founded the *fideicommissum* in the early 1540s. The original deed has not survived. However, in addition to other copies, there is the version confirmed by Emperor Charles V and a German version included in the will of

72 He was a son of Georg Fugger and a nephew of Jakob the Rich.
73 Schneider, 2016, pp. 75–76.
74 On forms of representation of the Fuggers around 1500 see Kagerer (2017, chap. 3).
75 Pölnitz, 1960, p. 36, chap. 7, 11 and 12.
76 The biographical data of the heirs are given by Isenmann (2020, p. 160) as 1494–1552. I follow the dates given by Schad (1989, p. 227). On kin and marriage and other social networks of the Fugger family see Sieh-Burens, 1986, pp. 90–98.

Hans Paumgartner and Regina Fugger. The primary aim was to ensure that the property remained undivided in the family and was inalienable. This was tantamount to a patrilineal logic, as the daughters – like in the Fugger case – were excluded from the succession: they were all to be "ausgeheurats nach zimblichait" – that is, they were to be married off and given an appropriate marriage portion[77].

Only a few traces of *fideicommissa* in merchant families on Habsburg territory are currently available. There is a particular lack of research on early modern Viennese merchants[78]. The *fideicommissa* of the patrician Nicolaus Rhediger and the landowner Valentin Sauermann, son of the merchant Konrad Sauermann, and his successors, the later Counts Saurma, Barons von und zu der Jeltsch, from the city of Breslau, Polish Wrocław, which belonged to the Habsburg monarchy until 1741, are mentioned in a legal history study on German private law from the beginning of the twentieth century by Rudolf Hübner[79]. Valentin Sauermann died in 1573. The *fideicommissum* was established in 1569 and confirmed by Emperor Maximilian II in 1570[80]. Described as "substitution and *fideicommissum*", the regulation stipulates that "the goods should fall and originate successively in the man's name and lineage each time" ("Mannesnamen und -stamm")[81]. As Joseph Morsel points out, from the late Middle Ages, "stem and name" was a synonym for agnatic kinship[82].

The Viennese merchants Wolf Pramer (1541–1613) and Lazarus Henckel (1551–1624) are also mentioned by Hübner as early *fideicommissa*[83]. But this needs to be investigated in more detail. In 1566, Wolf Pramer was granted burgher status as a merchant in Vienna. He was one of the few Viennese merchants "who traded with Italy"[84]. In the same year, he took part in the Hungarian campaign (*Türkenzug*) against the Ottoman

77 Isenmann, 2020, pp. 159–162 and note 85.
78 The diploma theses by Rudolf Buchinger (2009) on the Viennese merchants in the second half of the sixteenth century and by Mattheus Reischl (2013) on the merchant banker Lazarus Henckel von Donnersmarck deserve special mention.
79 Hübner, 1930 [1908], p. 338.
80 See Pusch,1990, p. 47.
81 Meyer, 1914, p. 231.
82 Morsel, 1998, pp. 263–270.
83 Hübner, 1930, p. 338.
84 Pradel, 1972, vol. 2, note 19.

Empire. In 1578, he and his brother Christoph were granted a coat of arms and the right to hold a fief, and in 1593 a knighthood. Pramer was initially represented in the Outer Council and later in the Inner Council of Vienna. He owned several properties within the city walls, as well as some outside[85]. Rudolf Buchinger mentions him as a Viennese merchant who came to the fore as a lender to the emperor towards the end of the sixteenth century[86]. Four of his daughters were married to merchants, Margaretha to Christoph Zollikofer[87]. The Zollikofers were a well-known merchant family from Constance. In the first half of the fifteenth century, the brothers Hans (1395–1471) and Jobst (1398–1476) acquired citizenship of the Swiss town of St Gallen. The Zollikofers became wealthy from linen trade and rose to become one of the leading families. Until around 1750, many members of the family were active in long-distance trade; with some of them settling in Lyon and Marseille[88]. In matters of inheritance, the aforementioned Lazarus Henckel acted as legal counsellor to the Pramer family. Furthermore, Henckel was related to the merchant Wolf Pramer through his first wife Anna Ettinger. Pramer also acted as a sub-creditor of a loan from Henckel to the Bohemian Estates at the beginning of the seventeenth century[89]. Pramer and Henckel were business partners and presumably also friends.

In the *Neue Deutsche Biographie* (*New German Biography*), Lazarus Henckel is listed as a "wholesaler, banker and mining entrepreneur"[90]. He was the financier of three emperors, in particular Rudolf II during and after the Long Turkish War (1593–1606)[91]. Born in the town of Leutschau (Levoca in present-day Slovakia) in the historical region of Zips (Spiš), he was a factor in an Ulm company in Vienna in 1579. In 1581, he became

85 Pradel, 1972, vol. 2, pp. 207–209.
86 Buchinger, 2009, p. 69.
87 Pradel, 1972, p. 207.
88 Rezia Krauer: "Zollikofer", in: *Historisches Lexikon der Schweiz (HLS)*, Version vom 24.02.2014. Online: https://hls-dhs-dss.ch/de/articles/022830/2014-02-24/, last access 14 Dec. 2023. In 1471, the family received a coat of arms from Emperor Frederick III; in 1578, Emperor Rudolf II elevated the members of one line (the "red line") and in 1594 those of a second line (the "black line") to the nobility. Ibid.
89 Reischl, 2013, pp. 28–29 and note 146.
90 Probszt, 1969; Reischl, 2013, pp. 31–61; see also Hugo Reichsgraf Henckel Freiherr von Donnersmarck (ca. 1895).
91 Reischl, 2013, p. 1; see also Czaja, 1936, pp. 15–24.

a citizen of Vienna, where he and his wealthy first wife Anna Ettinger bought a house on the Fleischmarkt[92]. This house became the seat of his trade in goods and money. He is known for his dealings with the court chamber (*Hofkammer*), the highest financial authority. "The business began with a loan of 40,000 gulden, half in cash and half in cloth for the clothing of the border troops."[93] By 1590, Henckel had his own factors in Leipzig and Nuremberg and an agent at the court of Rudolf II in Prague, whom he repeatedly helped financially. In 1591, he acquired an aristocratic estate in Nußdorf near Vienna and began a large-scale wine trade, purchasing vineyards and mining rights[94]. He also traded extensively in cattle, importing oxen from Hungary, Transylvania and Wallachia to Vienna and Upper Germany[95]. Although he laid the foundations, he did not establish the Henckel-Donnersmarcksche *fideicommissum* himself. In 1623, a year before his death, Lazarus Henckel von Donnersmarck was pledged the Silesian manor of Beuthen, the later *fideicommissum* estate, by Emperor Ferdinand II in his capacity as King of Bohemia. It was not until 1629 that his son of the same name, Lazarus II, acquired ownership.

As is usually stated, compared to the number of noble *fideicommissa*, there were only a few that originated from merchant families[96]. Pfaff and Hofmann see the establishment of *fideicommissum* in middle-class families "only as an imitation of aristocratic institutions"[97]. However, they clearly merit a more detailed analysis as they point to a completely different political context which has not yet been systematically studied: the financing of sovereignty, especially in relation to the costs of the wars against the Ottoman Empire[98]. Merchant families were heavily involved in supporting and financing Habsburg wars and power with very large sums of money. At the same time, these families were only granted titles of nobility in the course of their economic ascent and their involvement in court matters.

92 Kallbrunner, 1931, p. 145.
93 Probszt, 1969; Kallbrunner, 1931, p. 145.
94 Kallbrunner, 1931, p. 146.
95 On the importance of the cattle trade see Reischl, 2013, pp. 41–47; Buchinger, 2009, pp. 78–80; Kallbrunner, 1913, p. 146.
96 E.g. Neumann, 1984.
97 Pfaff & Hofmann, 1884, p. 5.
98 Some others are mentioned in Kallina, 1905, p. 169. They are likely to be later ones, such as Werner Ströhling's *fideikommissum*. In his will from 1638, he transformed the Mollenburg into a *fideicommissum* manor. See http://noeburgen.imareal.sbg.ac.at/result/burgid/2117.

Jens Beckert points out that the establishment of *fideicommissa* in the seventeenth and eighteenth centuries was justified by "protection against political uncertainty", while at the end of the nineteenth century the argument was "protection against market uncertainty"[99]. What about the *fideicommissa* of the sixteenth century? They resemble some kind of imperial reward or 'return gift' and recognition. The early *fideicommissa* were authorized by the emperor, whereas later – until the reign of Empress Maria Theresa – they were not subject to any control, apart from the registration that was repeatedly decreed[100]. In 1627, Ferdinand II stipulated in the Revised Land Ordinance of Bohemia that if someone wished to establish a primogeniture among his children in the future, he should "first receive a confirmation from Us, or Our heirs succeeding kings". Although it was possible in other Austrian lands to have a *fideicommissa* foundation provided with an imperial "consensus and confirmation"[101], this was not prescribed here, unlike in Bohemia.

The *fideicommissa* were used by the merchant families themselves as an instrument to secure the status they had achieved through their economic and social advancement, and by the Lengheim family from the lower nobility to secure their status and succession. Securing the male line of succession was a common goal for both, especially in times of demographic upheaval. Accordingly, one aim, particularly explicit in the case of the Fuggers, was to use the *fideicommissum* – in contrast to the more favourable municipal law – to exclude daughters from inheriting property. Such a practice among the nobility is known from the fifteenth century, when daughters were required to renounce their paternal, fraternal and sometimes maternal inheritance when they married and received a dowry[102].

99 Beckert, 2004, 363, note 28.
100 Fraydenegg und Monzello, 1979, pp. 787–790.
101 *Verneuerte Landesordnung deroselben Erb-Königreich Böheim ... mit unterschiedlichen Declarationen und Novellen vermehret* (Prag 1753, 370, Art. O XXII), zit. by Fraydeneg und Monzello (1979, p. 785).
102 Clementi, 2023, pp. 90–91; Hufschmidt, 2001, pp. 275–276, 291; Marra, 2007, pp. 97–98; Spieß, 1993, pp. 133, 327–343.

Conclusion

In any case, the search for sixteenth-century *fideicommissa* can be very rewarding and can broaden our historical understanding. The question of the exact form of the *fideicommissa*, their political impacts and their consequences for kinship organization can only be answered by a careful analysis of the sources and the reconstruction of the relevant contexts. This article can only sketch out some possible threads for the necessary deepening of the topic.

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Noble *fidei commissa* in the Archduchies of Upper and Lower Austria. On the spread, use and regulation of an aristocratic legal institution in the western Habsburg Empire (seventeenth and eighteenth centuries)

Florian Andretsch
(University of Vienna, Department of Economic and Social History)[1]

Abstract: *Fidei commissa* were an important legal institution for the nobilities of the Austrian Habsburg Empire. This paper examines their spread, use and regulation in the Archduchies of Upper and Lower Austria during the early modern period, contextualized with information on nearby regions. The investigation is based on literature written by historians since the nineteenth century as well as archival sources. *Fidei commissa* were most frequently established by higher nobles in core realms of the empire between about 1650 and 1750. Their main use was to promote perpetual male primogeniture. Political authorities did not set many regulations until the mid-eighteenth century. Thereafter, measures were taken to impede the further spread of *fidei commissa* and to weaken the institution.

Keywords: Fidei commissum, entail, inheritance, nobility, Austria, Habsburg Empire, early modern era.

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Introduction

In the course of the seventeenth century, the legal instrument of the *fidei commissum* became increasingly popular in the Austrian and Bohemian lands of the Austrian Habsburg Empire. Although syntheses of the rich literature on the nobilities of these realms often attribute great importance to this institution,[2] the history of the *fidei commissum*'s spread and its functioning has rarely been investigated in detail. Some contributions that are still useful today were written by legal historians in the last decades before the break-up of the monarchy.[3] Thereafter, historians have only occasionally made the *fidei commissum* an object of study,[4] resulting in major gaps in our understanding of this legal institution in the Habsburg Empire compared to other parts of Europe. Several types of source material could be used to close this gap in the future. Firstly, former archives of central or supraregional administrative and judicial bodies stored documents concerning legal issues and matters negotiated between fideicommissary owners and the state, or imposed by the latter on the former. Two important collections of this kind, stored in the Austrian State Archive, originate from the Austrian Aulic Chancellery (in existence from 1559 to 1742)[5] and its successor institutions, and from the Supreme Justice Office (in existence from 1749 to 1848).[6] Unfortunately, the source material on *fidei commissa* was severely damaged in the Vienna Palace of Justice Fire in 1927 and the remains are not currently available for research. Secondly, other relevant materials on *fidei commissa* were stored in the archives of regional administrative and judicial institutions; the situation regarding what information was gathered and what is still preserved differs from region to region.[7] Thirdly, the families who owned *fidei commissa* often kept their own family and seigneurial archives containing relevant materials, many of which have been transferred to public archives over the course of the nineteenth and twentieth centuries.[8]

2 Evans, 1979, p. 169; Schenk, 1953, pp. 102–103; Scheutz, 2015, pp. 152; Van Horn Melton, 2007, pp. 185–186.
3 E. g. Inama-Sternegg, 1883; Kallina, 1881, 1905; Pfaff & Hofmann, 1884.
4 Andretsch, 2019, 2021; Fraydenegg und Monzello, 1979; Götz, 1974; Hofmeister, 1990; Leisching, 1988; Schmid, 1978.
5 Österreichisches Staatsarchiv (AT-OeStA), Allgemeines Verwaltungsarchiv (AVA), Inneres, Hofkanzlei (HK), Allgemeine Reihe, Akten, K 1486–1510.
6 AT-OeStA/AVA, Inneres, Oberste Justizstelle, Justzizsenate.
7 For an overview of public archival repositories of early modern noble as well as non-noble wills in what is now the Republic of Austria, see: Hochedlinger, 2001.
8 For an overview of Austrian family archives, see: Hochedlinger et al., 2018.

In the following sections, I will give an overview of some central characteristics of *fidei commissa* in the Archduchies of Upper and Lower Austria, contextualised with information on other Austrian Habsburg realms. My investigation is based on literature from the nineteenth century to the present day as well as sources from regional institutions and family archives. I argue that *fidei commissa* were most popular among the higher nobilities in core realms of the Habsburg Empire and that they were most frequently established in the later seventeenth and the early eighteenth centuries. Their main use was to promote perpetual male primogeniture. Political authorities embraced the spread of the legal institution until the mid-eighteenth century. Thereafter they counteracted its further proliferation and set measures to weaken the entailment of land. The first section summarises data on the regional distribution and the temporal spread of *fidei commissa* in various realms of the western Habsburg Empire. The second section deals with the stipulations Upper and Lower Austrian founders of *fidei commissa* wished to leave for future generations. The third section sums up research on the policies by which the Habsburg sovereigns regulated *fidei commissa* in the two archduchies. In the last section, I present concluding thoughts and propose three possible avenues for future research.

1. Regional distribution and temporal spread

1.1. The regional distribution of *fidei commissa* in the western Habsburg Empire in the nineteenth century

Although the process of abolishing *fidei commissa* in Austria only started with Austria's annexation by the National Socialist regime in 1938,[9] the legitimacy of the legal institution was already often contested in the times of the monarchy. Critics in the late nineteenth century argued that *fidei commissa* impeded the free circulation of property as well as market competition and, more broadly, that it was a vestige of old aristocratic privileges

9 Lanzinger, 2012, pp. 360.

contrary to the principles of civic equality.[10] In 1881, partly in response to such controversies, the k. k. Ministry of Justice conducted a major survey on *fidei commissa* in all 17 crownlands that constituted Cisleithania, the western half of Austria–Hungary. In 1883, the results of the survey were published in the public *Statistische Monatsschrift* (Monthly Magazine for Statistics) by its editor Karl Theodor Inama–Sternegg.[11] While not defending the legal instrument per se, Inama–Sternegg concluded that critics had overstated the impact of the 292 "real *fidei commissa*" – that is *fidei commissa* binding real estate – on the empire's economy. "Only" 3.8 per cent of the total territory was affected, and this percentage actually fell to 2 per cent if only arable land was considered, since about two–thirds of the fideicommissary estates were forests. Nonetheless, the statistician argued that the actual significance of *fidei commissa* varied from one crownland to another, with some regions being more affected than others. The result of the survey on regional variations are summarised in table I.

Table I: Number and size of real *fidei commissa* in Cisleithania, 1881.

Crownland	<5 ha[a]	6–115 ha[a]	116–575 ha[a]	576–2877 ha[a]	>2877 ha[a]	% of crownland	% that is forests
Lower Austria	15	3	10	26	17	6.3%	60.5%
Upper Austria	0	6	8	5	1	5%	84.2%
Styria	3	4	16	5	2	1.1%	70%
Carinthia	0	0	5	3	7	6.8%	73.5%
Carniola	1	2	1	2	4	4.9%	91.2%
Tyrol	0	1	0	0	0	0.003%	57.3%
Bohemia	1	0	0	17	40	11.2%	62%
Moravia	0	0	0	8	10	8%	72.3%
Silesia	0	0	0	2	3	3.4%	70.9%
Galicia	1	0	0	4	4	0.4%	35.1%
Dalmatia	10	16	8	2	0	0.4%	14.9%
Littoral[b]	6	11	2	0	0	0.2%	37.8%
Total	**37**	**43**	**50**	**74**	**88**	**3.8%**	**65.9%**

Source: Inama–Sternegg, 1883, pp. 468, 473, 478; [a] the original unit of measurement in Inama–Sternegg's article is *Joch* (= 0,575 ha); [b] this is a collective name for the three small crownlands of Istria, Trieste and the Princely County of Gorizia and Gradisca.

10 Inama–Sternegg, 1883, pp. 465–466.
11 Inama–Sternegg, 1883, pp. 465–466.

The data gathered by the Ministry of Justice reflects the fact that throughout the early modern period the Habsburg Empire was a composite monarchy consisting of more than a dozen realms (*Länder*), each with its own legal and political traditions.[12] Three nineteenth-century crownlands, Salzburg and Vorarlberg in the west and Bukovina in the far east, had no *fidei commissa* at all.[13] Salzburg had been an independent prince-archbishopric until 1803; about 80 per cent of its territory was under the direct seigneurial authority of the archbishop's court chamber, without noble landlords as intermediaries,[14] thus hardly a realm conducive to the emergence of large patrimonies[15] that could be bound by a *fidei commissum*. Since the late Middle Ages, the political entities that were to become the crownland of Vorarlberg in 1861 had no nobility at all,[16] and Bukovina was a thinly populated area annexed from an Ottoman satellite in 1775; the realm's anterior legal culture was too different from more western ones to have adopted the *fidei commissum*. In another more western crownland, Tyrol, one rather small entail existed. The realm's conservative legal tradition, codified over the course of the sixteenth century, was comparatively hostile to the concept of testamentary freedom.[17] The fideicommissary principle, a radical expression thereof, did not fall on fertile ground to flourish in the county.

In two other areas, the significance of *fidei commissa* was limited, but not absent. The Kingdom of Galicia and Lodomeria corresponded to the territories annexed from the Polish-Lithuanian Commonwealth in the late eighteenth century. Although entails were not unknown to the Polish nobility, only a very small minority of families actually adopted them in the early modern period.[18] The majority of Galicia's *fidei commissa* in the late nineteenth century were probably established after the Polish partitions.[19]

12 For an overview, see: Hochedlinger, 2003, pp. 1–36; Mat'a 2019a.
13 Inama-Sternegg, 1883, p. 469.
14 Ammerer, 1995, p. 352.
15 Ammerer & Weiss, 2015, p. 208.
16 Niederstätter, 1996, p. 232.
17 Wesener, 1957, pp. 186–187.
18 In the Polish-Lithuanian Commonwealth, only seven noble entails were established between the sixteenth and the eighteenth centuries, see: Frost, 2007, pp. 307–308.
19 Inama-Sternegg (1883, p. 471) states explicitly that three out of the nine *fidei commissa* in this realm were established in 1868 or later.

The Littoral and the Kingdom of Dalmatia, often former possessions of the Venetian Republic, had a significant number of *fidei commissa*, but most of them were comparatively small. It is likely that the geographies of these realms did not allow for the accumulation of large landed patrimonies. All the crownlands examined so far were either peripheral areas of the Habsburg Empire or rather late acquisitions. The importance of the *fidei commissum* was greatest in the monarchy's older core territories, the Bohemian[20] and the eastern Hereditary Lands.[21] This finding can be interpreted as an indication that the spread of *fidei commissa* in this part of Europe was connected to Habsburg governance and the cultural influence of the Viennese court.

Considering that the share of fideicommissary land in the total territory, even in core areas, never exceeded 11.2 per cent in 1881, one might come to the conclusion that the economic, social and political impact of entailment was limited even here. However, it is important to keep in mind that at least three different factors had diminished the importance of the legal institution by the time the k. k. Ministry of Justice survey was conducted. Firstly, many *fidei commissa* established in earlier centuries had ceased to exist due to the extinction of the lineage of the *fidei commissum*–founder or for other reasons. Secondly, the binding power of entails had been weakened in the late eighteenth century.[22] Thirdly, and most importantly, the land reforms (*Grundentlastung*) of 1848–1850 had radically changed the nature of noble property. The policies had abolished the *ancien régime*'s seigneurial system (*Grundherrschaft*), making peasants full owners of their farms in return for a financial compensation to their former landlords.[23] Before 1848, what was bound by real *fidei commissa* were large complexes of noble landed possessions, usually called

20 Bohemia, Moravia and Silesia.
21 Lower Austria, Upper Austria, Styria, Carniola and Carinthia. As opposed to the western Hereditary Lands of Tyrol and Vorarlberg.
22 See section III.
23 Feigl, 1998, pp. 265–276; the financial compensation amounted to two thirds of the price of a given seigneurial estate (calculated by multiplying the average annual income by a factor of 20). One third was paid by the state, another third remained a debt claim of the former landlord or landlady towards his or her former subject.

"seigneuries" (*Herrschaften*) or "estates" (*Güter*),[24] the ownership of which empowered landlords to extract rents and labour from rural subjects and control many aspects of their lives.[25] The forests and other lands bound by the *fidei commissa* of 1881 were but the remnants of formerly far more lucrative and socially impactful units of entitlements.

A final point to consider is that the real *fidei commissum* was only one of two variants of the institution, the other being the "pecuniary *fidei commissum*". The latter did not bind real estate but an interest-bearing financial asset, such as a bank deposit or a mortgage loan to a specific debtor. Their owners could use the gains earned as interest as they wished, but they had to keep the capital in its original amount. Unfortunately, there are no detailed studies of how this system was administered in practice. In 1881, there were 196 "pure" pecuniary *fidei commissa* with a total value of about 17.9 million gulden (henceforth fl.), 79 of which, with a total capital of about 11.4 million fl., were deposited in Lower Austria, where the capital of Vienna was located. In addition, 201 of the 296 real *fidei commissa* had a total of 35.4 million fl. in pecuniary components. Often, these mixed asset structures had come into being after the land reforms of 1848 to 1850, when many fideicommissary owners added financial compensations to their entails,[26] although combinations of the two types can be traced back to the early seventeenth century.[27] It may also be the case that some *fidei commissa,* originally intended to bind real estate, had been entirely converted by the late nineteenth century.[28]

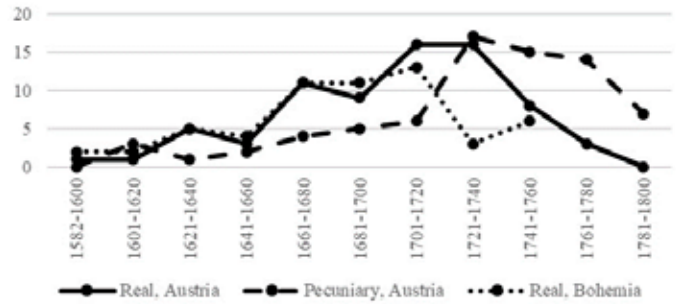
24 Havlik, 1982, pp. 13–14.
25 Feigl, 1998; Winkelbauer, 2003b, pp. 245–266.
26 Inama-Sternegg, 1883, pp. 479–481.
27 One of the earlier founders of a *fidei commissum* – Count Karl of Harrach – entailed, in addition to his estates, considerable claims of about 462,000 fl. on the emperor's court chamber in 1628. If the monarch was to repay the principal loans, the fideicommissary owner was to use 100,000 fl. to pay off any debts that Karl himself might owe to creditors, and the remainder was to be used to purchase new landed estates that would henceforth form part of the *fidei commissum*, see: AT-OeStA, Haus-, Hof- und Staatsarchiv (HHStA), Landesarchive (LA), Niederösterreichisches Landmarschallamt (OLMA), Akten, K 12 Testamente "H", H25.
28 The legal historian Alois of Kallina (1905, p. 205) assumed that many former real *fidei commissa* had been converted into pecuniary *fidei commissa*.

1.2. Temporal and social dimensions of the spread of *fidei commissa*

Inama-Sternegg did not go into detail as to when the majority of *fidei commissa* included in his statistical paper were established, noting mainly that the oldest ones – created in the mid-sixteenth century – were located in Dalmatia.[29] Sources from a somewhat later survey by the regional courts of Upper and Lower Austria, namely two lists of *fidei commissa* existing in the two crownlands in 1903,[30] allow for a more systematic study. In total, the tables list 81 real and 79 pecuniary *fidei commissa* in the two archduchies,[31] but it is clear that these numbers had once been higher. Inama-Sternegg's article of 1883 already listed six real and no less than 15 pecuniary *fidei commissa* that had expired by 1903. The Codex Austriacus of 1704 – a collection of laws enacted by the sovereign for Lower Austria – recorded 35 *fidei commissa* or related legal instruments,[32] of which only 15 still appear in the 1903 lists.[33] The tables of 1903 are therefore biased towards later foundations because older ones are more likely to have ceased to exist by the early twentieth century. Nevertheless, when the foundation dates are quantified, the tables show trends in the establishment of *fidei commissa* that are similar to tendencies in the Kingdom of Bohemia identified by the Czech historian Aleš Valenta on the basis of a source from 1762. The results are compared in graph I.

29 Inama-Sternegg, 1883, pp. 469, 471.
30 Niederösterreichisches Landesarchiv (NOeLA), 06. Gerichtsarchive, 06.03. Landesgericht Wien, Fideikommisse 14.
31 The tables show 16 real and 12 pecuniary *fidei commissa* in Upper Austria, 69 real and 69 pecuniary in Lower Austria. Two pecuniary and four real *fidei commissa* in both territories were identical, so that the above total remains.
32 Quarient und Raal, 1704, pp. 337–352.
33 All of the expired foundations were registered by a regional judicial body after 1648, most often in the 1670s, 1680s and 1690s, although in twelve cases the date of their registration may not correspond to their actual establishment, as some founding documents are clearly older than the date of their judicial registration. The Codex Austriacus is, thus, a problematic source when it comes to determining the age of *fidei commissa*.

Graph I: Foundations of *fidei commissa* in Upper and Lower Austria as well as Bohemia, 1582–1800



Source: NOeLA, Landesgericht Wien, Fideikommisse 14; Valenta 2011, pp. 260–262.

As can be seen, the majority of real *fidei commissa* originated in the second half of the seventeenth and the first half of the eighteenth century, corresponding to the reigns of Emperors Leopold I (r. 1658–1705), Joseph I (r. 1705–1711) and Charles VI (r. 1711–1740).[34] Despite the bias of the sources towards later creations, the second half of the eighteenth century is a time when the entailment of new lands became much rarer, corresponding to a policy change that will be discussed in more detail in section III. Pure pecuniary *fidei commissa* were about as old as their counterparts binding real estate. However, they were not as popular until about 1720. It was only in the mid-eighteenth century that their number increased significantly. This can be explained in part by the fact that from the 1760s onwards it became more difficult to entail landed estates,[35] which led the nobility to seek alternative solutions to keep property in the family. However, a considerable increase in the number of pecuniary *fidei commissa* had already begun a few decades before 1760, perhaps due to growing availability of and confidence in more secure ways of depositing money in institutions such as the Viennese City Bank (established

34 Inama-Sternegg (1883, pp. 466, 469) regarded these monarchs to be particularly favourable to *fidei commissa*.
35 See section III.

in 1706).[36] Even the establishment of new pecuniary *fidei commissa* came to a halt in the 1790s. No new foundations were carried out between 1797 and 1832. Throughout the entire nineteenth century, only nine new real and five new pecuniary *fidei commissa* were created, ten of these in the 1850s and 1860s, in the wake of the land reforms. The entailment of land and capital in the Habsburg Empire must therefore be seen as a phenomenon of the "Baroque era".

The question arises as to which types of person had both the will and the means to entail their property. The tables of 1903 provide a clue by indicating the titles of *fidei commissum* founders, the results of which are shown in table II. In the Archduchies of Upper and Lower Austria, the *fidei commissum* seems to have remained a predominantly aristocratic institution, with most of the founders having the title of count. At the beginning of the seventeenth century, this noble rank was rather exclusive, with only about 10 per cent of the lineages belonging to Lower Austria's higher noble "estate of lords" (barons, lords, counts and princes) holding it.[37] This changed in the course of the Thirty Years' War (1618–1648) and thereafter, when the Habsburg rulers started to distribute the title in an inflationary manner.[38] Given that the proportion of comital founders in the eighteenth century was about the same as in the seventeenth century, when the title was much rarer, we can even argue that the *fidei commissum* – especially its pecuniary variant – had become somewhat more socially widespread. The same applies to the gender-specific use of the legal instrument. Almost no women established *fidei commissa* in the seventeenth century,[39] while in the eighteenth century about 10 per cent of foundations were carried out by women.

36 On the Viennese City Bank and other central banking institutions that emerged in the eighteenth century, see Winkelbauer 2019; economic strategies aimed at securing claims on public debt may have been inspired by the practices of elites in the Kingdom of France, where creditors of the Parisian *hôtel de ville* frequently established fideicommissary substitutions for their state bonds, see Béguin & Pradier, p. 2012.
37 MacHardy, 2003, p. 253.
38 Mat'a, 2019b, p. 122; by 1777, 101 of the 190 noble lineages listed in a register of families belonging to the "estate of lords" in Lower Austria were counts (Knoll, 1966, pp. 252–256); in Bohemia, 130 of 282 higher noble lineages held the comital title by 1741 (Hassenpflug-Elzholz, 1982, p. 306).
39 The 1903 tables do not list any women as fideicommissary founders in the seventeenth century. However, the Codex Austriacus of 1704 lists four *fidei commissa* established by three different noblewomen in 1670, 1676, 1679 and 1695, see: Quarient und Raal, 1704, pp. 340, 342, 346, 348.

Table II: Social rank and gender of *fidei commissum* founders in Upper and Lower Austria.

Rank/gender	Real, 17th c.[a]	Pecuniary, 17th c.	Real, 18th c.	Pecuniary, 18th c.
Commoner	–	6.7% (1)	2.3% (1)	8.5% (5)
Noble<baron	6.7% (2)	13.3% (2)	26.3% (7)	18.6% (11)
Baron/Lord	23.3% (7)	13.3% (2)	20.9% (9)	25.4% (15)
Count	56.7% (17)	66.7% (10)	55.8% (24)	44.1% (26)
Prince	13.3% (4)	–	4.6% (2)	3.4% (2)
Men	100% (30)	100% (15)	90.7% (39)	89.2% (51)
Women	–	–	9.3% (4)	10.8% (8)
Total	**100% (30)**	**100% (15)**	**100% (43)**	**100% (59)**

Source: NOeLA, 06.03. Landesgericht Wien, Fideikommisse 14; [a]including one foundation in 1598.

Finally, it should be pointed out that even among the "estate of lords" the assertion of the *fidei commissum* principle was never generalised. If we assume that each of the 98 higher noble *fidei commissa* established in Lower Austria by 1777 was owned by a separate lineage, only about half of the 190 lordly lineages existing in this realm at that point in time[40] would have had ownership of a *fidei commissum*. In Bohemia, the 59 real *fidei commissa* that existed in 1762 could have covered at most about a third of the 166 lordly lineages that still existed in the kingdom in 1770.[41] Although some of these families clearly disposed of fideicommissary property in other parts of the empire, these figures suggest that a considerable number of noble lineages without entailed assets still existed in the late eighteenth century.

40 Knoll, 1966, pp. 252–256.
41 Dickson, 1987, pp. 90, 92.

2. Succession and other stipulations

2.1. Orders of succession

In a short article on *fidei commissa* in Bohemia, published in a legal journal in 1881, Alois of Kallina stated that all but four of the 57 real and 24 pecuniary *fidei commissa* still existing in the late nineteenth century decreed perpetual male primogeniture.[42] The other four had established a so-called "seniorate" (*Seniorat*), that is the oldest male of the founder's agnatic lineage – or a certain branch of it – was called to exercise ownership.[43] While both modes of transmission seem similar at first sight, the principle of the seniorate[44] is radically different from primogeniture. While in the latter succession ideally ran from father to son to son and so forth, in the seniorate it could run from father to son to brother to cousin to nephew to brother or similar sequences, with the aim of encouraging horizontal connections among agnates. In the far more common primogeniture *fidei commissum* of Bohemia, daughters were rather strictly prohibited from acquiring entailed estates, in contrast to the *mayorazgos* in Spain. If a fideicommissary owner died without sons, the property in question was not to go to his female offspring but to his oldest brother or the closest patrilineal uncle, cousin or nephew. In "the majority of cases",[45] women were at best allowed to succeed after the entire agnatic lineage had died out.[46]

While Kallina wrote a similar article on *fidei commissa* in Upper and Lower Austria,[47] he did not address the question of how many of them stipulated primogeniture, despite the fact that the situation there was somewhat more complicated. Only two of the 35 entails mentioned in the 1704

42 Kallina, 1881, p. 186.
43 Gspan, 1842, p. 13.
44 The seniorate principle was common among rural Slavic populations to transmit certain positions of authority, see: Kaser, 2000, pp. 198–200; Gestrich et al., 2003, pp. 261–262; it was also used by certain late medieval ruling dynasties in Central Europe to arrange who was to exercise power, see: Rogge, 2002, p. 319.
45 Kallina, 1881, p. 186.
46 Kallina, 1881, pp. 186–187.
47 Kallina, 1905.

Codex Austriacus were seniorates, and one of them only bound a comparatively small capital of 4,000 fl.[48] Interestingly, an influential draft of a 1616 legal code[49] – the Upper Austrian *Landtafel* (literal translation: table of the realm) – already contained a chapter on *fidei commissa*, but when the author gave an example of how they worked, he described a seniorate.[50] Although seniorates were not very popular at the beginning of the eighteenth century, they were apparently once considered the default variant of the *fidei commissum*.

Both the 1704 Codex Austriacus and the 1903 tables of *fidei commissa* in Upper and Lower Austria imply the existence of other variants of the legal instrument. In the latter sources, two real and 13 pecuniary *fidei commissa* were held by more than one person. An entailed house in Vienna had no less than 54 co-owners, another house had four co-owners belonging to the same lineage. The number of co-owners of the 13 pecuniary *fidei commissa* varied in twelve cases between two and seven, and in one case amounted to 24. In six instances, the co-owners had all the same patronym. In the 1704 Codex Austriacus, at least ten of the 35 foundations recorded allowed for co-ownership; in one case, male and female descendants unequivocally had equal rights to succession. Two legal entities recorded in the Codex were not called "*fidei commissa*", but "dispositions of first refusal" (*anfeilungs-disposition*)[51]. They stipulated that, if a male descendant of the founder wished to sell his share of the paternal inheritance, he would be forced to offer the sale first to other members of the lineage at a certain price.[52] The oldest *fidei commissum* in the Austrian archduchies according to the 1903 tables was established by the Upper Austrian lord Reichard of Starhemberg in 1598 and also only provided for a right of first

48 Quarient und Raal, 1704, pp. 340, 343.
49 Throughout the early modern period, there were no legal codices officially confirmed by the sovereign in the Hereditary Lands of the Habsburg Empire, with Tyrol being an exception. The Habsburg rulers regarded such a step as a potential infringement on their legislative and judicial powers. Nevertheless, over the course of the sixteenth and seventeenth centuries, drafts of regional codices were commissioned by the regional estates, which strongly influenced the decision-making of the law courts of a realm, see: Wesener, 1957, pp. 12–21; Winkelbauer, 2003a, pp. 202–220.
50 Strätz, 1990, pp. 340–341.
51 The two dispositions of first refusal listed in the Codex Austriacus of 1704 are not counted as *fidei commissa* in the confines of this article. If they are considered, the total number *fidei commissa* listed in the Codex is 37, not 35.
52 Quarient und Raal, 1704, pp. 344, 356–357.

refusal for his sons and their male offspring.[53] It was only after revisions in a second last will from 1666[54] – written by one of Starhemberg's sons – that the family began to regard their entailed estates as a primogeniture *fidei commissum*.[55] Since such documents made no use of terminology typical for the fideicommissary dispositions, it is questionable whether they can be characterised as *fidei commissa* at all.

Some of the examples of co-owned entails can plausibly be seen as representatives of the "dividual" *fidei commissum* common among Italian patrician elites, especially in the Republic of Venice.[56] The heirs held the entailed estates in common, often administering and using certain subunits separately, but they were forbidden to alienate their shares to individuals who were not their agnates or even members of a bilaterally defined kin group. In the case of Lower Austria, there existed an early fideicommissary foundation combining elements of both the dividual and the primogeniture variants. In 1606, the brothers Karl, Maximilian and Gundaker, Lords of Liechtenstein, contractually united their ten seigneuries at the border between Lower Austria and Moravia into an "eternal and most strict *fidei commissum*, for the preservation of the family and the dignity of agnation".[57] The eldest brother, Karl, was to become the "director", being granted a certain set of symbolic privileges and decision-making powers.[58] This office was to be passed down through the generations by primogeniture. However, each of the three brothers had received the usufruct of several specified estates within the *fidei commissum*, and they would be able to further subdivide these entitlements among their male heirs.[59] In 1629, one of the younger brothers (Gundaker) established a

53 Oberösterreichisches Landesarchiv (OOeLA), Herrschaftsarchive, Herrschaftsarchiv (HA) Eferding-Starhemberg, Bestand Riedegg K 96, N. 13.
54 OOeLA, HA Eferding-Starhemberg, Starhemberger Urkunden 4741.
55 The stipulations of the 1666 will are still rather ambivalent in regards to primogeniture. However, following generations of the family regarded the relevant passages as establishing a primogeniture *fidei commissum*.
56 Chauvard, 2018, pp. 43–48; Chauvard et al., 2012, p. 319.
57 "ewig werenden strictissimo fideicommisso, pro conservanda familiae, et agnationis dignitate", as cited in Schmid, 1978, p. 134.
58 For example, Karl and his first-born heirs were allowed to decide who the members of the lineage could marry, how the orphans of the lineage were to be educated, the "director" would be a judge in conflicts among agnates, and in emergencies he could decide whether parts of the entailed estate could be sold.
59 Andretsch, 2021, pp. 30–32; Schmid, 1978, pp. 63–65, 69–70.

primogeniture *fidei commissum* for his shares as well as properties outside the 1606 foundation,[60] creating a kind of two-tier structure, in which certain parts of a younger *fidei commissum* lay within an older, overarching one.

2.2. Primogeniture

Although there was some variation in the way in which Austrian nobles used *fidei commissa* in matters of succession, on the whole the vast majority of them in the two Austrian archduchies were intended to promote perpetual patrilineal primogeniture. "[M]any honourable ancient families and lineages are falling into disgrace, because they have carelessly weakened their estates by imprudent divisions, separations and alienations or modifications",[61] lamented Count Karl of Harrach, arguing for the urgency of his rather early establishment of primogeniture in 1628.[62] Austrian inheritance law concerning nobles provided that, in the absence of a will, all sons of a nobleman and all children of a noblewoman were to receive an equal share of the inheritance, and that a man without sons was to be succeeded by his daughters. Even before the spread of *fidei commissa*, an aristocrat who favoured impartible succession could reduce the shares of his younger children by up to two-thirds in his will,[63] but entails offered many advantages over a regular testament. Patrimonial partitions due to intestate inheritances could be more reliably avoided, the daughters of sonless men could be more systematically excluded from the inheritance in favour of male collateral relatives, and the minimal claims of younger and female children to the entailed patrimony of the fideicommissary successors (though usually not the founder) could be eliminated.

60 AT-OeStA/HHStA, LA, OLMA,, K 20 Testamente „L", L43.
61 "[V]iel ansehenliche uhralte familia und geschlechter, [haben] durch unfürsichtige thail-, trenn- und hingebung oder veränderung ihre herrschafften unbedächtlichen geschwöcht, und [khomen] in abfahl [...]".
62 AT-OeStA, Allgemeines Verwaltungsarchiv (AVA), Familienarchive (FA), Harrach, Urkunden, Urk 1628-1-27; this formulation was copied almost verbatim in the fideicommissary disposition of Count Raimund of Montecuccoli in 1675, see Leisching, 1988, p. 82.
63 Wesener, 1957, pp. 45, 84-86, 170-181.

A majority of entails in the Austrian archduchies, like their Bohemian counterparts, stipulated a strictly patrilineal form of primogeniture. This is illustrated by the fact that in 1903 no fewer than 65 of the 81 real *fidei commissa* were still held by a member of the founder's agnatic lineage. Even in the 16 other instances, female succession may not have been as frequent as in the Spanish *mayorazgo*. Count Ferdinand Maximilian of Sprinzenstein, for example, established a *fidei commissum* for the seigneurial city of Drosendorf in 1671. In the event that his wife did not bear him a son by the time of his death, the estate was to pass to his eldest daughter, Katharina Eleonora, rather than to other male lineage members (who existed at the time). However, even though the testator thus preferred his daughter to his agnates, the *fidei commissum* was to be transmitted by strictly patrilineal primogeniture among the male descendants of Katharina Eleonora in future generations. These descendants were obliged to add the name "Sprinzenstein" to their patronym, and the noblewoman's only son was consequently baptised Count Karl Joseph of Lamberg and Sprinzenstein. Only if the agnatic lineage descending from Katharina Eleonora and her husband became extinct, the *fidei commissum* should again be transmitted through a female relative. The male descendants of Katharina Eleonora's younger sister, Maria Regina, were to receive Drosendorf under the same conditions as before.[64] In 1903, the *fidei commissum* was indeed in the possession of a Count of Hoyos-Sprinzenstein, a descendant of Maria Regina. Other foundations allowed for the eldest daughter to succeed only if no male member of the founder's lineage was alive, sometimes with similar prerogatives concerning the last name as in the Sprinzenstein case, sometimes not.[65] A greater degree of leniency towards female succession seems to have applied to pecuniary *fidei commissa*. In 1903, "only" 44 out of 79 representatives of the institution were still under the control of a member of the founder's lineage.

Nineteenth-century legal scholars attributed the origins of primogeniture *fidei commissa* to the Spanish Habsburg Empire, albeit sometimes with the intention of delegitimising the practice.[66] In any case, while the

64 Andretsch, 2019, pp. 150–158.
65 Kallina, 1905, pp. 181–182.
66 The legal historians Leopold Pfaff and Alfred Hofmann (1884, p. 315) characterised the *fidei commissum* in the Austrian Empire as an "invention of foreigners" and an "alien (*welsch*) article of import", adopted in times of "scientific incompetence, political confusion, incomparable barbarism".

growing demand of central European aristocrats for the establishment of primogeniture from the seventeenth century onwards is most plausibly attributed to endogenous factors,[67] the hypothesis that Iberian legal practices inspired the means by which noblemen in the Austrian Habsburg Empire fulfilled their wishes, is appealing. Early founding documents in favour of primogeniture often did not use the term *fidei commissum* but "*Majorat*", a word derived from the Spanish *mayorazgo*. Emperor Ferdinand II (r. 1619–1637) himself, who introduced primogeniture for his realms, declared in 1635 that the sovereignty of the monarchy should henceforth be transmitted according to the principles of "*primogenitur und majorasco*".[68] The first creation of a primogeniture *fidei commissum* in the Hereditary Lands had been made somewhat earlier by the Carinthian count Hans of Khevenhüller.[69] Not only had Khevenhüller been the Austrian ambassador to Spain for many years, but also his will of 1605[70] was drawn up in the Spanish capital of Valladolid. His brother should become the first heir of the entailed Frankenburg estate and its environs, after him his first-born son and so on. The testator had no children of his own. The stipulated order of succession already contained the exclusion of brotherless daughters in favour of male collateral relatives, so atypical of the Spanish *mayorazgo*. Clearly, even a Hispanophile pioneer such as Khevenhüller did not simply "copy" Iberian inheritance practices, but adopted certain parts and modified others according to his own desires and the prerogatives of his own culture of origin.

2.3. Exclusions beyond patrilineal primogeniture

The persons most systematically excluded by fideicommissary founding documents were women, but other groups were also frequently forbidden from succeeding. The attributes that often disqualified a man from holding a *fidei commissum* were membership of the clergy, physical or mental disability, birth out of wedlock, marriage to a spouse of "inappropriate" (*nicht standesgemäß*) social rank, affiliation to Protestantism, having

67 Clavero (1992, pp. 253–254) shares this view.
68 Pfaff & Hofmann, 1884, pp. 300–302.
69 Pfaff & Hofmann, 1884, p. 300.
70 AT-OeStA/HHStA, LA, OLMA, K 17 Testamente „K", K1,5.

violated the terms of the founding document and having committed the "so heinous crime of lèse-majesté".[71] The stipulations on lèse-majesté aimed to preserve noble patrimonies in situations when a *fidei commissum* owner had committed acts of rebellion or treason. The perpetrator was to be punished personally, but the patrimony should be left intact and the next in line was to be installed as the new landlord. However, when the Habsburg rulers wanted to expropriate a noble family in troubled times, they clearly did so without bothering about fideicommissary stipulations. When the generalissimo Albrecht of Wallenstein, Duke of Frýdtlant (1583–1634), fell out of favour with the emperor and was assassinated, Ferdinand II did not hesitate to confiscate the *fidei commissa* established by him[72] and followers of his.[73] Indeed, the political purges of the Thirty Years' War may have obscured our knowledge of some of the earliest foundations in the Habsburg Empire. When later emperors, such as Leopold I, confirmed fideicommissary founding documents, they sometimes made an exception for lèse-majesté clauses, arguing that they constituted an undue infringement of their judicial powers.[74]

2.4. Inalienability

Fideicommissary stipulations did not only concern matters of succession. Almost all foundations included mortgage and alienation bans, forbidding successors to sell entailed estates and to use them as security for loans.[75] Sometimes noblemen went to great lengths to make their wishes clear in this regard. In 1628, in his rather early foundation of a *fidei commissum*, Count Karl of Harrach listed a myriad of different types of alienation and mortgaging that were to be prohibited in the future:

71 "[D]as also abscheuliche crimen laesae majestatis". This formulation was used by Count Ernst of Abensberg und Traun, in his last will from 1668, as cited in Andretsch, 2021, p. 41; regarding persons that were typically excluded by Austrian fideicommissary dispositions, see: Andretsch, 2021, pp. 33, 41–42, 45; Kallina, 1905, pp. 181–182, 193–194.
72 Mann, 2004, pp. 727, 971.
73 An example of such a family is described by Herbert Meyer (1914, p. 251).
74 This was the case in the 1668 will of Count Ernst of Abensberg und Traun, see: Andretsch, 2021, pp. 41–42.
75 Andretsch, 2021, pp. 32, 40; Kallina, 1905, p. 194.

> "My heirs and the heirs of my heirs shall not alienate anything [of the "*Majorat*"] anywhere, either by purchase, sale, handover, exchange, concession, transaction, whether *inter vivos* or *causa mortis*, donation, contract or other common agreement, nor by *fidei ussiones* or guarantees towards others, nor by taking up, borrowing or raising money, nor by express or secret mortgages for themselves or their successors, nor by confirming any personal contracts and obligations, nor by pledges, interest payments, assignments and admissions, nor should they [the successors] alter the rights of use in any way by alienation, modification, charge, affection, impediment and reduction [...], under whatever name or whatever anyone may invent [...] with an explicit objection, annihilation, reversion and annulment of everything contradictory, under whatever pretext, pretence or remedy [...]."[76]

But however strict the wording,[77] the restrictions could be circumvented by special permissions granted by the sovereign. It remains to be seen how difficult it actually was for the owners of *fidei commissa* to obtain such licences. The Harrach *Majorat*, for example, was burdened with a considerable sum of 50,000 fl. in new loans only one year after the death of its founder.[78] In 1650, another 70,000 fl. of credit was secured with fideicommissary estates,[79] and in 1656, the usufruct of the seigneurial city of Bruck an der Leitha was temporarily pledged to a lender for a loan of 50,000 fl.[80].

76 „[D]as meine erben, erbens erben unnd nachkhommen durchaus ganz und gar nichts überall, es geschehe gleich durch khauff, verkhauff, übergab, tausch, wexel, cession, geschöfft under den lebendigen oder auf todfall, schenkhung, vertrag, oder sonsten übliche contract noch auch durch fideiussiones und bürgschafft für andere, oder selbst aufnehmen, entlehnen unnd aufbringung gelts, austrückhliche oder haimbliche inn rechten gewöhnliche hypothecas für sich selbst, oder zur nach-volg, unnd bestättigung ainiger personal contract unnd obligation, oder versezung, verzinsung, anweisung, einnraumbung gebrauchen od. [die] nüesung in ainigen weg alienieren verenndern, ent-frembden, beschwären, afficiren, bekhümmern unnd schmälern, [...], wie das alles namben haben oder erdacht [...] werden möchte [...] mit austrücklicher widersprechung vernichtigung, umbstosung, und aufhöbung all des ienigen, so darwider, unnder was praetext, schein oder behelff es immer beschehen mag"; see: AT-OeStA/AVA FA Harrach Urk 1628-1-27.

77 Similarly lengthy formulations were used in the fideicommissary disposition of the Liechtenstein family in 1606 (Schmid, 1978, p. 146) and in the last will of Count Raimund of Montecuccoli in 1675 (Leisching, 1988, p. 82).

78 AT-OeStA/AVA FA Harrach, Urkunden 1629-3-29.

79 AT-OeStA/AVA FA Harrach, Familie in specie 730, 25 August 1650.

80 AT-OeStA/AVA FA Harrach Urkunden 1656-12-26.

Legislative efforts in the eighteenth century do not suggest that it was particularly difficult to mortgage fideicommissary estates in later times.[81]

2.5. Provisions for family members and beyond

Fideicommissary dispositions often provided for certain claims of persons other than the fideicommissary successor. These included dowries for daughters, pensions for widows of fideicommissary owners and annual monetary apanages for cadets. Such entitlements were often capped, the *fidei commissum* founders apparently concerned that their descendants might weaken the patrimony by being too generous. Since such fixations were often expressed in absolute monetary terms – for example, a daughter's dowry should be 2,000 fl., a widow's pension up to 2,500 fl. per year, a cadet's appanage up to 2,000 fl. per year[82] – it is fair to assume that the share of women and younger sons in their family's wealth would decline with each generation due to inflationary developments. Further research is needed to determine whether this assumption is correct or whether fideicommissary owners made later revisions. Frequently, fideicommissary founding documents made no provisions at all for the claims of family members.[83] Perhaps the intention behind such omissions was not so much to subject daughters and cadets to the arbitration of their eldest brother in respect of their provisions, but to allow future generations to adapt them more flexibly to economic developments. In addition to family members, some dispositions provided for payments to the founder's creditors,[84]

81 See section III.

82 These examples are taken from the fideicommissary disposition of Count Karl of Harrach, of 1628: AT-OeStA/AVA FA Harrach Urk 1628-1-27; the fideicommissary disposition of Count Raimund of Montecuccoli of 1675 fixed dowries for daughters at 3,000 fl. and annual cadet's pensions at 1,000 fl., see: Leisching, 1988, p. 84.

83 Andretsch, 2019, pp. 175–176; Andretsch, 2021, p. 42.

84 Count Karl of Harrach died in 1628 with debts amounting to about 220,000 fl. He obliged his successor, Leonhard Karl, to use the income from an entailed toll station to reduce these debts, see: OeSta, HHStA, LA, OLMA, Akten, K 12 Testamente „H", H25; Count Leopold Joseph of Lamberg established a *fidei commissum* in 1705. His debts at the time amounted to about 150,000 fl. His successor, Karl Joseph, was to sell several properties to pay off these debts. If any debts remained after that, he was to spend 3,000 fl. per year to pay off the rest, see: Andretsch, 2019, p. 162; Kallina (1905, p. 194) also notes that many fideicommissary founding documents contained passages on debts.

to religious or charitable institutions, or to institutions responsible for ensuring that the terms of the entails were not violated.[85]

2.6. "Modal" foundations

A final phenomenon worth mentioning is that many nobles included clauses in their last wills that would only establish a *fidei commissum* if certain conditions were met. In his will of 1598, Lord Reichard of Starhemberg decided that if his sons died without male descendants, his inheritance would become a seniorate for his brother and his male offspring.[86] Baron Hans Franz of Lamberg decreed in 1660[87] that should his sons die in their youth, his daughters were to receive the bulk of the inheritance, but an exception was made for the Ottenstein estate, which was to become a *fidei commissum* of his brother and then "the eldest"[88] among his descendants. Hans Franz's youngest son, Franz Sigmund, declared his only daughter, Maria Aloisia, his heiress in his will of 1713. However, should the girl die before reaching adulthood or without children of her own, his possessions – including the Rossatz estate and three houses in Vienna – were to be converted into a primogeniture *fidei commissum* for his brother's son.[89] None of these three foundations ever came into being. I call such legal acts "modal" fideicommissary foundations. They can be interpreted as a testimony to the fact that, up to a certain point in time, entails were not that difficult to establish, allowing for a certain casualness with which some nobles made use of them in their wills.

85 In his fideicommissary disposition of 1671, Count Ferdinand Maximilian of Sprinzenstein obliged his successors to pay for two weekly requiems in the chapel of the manorial city of Drosendorf. This religious institution was to receive an additional 100 *Reichthaler* per year. Furthermore, the scribe and a secretary of the Lower Austrian noble court were to receive 50 and 12 *Reichsthaler* respectively per year to ensure that the clauses of his fideicommissary disposition would be observed by future generations, see: Niederösterreichisches Landesarchiv (NOeLA), 04. Herrschaften, Gemeinden, Schulen, religiöse Institutionen, Firmen, 04.01. Weltliche Herrschaften und adelige Familien, Herrschaftsarchiv (HA) Lamberg (Schlossarchiv Ottenstein), Akten, K 139/1551, 21 January 1671.
86 OOeLA, HA Eferding–Starhemberg, Bestand Riedegg, K 96, N. 13.
87 AT–OeStA/HHStA, LA, OLMA, Akten, K 20 Testamente "L", L7.
88 It is not entirely clear whether Hans Franz intended to create primogeniture or a seniorate.
89 Andretsch, 2019, pp. 168–170.

3. Regulation

The history of sovereign statutes regulating the establishment, use and administration of *fidei commissa* in the western Habsburg Empire has been outlined by the legal historian Otto Fraydenegg und Monzello in 1979, although his account is by no means exhaustive. In the realms of Bohemia and Moravia, the "state" took early steps to secure a say in who would be able to establish an entail in the *Verneuerte Landesordnung* (Renewed Constitution) of 1627 and 1628. In the wake of the Revolt of the Bohemian Estates (1618–1620), Emperor Ferdinand II had decreed that the establishment of *fidei commissa* would henceforth require the confirmation of the crown.[90] In the Hereditary Lands, such a policy was adopted much later. Throughout the seventeenth century, the monarchs in their less contentious realms tended to adopt a somewhat laissez-faire approach, and the enactment of statutes on the matter was a rare occurrence. In the Duchy of Styria, a law of 1609 stipulated that the establishment of *fidei commissa* had to be officially reported to an organ of the realm's noble court. In 1631, after several military defeats, Ferdinand II reaffirmed his right to confiscate the entails of "traitors" in Lower and Upper Austria, but he did not place any further obstacles in their way.[91] His son, Ferdinand III (r. 1637–1658), exempted fideicommissary possessions from judicial execution against the property of unpaying noble debtors in 1655.[92]

In 1674, Emperor Leopold I enacted what was probably the most important policy for the Archduchy of Lower Austria up until the mid-eighteenth century.[93] On the one hand, the monarch established a registration duty, complaining that the fideicommissary successors disposed of their entails as if they were allodial property and that they tended to deceive mortgage creditors by failing to declare the legal quality of their landed estates. The law thus aimed to strengthen the binding power of *fidei commissa*. Furthermore, Leopold I declared that he would "most graciously leave it to the

90 Fraydenegg und Monzello, 1979, p. 785.
91 Fraydenegg und Monzello, 1979, p. 786.
92 Quarient und Raal, 1704, pp. 305–306; the income of fideicommissary possessions, on the other hand, could be forcefully transferred to creditors.
93 Quarient und Raal, 1704, pp. 336–337.

discretion of the *fidei commissum* founders whether or not they wish to seek our sovereign confirmation",[94] thus confirming the right of his subjects to create entails without a special licence. While the wording used in the legal text implies that the emperor did not consider such licences necessary before 1674, the spread of *fidei commissa* did accelerate in the last three decades of the seventeenth century, indicating that the law may have popularised the institution within the nobility. While Leopold I did not explicitly state that only persons of noble rank could establish a *fidei commissum*, members of other social classes rarely made use of it. A clause in the law of 1674, which has puzzled legal historians,[95] stated that "the legitimacy of [...] *fidei commissa* made without the confirmation of the sovereign extends as far as the *fidei commissum* founders are permitted by the law to dispose of".[96] In the legal jargon of early modern Austria, "the law" (*die rechten*) frequently referred to the *ius commune*, i. e. what jurists considered Roman Law.[97] I myself interpret this passage as an attempt to secure the *portio legitima* – the minimal claims that the children of a testator could make on the inheritance of their parent – from the foundation of *fidei commissa*. This right, derived from the Corpus Iuris Civilis, was explicitly protected from entailment in the draft of a legal code for Upper Austria in 1616[98] and is often invoked in Austrian fideicommissary dispositions.[99]

94 „Drittens lassen Wir es bey der Fidei-Committenten Willkuhr ferner gnädigst bewenden, ob sie über ihre Dispositiones unsere Lands-Fürstl. Confirmation begehren wollen, oder nicht"; as cited in: Quarient und Raal, 1704, p. 337.

95 Pfaff & Hofmann, 1884, p. 304.

96 "[D]ie Gültigkeit dergleichen ohne Lands-Fürstliche Confirmation gemachten, und noch künfftig auffrichtender Fidei-Commissen [ist] dahin zu verstehen, als weit vermög der Rechten, der Fidei--Committens zu disponieren befugt ist", as cited in: Quarient und Raal, 1704, p. 337.

97 Regionally specific legal norms that deviated from Roman law were more commonly referred to as "custom of the realm" (*Landesbrauch*).

98 Strätz, 1990, p. 344; this legal code also protected a similar right called the Trebellican or Falcidian quarter. The testamentary heir of a person – even if not the testator's child – should receive at least one quarter of the inheritance. This quarter had to remain free from fideicommissary entailment, see: Strätz, 1990, p. 342.

99 When Count Leopold Joseph of Lamberg drew up a will establishing a new *fidei commissum*, he made sure that the lucrative seigneurie of Kottingbrunn was not affected by the entail, so that it could be inherited "*loco legitima*" – even though the only recipient of Kottingbrunn was also the fideicommissary heir and the testator's only child. Apparently, the founder thought that a *legitima portio* of his son should remain unaffected by entailment, see: NOeLA, HA Lamberg (Schlossarchiv Ottenstein), Akten, K 065/344, 19 March 1705; Count Ferdinand Bonaventura of Harrach drew up a will establishing a *fidei commissum* in 1697. In 1706, he wrote an addendum which changed the *legitima portio* of his cadet sons specified in the 1697 document. The reason given was that Emperor Joseph I had issued a "clarification" according to which the initial *legitima portio* was insufficient, see: OeSta, HHStA, LA, OLMA, Akten, K 14 Testamente "H", H123.

From 1674 onwards, there was little regulation during the reigns of Leopold I, Joseph I and Charles VI. The latter enacted some new laws on debt. In 1716, he confirmed that the debts of a *fidei commissum* founder could be forcefully redeemed by judicial execution of fideicommissary property if his successors failed to pay them. In 1733, the monarch adopted a policy that began to bureaucratise the administration of entails. The measure provided that whenever a *fidei commissum* was mortgaged by special permission, a fideicommissary *curator*,[100] working in conjunction with the regional courts of law, should oversee that the debt in question was repaid.[101] The growing concern of the "state" with indebted *fidei commissa* indicates that the prohibitions on mortgages in the founding dispositions were frequently circumvented. The mid-eighteenth century in particular was a time in which cases of aristocratic insolvency accumulated and became a problem for public administration.[102]

Habsburg's laissez-faire approach towards *fidei commissa* came to an end during the Era of Reform (1748–1790). Fraydenegg und Monzello speaks of a "flood of regulations regarding fideicommissary law [...] marked by an aversion to the entailment of property".[103] During her reign, Maria Theresa (r. 1740–1780) passed 14 new regulations for Upper and Lower Austria, her successors Joseph II (r. 1780–1790) and Leopold II (r. 1790–1792) issued 13 new regulations.[104] A decisive novelty was introduced in the Austrian archduchies in 1763: as in Bohemia and Moravia, the establishment of new real *fidei commissa* was now only possible with a licence from the sovereign. As has already been shown in section I, the 1760s marked a point in time when the frequency of new establishments declined, showing that the state had indeed decided to impede the further spread of entails. Around this time, the number and duties of fideicommissary *curatores*, introduced in 1733, were increased and a new reform forbade fideicommissary estates to be burdened with debts of 50 per cent or more of the nominal value of the assets. This debt limit was reduced to

100 The curator was to be either the next in line or a person chosen by a court of law.
101 Fraydenegg und Monzello, 1979, pp. 786–787.
102 Valenta, 2009.
103 "eine Vorschriftenflut zum Fideikommißrecht [...], die im Grunde von einer Aversion gegen die Güterbindung gekennzeichnet ist"; Fraydenegg und Monzello, 1979, p. 787.
104 Hempel-Kürsinger, 1825, pp. 248–249, 252–253.

33 per cent two decades later. The last central innovation was introduced in two successive steps in 1781 and 1785. Joseph II allowed fideicommissary owners to convert entailed property into pecuniary *fidei commissa* with the permission of a court of law, thus dealing a severe blow to their binding power.[105] But although the late eighteenth-century monarchs clearly sought to reduce the importance of *fidei commissa* in their realms, they never took the more radical step of abolishing the institution altogether (the Duchy of Milan being an exception).[106] Under the rather conservative reigns of Emperors Francis II/I (r. 1792–1830) and Ferdinand V/I (r. 1830–1848), no new fundamental changes on *fidei commissa* were introduced and the legitimacy of the institution was enshrined in the Civil Code (*Allgemeines Bürgerliches Gesetzbuch*) of 1811.[107]

Conclusion and future research prospects

Let us sum up the observations we have made in the last three sections. In the western realms of the Habsburg Empire, the *fidei commissum* was most widespread in core regions where Habsburg rule was longest and most pervasive. In these realms, the legal instrument was most popular among the higher nobility, which dominated both regional and central politics. Some noble pioneers had already begun to entail landed estates at the turn of the sixteenth to the seventeenth centuries, and they still used their legal leeway in a rather colourful variety of ways, the existence of early seniorates or dispositions of first refusal being an expression of this. However, the *fidei commissum* only became more widespread after the end of the Thirty Years' War, in a period sometimes referred to as the "age of absolutism" in the historiography of the Habsburg Empire.[108]

105 Fraydenegg und Monzello, 1979, pp. 797–790.
106 Chauvard et al., 2012, p. 334.
107 §§ 604 to 646 of the Civil Code treat "*fidei commissa* and substitutions".
108 After the Battle of the White Mountain in 1620, the Habsburg dynasty largely succeeded in containing (often Protestant) opposition forces in regional political bodies (at least in the western realms) until the Austrian War of Succession (1740–1748), and generally adopted a more authoritarian approach to governance. Some scholars have thus characterised the period from 1620 to 1740 as an "age of absolutism". However, as in the case of other European monarchies, the concept of "absolutism" is widely disputed among historians. For a discussion, see: Mat'a & Winkelbauer, 2006.

The main purpose of establishing entails was to concentrate economic assets in the hands of single male heirs and to freeze ownership of these resources in patrilineal kin groups. For more than a century, the Habsburg rulers favoured and even encouraged this development by guaranteeing the legal legitimacy of the *fidei commissum* and refraining from placing obstacles in the way of its establishment, at least in the Hereditary Lands. It was only during the Era of Reform, starting in the mid-eighteenth century, that the emerging state began to view entails in a more negative light and counteract its further spread.

These considerations suggest that the introduction of entails and primogeniture in the Habsburg Empire was a phenomenon closely linked to the political and social stratification of the "age of absolutism", as well as to new power-sharing arrangements between the ruling dynasty and an aristocratic elite that had become smaller, richer, more interregional, more Catholic and more loyal than in previous centuries.[109] This nexus may support claims about the transformative influence of early modern state-building on the organisation of elite kin relations and intergenerational property transmission, perspectives that have become prominent in historical kinship studies over the past two decades.[110] Considering how little research on *fidei commissa* in the Habsburg Empire has been done, such a verdict must of course be made with caution, and remains in need of further verification and elucidation. I suggest three avenues for future research that might further our understanding of how and why *fidei commissa* spread to this part of Central Europe.

First, while it is one thing to say that the *fidei commissum* and primogeniture were probably connected to political configurations of the "age of absolutism", it is less clear exactly what demands were met by their adoption. The founding documents are seldom of much help here. While their authors frequently provided justifications, often voicing their aversion to patrimonial partitions[111] or even declaring their intention to "preserve and elevate it [the "*familia*"] in the service of the prince and

109 Bérenger, 1975; Evans, 1979, pp. 167–180; Scheutz, 2015, pp. 146–148; Van Horn Melton, 2007, pp. 177–184; Winkelbauer, 1999, pp. 39–46; Winkelbauer, 2003a.
110 Delille, 2003; Sabean & Teuscher, 2007; Teuscher, 2009; Johnson & Sabean, 2011.
111 AT-OeStA, AVA, FA Harrach, Urk 1628-1-27; Leisching, 1988, p. 82.

the motherland",[112] these considerations are rarely elaborated and do not explain why the nobility adopted primogeniture precisely in the second half of the seventeenth century. One explanatory variable may be that Habsburg governance relied on aristocratic office holders covering large parts of the expenses for their political activities themselves. It often took years or decades for the sovereigns to reward these efforts with major grants of land or capital.[113] Access to such patronage may have become more costly in the late seventeenth century, as competition increased and "state" projects became more ambitious.[114] Another factor may have been the establishment of a standing army in 1648 and its rapid growth over the next 100 years.[115] The increasing militarisation of the empire's society also resulted in a militarisation of the nobility,[116] with noble cadets frequently joining the ranks of the army as officers.[117] A new family model, in which the eldest son administered the estates and participated in court politics while the younger sons fought in wars against the Sublime Porte and Versailles, may have encouraged aristocratic families to adopt the *fidei commissum*. Further research into the political trajectories and career paths of members of noble families with and without entailed estates may provide further insights into the political dimensions of the phenomenon.

A second field for investigation concerns the economic domain. The seventeenth century was not only a time of political change but also of demographic and economic decline and stagnation. In many (but not all) realms of the Austrian Habsburg Empire, the nobility sought to counteract falling

112 "die selbe [die Lambergische *familia*] zu des vaterlandts und des landts fürsten dienst zu erhalten und empor zu bringen"; this justification is given in the will of Count Leopold Joseph of Lamberg, from 1705, see: NOeLA, HA Lamberg (Schlossarchiv Ottenstein), Akten, K 065/344, 19 March 1705.
113 Evans, 1979, pp. 177–178; Müller, 1979, pp. 98–101; Pečar, 2003, pp. 41–53, 103–126; Winkelbauer, 2015, pp. 91, 108–109.
114 Scheutz, 2015, pp. 158–162, 170, 174–176, 186; the costs of holding office rose particularly sharply in the field of diplomacy, partly due to the French monarchy's efforts to demonstrate its superiority in embassies and diplomatic missions from the reign of Louis XIV onwards, which challenged Habsburg ambassadors to spend more money, see: Polleroß, 2010, p. 54.
115 The standing army employed 24,500 men in 1650. By 1735, it was 205,600. Only thereafter, the army size began to stagnate until the onset of the French Revolutionary Wars, see: Godsey, 2018, p. 19; Hochedlinger, 2019, p. 149.
116 Cole, 2015; Hochedlinger, 1999; Hochedlinger, 2003; Hochedlinger, 2019.
117 Götz, 1974, pp. 117–118, 148–173.

rents and agricultural prices by intensifying the exploitation of corvée labour (*Robot*) by subjects on demesne land (*Dominikalland*).[118] The principles of primogeniture and impartibility may have aimed at pooling scarcer sources of income and facilitating new economic strategies. There are two reasons why I am reluctant to declare this development the main factor in the spread of *fidei commissa*. On the one hand, the intensity of the transition to new systems of exploitation varied greatly from region to region, and the chronology of this transition does not fit neatly into the timeline of the adoption of entails.[119] On the other hand, the nobilities of Poland and Russia, usually regarded as the main proponents of corvée-based manorial models,[120] remained hostile to primogeniture throughout the early modern period, demonstrating that impartible succession was not a necessary requirement for demesne economies (*Gutswirtschaft*).[121] Nevertheless, it may be fruitful to investigate whether entailed estates had different income structures from allodial ones, whether establishments coincided with the adoption of new economic strategies by a given landed family, or whether the position of subjects in estates transferred by primogeniture differed from those transferred by partible inheritance.

Thirdly, and perhaps most importantly, it is necessary to examine the extent to which the *fidei commissum* was an effective and rigorous legal instrument at all. It is important to know the norms laid down in fideicommissary founding documents and in regional legislation, but we also need to understand if and how such norms were realised in legal and administrative practice.[122] If stipulations could be easily circumvented or if the "state" took a rather permissive approach when fideicommissary owners, their relatives or their creditors demanded changes, the impact

118 Winkelbauer, 2015, pp. 92–100; for the Herditary Lands, Lower Austria in particular, see: Knittler, 1993; Landsteiner, 2012; for Bohemia, see: Maur, 2001.
119 In Lower Austria and Bohemia, labour rents and the size of demesne estates already grew considerably in the second half of the sixteenth century.
120 For an overview of forms of demesne lordship in eastern Europe, see: Cerman, 2012.
121 For the Polish-Lithuanian Commonwealth, see: Frost, 2007, pp. 307–308; for Russia, see: Kivelson, 1994; Chernekov (2016) demonstrates that the Russian state tried to promote primogeniture in the nobility in the early eighteenth century, partly because sovereigns were convinced that partible inheritance had negative economic consequences. The author also tries to show that smaller estates were, on average, less economically efficient; however, the statistical evidence presented is, in my view, somewhat inconclusive.
122 For example, such an effort was made for the Republic of Venice. See: Chauvard, 2018.

of entailments in the western Habsburg Empire may not have been as great as is sometimes assumed. Studies analysing judicial conflicts, revisions following the initial creation or the behaviour of administrative bodies and law courts may change our view of the importance of the *fidei commissum*. Such research could also shed light on why the "state" adopted a more hostile attitude towards the institution from the mid-eighteenth century onwards.

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The transfer of the Spanish "Mayorazgo" to the Hungarian Kingdom with an Austrian transmission in the 17th century

Zsuzsanna Peres
(Associate Professor, Ludovika University of Public Service, Faculty of Public Governance and International Studies, Department of History of State and Law, Budapest)

Abstract: In feudal Hungarian inheritance law, there were two types of vincula. One was the "aviticitas", which restricted family property to intestate succession, and the other was the "fideicommissum", which appeared in Hungary during the 17th century. Due to unique family efforts, the fideicommissum in Hungary was regulated by Act 9 of 1687, allowing Hungarian aristocrats to establish fideicommissa on their acquired estates. The same was granted to common nobles in 1723.

This article aims to answer questions such as: how did the fideicommissum gain popularity in 17th century Hungary? Why did some Hungarian nobles refer to Spanish and Austrian fideicommissum in their wills? How did this institution reshape Hungarian inheritance law? What is the main difference between fideicommissum and *bona avitica*?

Keywords: Hungarian Kingdom, Habsburg Empire, fideicommissum, acquisition by donation, intestate and testamentary inheritance, Esterházy family.

Introduction

In Hungarian inheritance law, there were two types of vincula during the feudal period prior to the revolutionary modernization of 1848. One vinculum was the so-called *aviticitas*, or entailment, which tied family property to the family members and limited the free right of disposal of the testator, and the other was the so-called "*fideicommissum et maioratum*", which appeared in Hungary in the middle of the 17th century, mainly in connection with families who had special political influence at the Viennese court and acquired large fortunes through donations. As a result of some unique family efforts, the institution of the fideicommissum in the Hungarian Kingdom was regulated by Act 9 of 1687, which allowed Hungarian high aristocrats to establish fideicommissa on their acquired property. The same possibility was granted to common nobles by Act 50 of 1723. The Hungarian fideicommissum regulation had very similar features to the decree of 1674 issued by Leopold I for Austrian nobles. After its legislation, the fideicommissum became popular among the Hungarian aristocracy as well as among common nobles with property. The institution even survived the revolutionary modernization of Hungarian private law in 1848 and existed until the mid-20th century, when the Communist Party came to power, abolished it, and ordered all noble properties to be expropriated for the state.

This paper aims to find answers to questions such as the following: How and why did the fideicommissum as a foreign legal institution come to gain popularity in 17th century Hungary? Why did some Hungarian nobles refer to the Spanish *mayorazgo* and the Austrian fideicommissum in their wills? How did this institution reshape Hungarian inheritance law? What was the main difference between the fideicommissum and other vinculum in Hungarian private law, such as *aviticitas*? Why did the private law system retain the fideicommissum even though it abolished all other vincula restricting the freedom of property?

1. Definition of Fideicommissum under Hungarian Law

In the fideicommissum's more than 250 years of existence, many definitions have been given to this legal institution. Therefore, if we wish to give a precise description of this legal institution from the perspective of posterity, we can do so from two angles: on the one hand, by looking at the definitions put forward by authors who have written on the subject, in order to find common elements of content, and on the other hand, by looking at the relevant legislation and individual founding documents[1].

A one-sided examination can be misleading. Most of the works of authors in the field of Hungarian jurisprudence, dealing with the development and institutions of Hungarian private law, were written during the 19th century, when the existence of the fideicommissa was accompanied by political statements in the legislature emphasizing their abolition, their transformation, and the burden represented by the legal institution. Therefore, most of the authors do not form an objective view of the legal institution, assessing its aims and content as the first founders of the fideicommissa and the first legislators did during the 17th century. For this reason, the definition of the fideicommissum is anachronistic for the majority of authors, who sought to define its legal predecessor in the 17th century on the basis of its 19th century significance and meaning. The aim of most of these writings was to argue for the abolition of a legal institution that was considered obsolete.

According to the current view of legal history, the following was to be regarded as a fideicommissum: *the totality or a piece of the property acquired by the founder, subject to a specific, fixed order of succession,*

1 Examining the founding documents of estates subject to fideicommissa is sometimes difficult, as there is no department in the Hungarian National Archives that maintains a separate collection of the founding documents. Each founding document must thus be found in the family archives of those families known to have had a fideicommissum in the past. In a family archive there is always a collection of property deeds, inheritance matters and legal proceedings relating to land, among which the founding documents of the fideicommissum may also be found. Due to almost 400 years of coexistence with the Austrian lands under Habsburg rule, some documents related to Hungary, even family archives, are now kept in the Austrian State Archives in Vienna, so it becomes necessary to expand our research to Vienna if we are to form a complete picture of our subject.

authorized by royal consent, and subject to a prohibition of alienation and encumbrance. These are the elements which are common to the views of the various authors on the definition of a fideicommissum[2]. Some authors also attempt to describe the reason for the emergence of the fideicommissum in their works, usually with the common scientific view that this legal institution was given to the Hungarian nobles as a "reward" for accepting the Habsburgs' hereditary kingship on the Hungarian throne[3]. We shall, however, clarify this latter argument further on, on the basis of the parliamentary documents, as well as the statement that a fideicommissum could only be established on acquired property.

If we take into consideration the provisions of the Act 9. of 1687 on the fideicommissum, regulating the institution for the first time in Hungary, we may read:

> "In order to avert the ruin of the magnates and dignitaries of the country, and to curb the arbitrary alienation and waste of the landed property which is customarily attempted, it is rightly decided: that from henceforth, if any of these magnates or dignitaries, on his estates acquired by his services, or by his own military valour, or by the revenues of his avitical estates, have established and set up a fideicommissum and a first-born inheritance confirmed by His Imperial and Royal Holiness, by a testamentary measure to be published in advance in the counties: that his heirs and successors shall have no right to encumber and alienate such property subject to such testamentary disposition, notwithstanding the contents thereof, in respect of the capital sum of the acquisition thereof. But only to draw from those goods the benefit and income under the penalty of forfeiture of the primogeniture possession. This article of law, however, does not extend in any way to the common nobles."[4]

2 Among the authors who sought to define this legal institution precisely, we should mention the work of István Huszty from the 18th century, the works of the leading Hungarian private law authors of the 19th century, such as Sándor Kövy, János Fogarasi, Imre Kelemen, Ignác Frank, István Czövek, Pál Szlemenics, János Markovics and, among later authors, Mór Katona and Ferenc Eckhart. Huszty, 1758; Kövy, 1823; Fogarasi, 1839; Kelemen, 1818; Frank, 1829, 1845; Czövek, 1822; Szlemenics, 1819, 1823; Markovics, 1822; Katona, 1894; Eckhart, 2000.

3 Bérenger & Kecskeméti, 2008, p. 109.

4 See the original text of Act 9. of 1687 in Latin in the millennial edition of the Collection of Hungarian Laws, the *Corpus Juris Hungarici* (1900).

There are some very interesting aspects to discuss further regarding the wording of the legislative provision, but for the moment we shall refer only to two of these:

> 1. The first is that the law does not explain the essence of the newly introduced legal institution, but simply refers to it by the names used in Europe and sets out the main parameters for its establishment. This suggests that it is an institution that was not unknown to the Hungarian nobility, based on existing examples at home and abroad. We shall find examples for this in testaments from before 1687, which show similar characteristics to those of the fideicommissa. Neither did the second law on fideicommissa, Article 50 of 1723, which was adopted later, give a precise definition, it simply extended the possibility of foundation to common nobles and provided for the compulsory proclamation of the fideicommissa in the county assemblies. The latter was also necessary, because Act 9 of 1687 left open numerous questions that were still to be regulated, due to its narrow wording. It can be seen from the proceedings of the 1723 Diet of Pozsony (now Bratislava, Slovakia) that a number of proposals had already been put forward there concerning the prevention of the squandering of family property and the extension of the system of intestate succession. The compulsory proclamation of fideicommissa was a pressing issue from the point of view of protecting creditors, since the Hungarian nobility, which was heavily in debt, had used fideicommissa to deprive creditors of the pledge on real estate as security for the repayment of loans, since the fideicommissa also excluded the encumbrance of real estate by pledge. In the parliamentary proposals, it is stated that all fideicommissa ought to be compulsorily proclaimed for the future at the county assembly of the county in which the property was located, so that creditors did not fall victim and were aware of the property's bound nature[5].
> 2. The second comment, concerning the original Latin text of the law, relates to the synonymous use of the terms majoratus and fideicommissum. The medieval (in Hungary, early modern) fideicom-

5 See the original text of the Act in Latin in the Österreichisches Staatsarchiv, Haus-, Hof- und Staatsarchiv (in the following referred to as: ÖStA HHStA) Wien, Ungarische Akten, Allgemeine Akten, 1717–1722, Fasc. 200, Konv. C.

missum has very little to do with the fideicommissum familiale of classical Roman law[6].

This is why Ignác Frank suggests that a more appropriate name for the purpose of the institution (to maintain the family reputation) would be "*succession of clan honor*"[7]. The influence of the terminology used abroad, however, can also be felt in the wording of the Hungarian article of fideicommissum-related law[8]. In archival documents prior to the legislative enactment

6 In Roman law, the institution was created to break through the strictness of the ius civile. In its original form, the fideicommissum consisted of the owner transferring all or part of his property to the fiduciarus as purchaser, who would buy it for a symbolic sestertius, with the obligation to transfer it to a third person, the fideicommissarius, to whom the owner could not otherwise bequeath it in the event of his death. Since the fideicommissarius had no legal basis for his claim, i.e., he could not legally enforce his right to acquire the estate, its transfer was left to the "good faith" of the fiduciarius. Initially, the fideicommissum was established in a solemn ceremony, but in Justinian law there was no longer any formal requirement for either its establishment or its revocation. In post-classical law, legatum and fideicommissum became synonymous concepts, and their definitive fusion was due to Justinian, who in one of his laws (*Codex Justinianus*, 6, 43 [AD. 529]) laid the foundations for the enforceability of the fideicommissum, both as a personal claim and as an action in rem, the latter being secured by a legal pledge on the property. This converted the fideicommissum against third parties a legatum. The second law of Justinian (*Codex Justinianus*, 6, 43, 2 [AD 531]) finally merged the two legal institutions. In the event of a conflict between fideicommissum and legatum, it had to be considered as fideicommissum, because of the more lenient rules that applied. In addition, the institution of substitutio fideicommissaria was created, under which the testator could establish an order of succession among his living family members and heirs in respect of his property. In the 159th novella, Justinian limited the succession in family fideicommissa to four generations, after which the property became free property in the hands of the last beneficiary, who could establish another family fideicommissa on it. See Marton, 1958, p. 298; Torrent, 1973, pp. 6–8; Fraydenegg und Monzello, 1979, pp. 777–808; in this case, pp. 778–779.

7 Frank, 1845, p. 461.

8 In the German territories, the Reichskammergerichtsordnung of 1495 introduced a version of the fideicommissum based on Roman law. This is also due to the use of Philippus Knipschildt's *Tractatus de fideicommissis* as a source of jurisprudence in German territories, which on the one hand identifies the fideicommissum with the German *stammgut* and on the other hand adopts the Roman legal theory of origin. "*Germanis dicuntur Stammgüter, so zu Erhaltung eines Fürstlichen, Gräffischen, Freyherrlichen, Adelichen Stammens und Namens verordnet sennd. [...] Fideicommissa haec familiarum, si constituantur, vel constant in aedibus, dicuntur Stamm – häuser et differunt ab aedibus seu arcibus istis, ex quibus nobilis aliqua familia originem et nomen ducit, eo quod hae regulariter alienari possint, illae vero alienationem non admittant.*" (Knipschildt, 1750, pp. 7–8). In fact, the fideicommissum and the *stammgut* served the same purpose, but the fideicommissum was spread among the lower nobility, while the aristocrats took advantage of the *stammgut*. The most significant difference between the two was that while fideicommissum was understood to mean property subject to an absolute prohibition of alienation and encumbrance, *stammgut* could be alienated with the consent of the future heirs (Fraydenegg und Monzello, 1979, p. 783; Gierke, 1909, pp. 104–105). While Knipschildt's work was highly acclaimed and successful in its time, filling the gaps in the legal system by clarifying the most important legal issues, the position of Ludovicus de Molina, who differed from Knipschildt and considered Spain to be the origin of the fideicommissum system, is more correct. Ludovicus de Molina in his work "*De hispaniorum primogeniorum origine*", the significance of which is also demonstrated by the fact that it is perhaps the most cited literature on the subject to

there is no reference to fideicommissum, and the founders use the word maioratus synonymically. However, maioratus in these documents does not refer to the classic fideicommissum et maioratum as later; moreover, it refers to the often-used, specific line of succession established by the aristocracy to prevent division of property in the future. In these foundations, more emphasis lies on the line of succession than on the prohibitions regarding encumbrance and alienation of such properties. The fideicommissum-related characteristic whereby the successor of the fideicommissum is a mere beneficiary of the incomes, as a simple possessor, and does not inherit the ownership of the fideicommissum's property comes to the forefront only later. Moreover, in the absence of a legal provision, the beneficiary could not be legally obliged to hand over the fideicommissum in its original state to the next beneficiary in line, and the founders could only hope that their testamentary provisions would be respected by their heirs. As examples show, in some cases heirs deviated from the original provisions of the testator and decided to divide property instead of keeping it intact. By the introduction of the enactment in 1687 conditions changed, and heirs to the fideicommissum had to keep themselves to the will of the first founder for as long as the fideicommissum existed.

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this day, derived the fideicommissa from the Spanish mayorazgo and stated that *"Fideicommissa etiam perpetua Hispanorum primogeniis similia non sunt."* (Molina, 1601, lib. I, p. 31). Following Molina, Italian scholars of law accepted that the fideicommissum was modelled on the succession of the throne, and that in the Italian and German territories the order of succession by primogeniture in the ruling families was in fact established at the same time as the firstborn succession in the succession to the throne (Pfaff & Hoffmann, 1884, pp. 277–319; in this case 301). But according to Antonio Pertile, the principle emerging in the succession of the fiefs, combined with the principles of the "*substitutio fideicommissaria*" described in the Roman Law, created the new phenomena called as fideicommissum, that provided the property to be inherited according to a preestablished line of succession. Foundation of fideicommissum could happen by testaments, family agreements or by donation (Pertile, 1893, pp. 151–152) Finally, many scholars educated on Roman and Canonic Law claimed that the "*mayorazgo*" is the resurrection of the Justitian's "*fideicommissum familiae relictum*" and provided the institution of mayorazgo with explanations based on the Roman Law. See Torrent, 1973, p. 19; Besta, 1961, pp. 171–172; Lewis, 1868, pp. 3–20; Litewski, 1987, pp. 164–166; Söllner, 1976, pp. 659–669; in this case, pp. 659–669; Brentano, 1911, p. 5. From the recent ones see Floßmann, 2001, p. 329; Coing, 1985, pp. 387–388. Whether we accept all above-mentioned theories, or, on the contrary, we have an alternative view regarding the origin of the fideicommissum, we should accept that the word fideicommissum applied synonymically to the mayorazgo or maioratum has appeared thanks to Roman law.

Common features of the fideicommissa established in the Hungarian Kingdom included the following:

1. the "*pro splendore familiæ*" gesture, ensuring the survival of the family honor and name for the future, by the establishment of a strict line of succession[9];
2. the fideicommissum could be founded on landed property[10], as well as on movables precious to the family[11];
3. the prohibition regarding the encumbrance and alienation of the fideicommissum's property[12];

9 In Hungary there are three types of succession lines detectable in the fideicommissum foundation documents: 1. the most common used was the line of the firstborn succession (*primogenitura*); 2. the second was the right of the older born (*maioratus*) – in this case the brothers of the beneficiary came prior in line than his children; 3. the least often used (in Hungary only in case of the Zichy fideicommissum) was the line of the seniors (*senioratus*), meaning that the oldest male of the family, despite of the proximity of lineage should be the next beneficiary in line, after the fideicommissum possessor's death.

10 With regard to the property subject to the fideicommissum, the view is unanimous in the works of some authors already cited that it could only be founded on acquired property. In this respect, some authors, such as Mária Homoki-Nagy, further narrow the definition, primarily to property acquired outside of royal donation, because according to her view royal donation fell under specific succession (Homoki-Nagy, 2004, p. 93; 2001, p. 83). As a rule, the acquired property clause is indeed true, as stated in the 1687 Act, but the documentary evidence shows that the foundation was generally based on donated property and not on property acquired outside the donation. This claim is supported by the circumstances in which the Act was enacted, its outlined purposes and the individual charters. Indeed, it is not uncommon for the founder to make a fideicommissum even on his hereditary property (*avitica bona*). This may be done if the founder has a privilege of free disposal, or if his relatives entitled to succeed agree to the foundation. Regarding the privileges of free disposal see Peres, 2010, pp. 167–182.

11 In this case not only the furnishing and equipment belonging to the fideicommissum is meant, but specific movables important to the family, mentioned especially by name in the founding documents, such as e.g. the golden cup received by Miklós Pálffy from the Austrian estates and orders for his valiant military conduct in the reoccupation of the Castle of Győr in 1598, a cup that was – after a long and adventurous history – ordered by Miklós Pálffy's son, the Palatine Pál Pálffy in 1653 to fall under fideicommissum restriction, and preserved as fideicommissum until the 20th century, when it was transferred to the National Museum in Budapest. See more: Peres, 2008, pp. 83–108. Another example would be the treasury of the Esterházy family that was ordered to be fideicommissum kept always in the treasury especially designed to them in the Forchtenstein (today in Austria) fortress.

12 Perhaps the most striking and criticized point of the fideicommissa was the prohibition of alienation and encumbrance, which resulted in a somewhat stricter constraint than any other restriction in Hungarian private law. The prohibition on alienation and encumbrance was relative in the case of fideicommissa, as the contract for the alienation of the fideicommissum was not void ipso jure but could only be set aside by contestation, if the next beneficiary of the fideicommissum, whose right was infringed, contested the contract on the grounds of legal defect (Huszty, 1758, pp. 186–187). If the contract is challenged in this way, the creditors and buyers forfeit their claim, and no existing debt can be enforced on the fideicommissum property (Frank, 1829, pp. 269). The law also gave the next beneficiary in line the right to challenge the current beneficiary in the competent court (the Royal Court of Justice) if the current beneficiary had damaged, squandered, or sought to alienate or mortgage the fideicommissum property (Huszty, 1758, pp. 186–187; Szlemenics, 1819, p. 319; 1823, p. 217)

4. the necessity of royal consent to the foundation;
5. foundation by testament, royal donation, or confession (authentication by an organ entitled to issue documents under their own seal)[13];
6. finally, in the case of the fideicommissum, ownership is separated from possession; after the death of the founder, who could be considered an owner, all beneficiaries or heirs to the fideicommissum are mere possessors — with the distinction that one beneficiary (the next in the line of succession) would enter into the possession of the property, and the whole family would be entitled to the income of the property, paid to them by the possessor as an annual share. Ownership properly speaking would thus belong to the entire family, understood as including also future heirs not yet born[14].

2. The adoption of the Fideicommissum Act in Hungary

The institution of the fideicommissum was legislated relatively late in Hungary, at a Diet convened after the reconquest of the Castle of Buda from the Ottomans[15]. Several coincidental circumstances suggest that

In order to ensure the protection of the future beneficiaries, the institution of the guardian of the fideicommissum was later introduced, and in 1862 it was ordered that the fideicommissum documents be transferred to the local court of the location of the fideicommissum as the fideicommissum court. The fideicommissum property could never be subject to a division, nor was it affected by confiscation, since no confiscation could be made against it if the fideicommissum holder was found guilty of infidelity, because he was not the owner of the fideicommissum property just a beneficiary. In such a case, he was immediately deprived of the possession of the fideicommissum property, and the nearest beneficiary took possession (Fleischhacker, 1795, p. 149).

13 Most of the fideicommissa in Hungary was founded through testaments, but we can also find examples of ones founded in donation (the Erdődy fideicommissum in 1722), or in authenticated documents (but usually these were testaments authenticated by document issuing organs).

14 Moreover, according to Huszty, the ownership of the fideicommissum property belongs to the whole family, both present and future descendants not yet born, and as long as its seeds are not disrupted, they are considered as co-owners of the fideicommissum property, while the "*dominium utile*", i.e. the beneficiary right, belongs to the next possessor according to the order of succession established in the deed of foundation (Huszty, 1758, p. 186).

15 Buda Castle was recaptured by the troops of Hungarian King Leopold I in 1686. With the recapture of the Hungarian royal capital, the Habsburgs succeeded in ending the Ottoman occupation, which had lasted almost 150 years. The liberated lands became part of the Hungarian kingdom ruled by the

the idea was the brainchild of one man, the then head of the Diet, Palatine Prince Pál Esterházy.

The idea of founding a fideicommissum appeared in Pál Esterházy's will, which he wrote on January 8, 1664, many years before the legislative initiative of 1687. In this will he disposed of his valuable movables, which were part of the family treasure, when he left for a battle against the Ottomans. He declared that all his movable property would be subject to the prohibition of alienation and encumbrance for the future[16].

This will, together with his later wills, can already be seen as propaganda for the fideicommissum[17]. These wills also testify that the institution of the fideicommissum was known to the Hungarian aristocracy on the basis of foreign examples, and especially so to the Palatine[18].

In a codicil to his will of April 25, 1664, Pál Esterházy describes the fideicommissum as the institution that maintains the family's splendor, and tries to get his children to avoid dividing the estate, instead following

Habsburgs again, under the supervision of the Hungarian Chamber, which was responsible for the economic affairs of the kingdom and could be given as donations by the king to those who served him loyally.
16 Already in this will, thirty years before his final testament, and twenty-three years before the creation of the article of the law on the fideicommissum, he expressly provides that the movable property is to belong to the majoratus as inalienable property. He specifically names some movables when he divides possession of them between his children and his wife: he leaves all his goldsmiths' gold with 12,000 forints to his wife, since they belonged to the Lánzsér (today Landsee, Austria) property which his wife had brought as a dowry but later ceded to Pál Esterházy. The silver, which she had acquired with her own money, she could distribute as freely disposable property, outside of the maioratum. In the same way, he distributes the tapestries, quivers, and robes, except for the tapestries in the castle of Frakno (today Forchtenstein, Austria), which go to his son Miklós together with the pictures and the Kunstkammer (Chamber of Art) in Kismarton (today Eisenstadt, Austria) and the library (Merényi, 1911a, pp. 151–157).
17 Emma Iványi, the scholar who wrote several books about Pál Esterházy, calls these wills "real jurisprudential essays" (Iványi, 1989, p. 447).
18 Recent library research has unearthed around 70,000 volumes from Pál Esterházy's famous library, which is mentioned several times in his will. The list of books reflects the image of a man who was well versed not only in religious literature, but also in the works of classical Roman and Greek writers, in jurisprudence and in the history of European countries (he owned issues of the historical journal of the time, the Theatrum Europaeum), and who was certainly also familiar with the current literature on fideicommissum, as his library contains dissertations on succession, especially on legates, wills and fideicommissa (Hunnius & Neander, 1613), as well as catalogues of the nobility of European countries. Although the legal literature of the same period, previously mentioned in the article, such as the book by Ludovicus de Molina, is not included in the 1756 inventory of Pál Esterházy's books by title, it is possible that Pál Esterházy, as a widely travelling Hungarian nobleman who was in contact with European aristocrats, was familiar with this publication as well. Regarding the content of the Biblioteca Esterhaziana see: Monok & Zvara, 2020.

the example of foreign families. He cites the Spanish, French, Germans and other nations who, he says, "*wisely recognized the way of preserving families and invented the institution of the maioratum*" because they knew that the division of property causes the ruin of families. He points to Hungary as an example where three families cannot be named that would have existed for a long time because of the division of property. Because if a nobleman has ten sons and his property is divided into ten parts, and one of the sons also has ten sons, the result will be a family that can hardly preserve its status among ordinary nobles, not mentioning the aristocracy[19].

At the same time, it is clear from his words that since there is no legal provision for a majoratus, he cannot force his heirs to comply with the provisions of the will, but merely asks them to act in accordance with his wishes using common sense[20].

In his will of January 1, 1678, he adds further details relevant to the story of the establishment of the majoratus, or more precisely, since we are still in the pre-legislation period, he tries to convince his heirs with new arguments not to divide their property after his death according to the existing laws of the land. His property already made up a considerable fortune at

19 "Finally, I should continue to think about the maioratus and convince my children that it is worthy of preserving families: Let them take an example from the Spaniards, French, Germans, and other nations of all kinds, who have seen with great wisdom wherein the preservation of families consists, and have invented the majoratus; for human wisdom also brings with it that the equal distribution of goods is nothing else than the bankruptcy of families, an example of which is Hungary, in which there are scarcely three old families to be found that could now live in power as formerly. Surely the reason is not another, but only the waste of goods in many directions. For if a man of any name who has a large estate has ten sons, if after his death the estate is divided into ten, one can think what portion for a man there is in it, and if the tenth son should have ten sons again, he can hardly be a worthy lord, nor a man of noble birth." – translation provided by the author. See the original testament in Hungarian (Merényi, 1911a, p. 156).

20"I know there are many bad men who, delighting in new things, and perhaps in their own profit, will hinder the maioratus. Whose word, if my children listen to them, will surely, with irremediable harm, led my heirs to bankruptcy. And if my children are wise, each will keep the majoratus in his own line, and will rather pay the others with money, for if it should be that one of them should perhaps become poor, I know that the other brothers will not be so bad as not to help him with money, and it is better for the preservation of the family's status that one or two should become poor, than that the whole family should be reduced to total bankruptcy. I think I have described the maioratus well enough, though it may seem to be against Hungarian law, and if my children do not wish to act according to my testamentary points, no one can force them to do so." – translation provided by the author. See the original testament in Hungarian: Merényi, 1911a, p. 156.

that time, and made the Esterházy family one of the most important of the period. One could say that he taught his children how to preserve the family's prestige. This endeavor, as we can see from his efforts to build a treasury, is the intention of a prudent and at the same time ambitious man to create something lasting for the survival of his second-generation noble family. He is a prime example of the newly emerging courtly aristocracy, loyally serving his king until his death, as can be seen in all his politically significant actions. The grievances expressed at the Diet of Pozsony in 1687/88 relating to families' diminishing wealth are also undoubtedly influenced by his inheritance and property policies, as the terms used in his will are found almost verbatim in the bill, and later in the text, of the law.

In his will of 1678, he further praises the institution of the maioratus, and notes that the beneficiaries of the fideicommissum will more easily support the other members of the family. He also cites examples of predecessors, especially clergymen, who already recognized the blessing of this institution, and expresses his hope that in the future more and more people will make use of it, as that would prevent the extinction of aristocratic families in Hungary[21].

He observes, furthermore, that the Catholic Church can be better supported by a wealthy successor, and that the country can better resist its enemies when wealthy lords serve with their armies — surely an important point in the Counter-Reformation period. He further cites foreign examples from the duchies of Florence, Mantua, Parma, Savoy, and Modena, where visible results show the benefits of the institution[22].

21 "[...] I wish God to give us to have more dignified families to follow this in Hungary, and the country would not run out of dignified lords, who would be solid pillars to this poor, crippled country of ours, and whom the country would really need especially considering the current conditions" – translation provided by the author. See the original Hungarian text here: Merényi, 1911b, p. 612.

22 "In this respect, I bring as an example the princes of Italy who have great dignity because the elder brother disposes of everything, and he is alone in the possession of all fortune, but he maintains his brothers from his income and raises them to high dignities, preserving the maioratus at the same time; and after whose death not his younger brother, but his son succeeds in the empire and so goes it on; and the Duke of Florence, Parma, Savoy, Mantua, Mutina and several other dukes and great families, where the maioratus is observed, are preserved as dignified noble houses because the dukes are really wisely thinking about their preservation" – translation provided by the author. See the original Hungarian text here: Merényi, 1911b, p. 613.

We find similar provisions to those of Pál Esterházy in the will of his brother-in-law, Lord Chief Justice Ferencz Nádasdy — who would be considered one of the first founders of fideicommisum in Hungary, were it not for the fact that he was sentenced to confiscation of his property and death by beheading for treason in 1671, prior to the entering into force of the will whereby he founded a fideicommissum. The wording of his will also proves that the legal institution of the fideicommissum was known among the Hungarian aristocracy, because Ferencz Nádasdy himself refers to fideicommissum as "*[...] according to German custom fideicommissa sint bona[...]"* in the context of the order of seniority established on the Pottendorff (now Pottendorf, Austria) estate, emphasizing its prohibition with respect to alienation and encumbrance. In his will of July 10, 1663, he also established a fideicommissum for the Pottendorff estate belonging to Austria, and for the Sárvár (now Sárvár, Hungary) and Szarvkő (now Hornstein, Austria) estates belonging at that time to Hungary, in order to preserve the name and fame of the family. With the aim of preserving the family name, Nádasdy stipulated in his will that in case the sons of the family died out, the men who married daughters in the family should also bear the Nádasdy name. His will thus became a real small "pragmatica sanctio"[23]. Since his children had received only 160,000 Hungarian forints from the imperial favour after their father's execution, they were unable to enforce their father's will[24]. The death of Ferenc Nádasdy led Pál Esterházy, his brother-in-law, who was also affected by the conspiracy, to fear for the possible loss of his family property, so he pushed for the establishment of the fideicommissum, as it was exempt from confiscation.

At the Diet of Pozsony in 1687/88, Pál Esterházy saw an opportunity to initiate legislation for fideicommissa. While he himself had already endorsed the idea, he did not have sufficient political influence to pursue this aim at

23 With a slight reference to the law about the succession to the Hungarian throne in the Habsburg family, adopted by the Hungarian legislation in 1723.

24 When reading the will of Ferenc Nádasdy, his description as given by Gyula Schönherr seems apt: *"[...] True Hungarian feeling and self-sacrificing loyalty to the ruling house, in so far as the loyalty does not conflict with the patriotism and ambition of both; the amiability of a man of great ambition and the petty, hair-splitting pettiness of an arrogant nature, all these diametrically opposed traits would make him one of those in whom we have more interest and even pity than sympathy."* (Schönherr, 1888, pp. 176-187, 369-382; 580-587; in this case p. 178).

the Diet of Sopron (now Sopron, Hungary) in 1681, when he was elected Palatine of the country.

The Diet convened by Leopold I in 1687 was important for several reasons. The king – as the ruler who had liberated the country from the Ottomans – had several demands to the Hungarian Diet, such as the recognition of the Habsburgs' hereditary rights to the Hungarian throne according to the rule of primogeniture, the coronation of his nine-and-a-half-year-old son Joseph as the future king, and the renunciation by the Hungarian nobles of their right of resistance granted by the Golden Bull of 1222[25]. Esterházy, as palatine, found the time to pursue his own goals here and put forward an initiative both to settle the fideicommissum and to return the liberated territories to the families who could prove by documents that they had been owners of the land before the Ottoman occupation[26].

The establishment of a fideicommissum and the associated royal authorization could have solved Pál Esterházy's problems in other respects as well. As can be read in the study by István Soós,[27] towards the end of the century the Palatine had troubles with the production of documents proving the continuity of the ownership of his estates from the time before Mohács, which was mainly due to the fact that his family did not have any property rights until the first half of the 17th century. The fideicommissum and the imperial approval which was always obligatory for the foundation of a fideicommissum also meant that the emperor renounced all rights *in rem* to the estates belonging to the fideicommissum, regardless of whether they had been acquired by donation or otherwise, and that the fideicommissum's property was never reclaimed, nor did it revert to the crown, since it was exempt from confiscation. This way Pál Esterházy could justify the lands he possessed by obtaining the royal consent and assuring that nobody doubted the lands' legal status for the future. In the case at hand, therefore, the king's approval of the establishment of the fideicommissum would also have put an end to the trouble over the presentation of the deed. That is why Pál Esterházy, in his will of 1696, tried

25 Turba, 1911, pp. 9–10; Turba, 1903, pp. 355–356.
26 Kállay, 1993, pp. 159–162; in this case, p. 160.
27 Soós, 2009, pp. 801–852.

to dispose of every property of his dividing them into three different fideicommissa as soon as possible.

The diary of Balthasar Patachich, a delegate to the Diet, also informs us that the initiative to regulate fideicommissa came from the Palatine Esterházy[28]. Another proof of the Palatine's efforts is that the introduction of the regulation was not followed by a wave of fieicommissum foundations. Until 1723, only a few fideicommissa were established in Hungary: the Esterházy, Erdődy, Szirmay, Zichy and Pálffy families succeeded in establishing them[29].

In the collection of materials of the Diet of 1687/88, the request for the establishment of a fideicommissum is mainly found among the grievances of the high noble orders, who, out of the ninety-nine points put forward, only in the ninety-fourth point mention the possibility of allowing the establishment of a fideicommissum by the monarch — and even there the wording is very terse:

> "It has been the experience of the estates and orders of the country that the ruin of the magnate or distinguished families is brought about in no small extent by alienation, without any special necessity, of the maternal and paternal, or hereditary properties inherited from mother or father, carried out by those families' descendants and heirs, so to block such a waste they deliberately decided, that from today on, if any magnate or distinguished person on his properties acquired by his own service or military bravery, or from the incomes of his hereditary property, by his own will proclaimed prior in the counties creates a fideicommissum and majoratum and names heirs to it, these heirs are not allowed to alienate or encumber by any means the capital of these restricted properties on the contrary of the founder's will, because they are only beneficiaries of such properties; and if any of these Magnates sells part of such property for an amount of money, that contract can be declared void by his brother (as the next immediate heir in line to the fideicommissum) at the county court, and the seller loses his possession

28 Patachich, 1687, p. 27.
29 For a detailed treatment see Peres, 2014.

> by this cause for good. This grievance does not affect only the Magnates and distinguished ones [...] but also extends to the heirs of the noblesse de robe." [30]

The only response from the court to this proposal in the royal document of January 13, 1688 (*indorsatio*) was that the monarch actually had no objection to allow the establishment of fideicommissa in Hungary[31]. This would also be in line with the ruler's wish, because only thirteen years earlier, in a patent issued on 2 November 1674, he had allowed the nobles of the Austrian hereditary provinces to do the same.

There are several reasons why the monarch did not show himself adverse to the foundation of fideicommissa by the Hungarian magnates. Leopold I, as the absolute ruler of the country who reconquered the territories occupied by the Ottomans and pulled these territories under his rule, decided to have his son Joseph crowned by the Hungarian estates and orders and also made the Hungarian Diet to accept the principle of the hereditary monarchy, meaning that in case the Austrian line of the Habsburgs died out, the Spanish line should follow on the Hungarian throne. He also made a third demand before the Diet that the estates and orders should resign their right of resistance as granted by the Golden Bull of 1222[32]. It was unbearable for Leopold I to have his authority as a ruler restricted by any group of interest[33]. His endeavors achieved success, even if as a result of a long dispute with the Diet[34], no doubt thanks to the mediation of the

30 Translation of the original Latin text provided by the author. Original text here: ÖStA HHStA Ung. Akt. 402 Comitialia Fasc. 402. Konv. C. 1687/88. By noblesse de robe were understood those magnates whom the documents call *barones solo nomine* — i.e., barons who did not hold any office, but they have the name and title of a baron.

31 ÖStA HHStA Staatskanzlei, Patente Kt.nr. 14 (Alt 11).

32 Baranyai, 1937, pp. 84–110; in this case, pp. 100–101.

33 *"The court now regarded Hungary as a province conquered by force of arms, and the fact of the conquest by force of arms, according to the legal theory of the time, provided the dynasty with sufficient legal basis to settle Hungary according to its own interests, often contrary to those of the Hungarians, and at its pleasure, by the absolute right acquired by force of arms, disregarding the Hungarian constitution, and, more importantly, the interests of the Hungarians."*. Bartoniek, 1939, p. 96; Iványi, 1989, p. 446; Szita, 1995, pp. 313–333; in this case, p. 315.

34 *"[T]he fact that the Hungarians were not very enthusiastic about the conquest afterwards is also shown by the fact that the Diet, which had already dispersed the Thökölyi Revolution, when even the most fervent patriots could not hope for the renewal of self-defense, lasted five whole months, and if the nation had felt gratitude for the capture of Buda, would certainly have accepted both proposals with a shout."* (Máriássy, 1887, p. 178). See more: Goldschmiedt, 1914; Csekey, 1917, pp. 107–162.

Palatine Esterházy; that could also be a reason he did not deny his loyal servant's request[35].

Another reason could be that foundation of a fideicommissum – even if the law allows it – will always require the ruler's consent, therefore it does not mean any harm to the crown, and the ruler knew very well that he could have many Hungarian magnate families by his side, by granting them the privilege of fideicommissum foundation[36].

István Bakács was also right when he wrote that the reason for the regulation of fideicommissa was – besides the concentration of property in one hand – the protection of property from excessive indebtedness[37].

3. Examples influencing the Hungarian magnates from neighboring Austria.

Because of the close family, kinship, and political ties between the Austrian and Hungarian aristocratic families, the fideicommissa established in the Austrian hereditary provinces also shaped the Hungarian customary law with respect to the fideicommissum and majoratum.

The fideicommissum, or as some of the foundation documents refer to it, "*Fideicommiss und Primogenitur*" or "*Majorat und Fideicommiss*", appeared in the Austrian hereditary provinces before its regulation happened

35 In this respect, in a letter written by the Palatine in 1677, we see that he was not so much in favor of the idea of a hereditary kingdom, but later became the mediator between the estates and orders and the king. Baranyai, 1937, p. 98.

36 Ágoston, 1913, p. 256. *"By the fideicommissum, the king is making a bargain with the high lord. The king gives the fideicommissum, the lord gives his services; he will always be a loyal man to the king. The House of Habsburg therefore had a great interest in keeping the Hungarian lords permanently attached to it. It was only necessary for the king to establish some institution which would make it in the obvious interest of the lords to serve the royal house faithfully at all times."* (Králik, 1909, p. 8).

37 *"In our opinion, the excessive borrowing was prevented and the inviolability of the landed property complex was ensured by Article 9 of 1687 on the fideicommissa […] which was the result of the fact that the increase in the number and value of credit transactions threatened to destabilize the financial situation of families, both in terms of usury interest and indebtedness, and thus the need to fix the interest rate and prevent the property from being seized."* (Bakács, 1965, p. 5).

in 1674. However, it was not until the first third of the 17th century that this legal institution became widespread, after it had become established in practice as the basis of the Habsburg family succession[38].

The fideicommissum became popular at the Austrian court when the Thirty Years' War changed the balance of property ownership and more and more of the court aristocracy decided to establish a fideicommissum, following the imperial model. In 1627, Ferdinand II issued a provincial order, binding on the territories of Bohemia, stipulating that anyone wishing to establish a feudal tenure on his estates there could do so only with royal permission[39]. At the same time, he confiscated the property of the rebels in Bohemia and began to donate it to the aristocrats who were loyal to him. The monarch wanted to ensure that the nobles faithful to him would remain so also in the future, and he approved the establishment of fideicommissum on the condition that the beneficiaries would always remain loyal to the Roman Catholic religion as well[40].

The institution was regulated by a patent issued on 2 November 1674 by Leopold I[41]. The patent, which is much more detailed than the Hungarian legislation, is grouped around three main regulatory areas. Firstly, it provides for fideicommissa which have been previously created and which have already been "validated" by the death of the founder. In order to prevent future damage to bona fide creditors and purchasers, it provides for the publication of fideicommissa where they are located and their registration by the competent court. It also requires the current holder of the fideicommissum, or the person in possession of the relevant family documents, to prove their right to the fideicommissum by handing over the documents to the competent court. They were to be granted one year

38 This was based on the will of the German-Roman Emperor and King of Hungary Ferdinand II in 1621. In 1621, Ferdinand II declared all his lands and provinces to be a fideicommissum, which he confirmed in his codicil of 20 May 1621 (Turba, 1913, p. 6). The Hungarian Diet also referred later to Ferdinand II's will in the dispute over the acceptance of the Pragmatica Sanctio. See: ÖStA HHStA Ung.Akt. Allgemeine Akten 1717–22, Fasc. 200 Konv. A. January 19, 1720. In fact, the order of primogeniture was the naturally obvious solution. "The importance of primogeniture can be observed already in the animal world" writes Andreas Tiraquellus in his work on primogeniture. Quotes Tiraquell's work Schulze (1982, pp. 253–271; in this case, p. 252).
39 Fraydenegg und Monzello, 1979, p. 785.
40 Pfaff & Hoffmann, 1884, p. 308; Fraydenegg und Monzello, 1979, pp. 785–786.
41 Voglhuber, 1808, p. 2.

and one day to do this, subject to a fine of 100 ducats. The first part of the provision also states that the 'majorat und fidei-commissa' is a legal institution intended to maintain the family's status and well-being and to prevent heirs from disposing of property as if it were their own. Secondly, for fideicommissa to be created in the future, it states that until they were proclaimed and enrolled in the land register (Weissbotten Protocol), they were not deemed validly created for effects of creditor protection. The registration and the census of the landed property of the fideicommissum is the official duty of the competent court of the place of registration. The will or other instrument evidencing the fact of creation shall be sent to the Chancellery. Thirdly, it will leave it to the free will of the fideicommissum possessors whether or not to seek the imperial approval of the foundation they have previously established, but the imperial approval will be an absolute validity requirement for newly created fideicommissa[42]. Approval is not required in cases where the founder has established a fideicommissum on property over which he has complete and free disposal rights[43].

In order to complete the picture of the Austrian law on fideicommissa, it is also necessary to trace the individual founding documents. These can be found both in the family archives and in the Salbücher, a collection of documents containing transcripts of charters issued by the monarch, given that most of the other documents on the fideicommissa have been burnt, according to the information from the Archives in Vienna[44].

Examining the charters, it can be said that the names of the founders of fideicommissum generally include persons and families that are very often found in the ranks of various court and state officials. According to the founding charters, members of the founding families had been in the service of the monarch for many decades, and for their loyalty the monarch bestowed upon them the titles of baron, earl or duke, which also earned them considerable wealth. However, these families were not only important for their titles and wealth, but also because they were constantly involved in Habsburg politics, often having extensive marital and kinship

42 ÖStA HHStA Staatskanzlei, Patente, Kt. nr. 14. (Alt.11).
43 Pfaff & Hoffmann, 1884, p. 307.
44 A full list of the fideicommissum documents transcribed to the Salbücher and proving the foundations of fideicommissa in the Austrian hereditary provinces can be found in Peres, 2014, pp. 234–236.

ties with aristocratic families in neighboring countries, especially in the territories under Habsburg rule[45]. As such, when we speak of these families, we should not think of an isolated Austrian aristocracy, but rather of a layer of importance among the "Europäerei" of the period[46].

In their case, the possibility of establishing a fideicommissum becomes more valuable, as it is seen as a way of ensuring that the property is passed on in an undivided form, and that any irresponsible future beneficiaries of the fideicommissum are not allowed to squander the property they have inherited from their ancestors at their discretion, sometimes acquired by their ancestors with great effort. Such fideicommissa-founding families were the following: Khevenhüller (1605), Bubna (1608), Wurmbrand (1616), Harrach (1628), Breuner (1640), Trauttmansdorff (1650), Tilly (1661), Traun (1666), Walterskirchen (1674), Wägele von Walsegg (1675), Stahremberg (1666).[47] Besides the families mentioned in the work by Pfaff and Hofmann we find other fideicommissum founders in the Salbücher, such as the Cavriani, Dietrichstein, Enkevoirt, Grundemann, Kufstein, Kurz, von Losenstein, Schallaburg, Schellerer, Riesenfels, Thun, Trautson, Ursin und Rosenberg, or the members of the princely Liechtenstein family.

A fideicommissum could be founded not only by a man, but also by a wealthy woman, as there was no rule excluding women from the right to establish a fideicommissum. There were examples of this in practice, for example in the case of Countess Maria Clara Theresia von Stahelburg (née Baroness Hocher), who founded a fideicommissum for the children of her sister, Countess Anna Franciska von Kufstein (née Baroness Hocher), worth

45 Bůžek, 2013, pp. 15–36; in this case, pp. 19–20.
46 A good example of the interweaving of Austrian aristocracy with European aristocratic families is also seen in the fideicommissum founded by Count Friedrich Cavriani on 31 May 1661, which was in fact founded by his father in 1617 for the estates of Count Friedrich Cavriani in Mantova. Friedrich Cavriani wanted to use this as a model for the fideicommissum he had established for his own acquisitions, on the one hand, and for the goods given to him by his wife on 31 March 1661, on the other, including all of the paternal and maternal property which she had brought into the marriage specified in the marriage contract of 25 January 1628. Thus, knowledge of this legal instrument did not stop at the borders of the country, and if there was no legislation, it was adopted by customary law. ÖStA AVA (Österreichisches Staatsarchiv, Allgemeines Verwaltungsarchiv) SB (Salbuch) Nr. 69. Blatt 56–61.
47 See more Pfaff & Hoffmann, 1884, p. 304.

68,000 to 70,000 gold florins. Under the terms of her will of 5 December 1703, her sister's sons, Counts Johann Paul and Johann Carl von Kuffstein, and their four surviving brothers and their descendants, would inherit the fideicommissum in accordance with the order of primogeniture[48].

Of the Austrian founders of fideicommissa, Maximilian von Trauttmansdorff is of particular importance to us, as we know that he had very close ties of friendship and kinship with the "first" fideicommissum founder in Hungary (1653), the Palatine Count Pál Pálffy. These ties are evidenced by letters between the two of them, by the fact that it was Maximilian von Trauttmansdorff who recommended Count Pál Pálffy to the Emperor as a possible candidate for the title of Palatine, and by the fact that Pál Pálffy was the first Hungarian nobleman to be a member of the Emperor's Privy Council, of which Count Trauttmansdorff was also a member[49]. The first fideicommissum founded in Hungary in 1653 by Pál Pálffy is very similar to the fideicommissum his brother-in-law founded in his will of 1650[50].

Within the framework of this article there is not enough space to write in detail about the characteristics of Austrian fideicommissa[51], but there is one important thing to note. Since their founders were in intertwining political relations with each other in the everyday life of the Court of Vienna, they would have influenced each other. This meant mainly that the Hungarian aristocrats in service of the King who wanted to become more influent in the court and more like the foreign aristocracy in wealth and power usually followed the example of their Austrian fellows to develop further influence in the court.

48 ÖStA AVA SB Nr. 132. Blatt 710–729.

49 See in detail Lernet, 2004. The correspondence and relationship between the two statesmen is explored in detail in several studies and in the book "Ein ungarischer Aristokrat am Wiener Hof des 17. Jahrhunderts. Die Briefe von Paul Pálffy an Maximilian von Trauttmansdorff (1647–1650)" written by Anna Fundárková (Vienna, Institut für Ungarische Geschichtsforschung in Wien, 2009). For more on the intertwining of the Hungarian and other members of the Austrian aristocracy and the court careers of Hungarian aristocrats, see Pálffy, 1999.

50 The original will's transcript can be found in Vienna under the following signature: ÖStA AVA SB nr. 51. 432–446.

51 A detailed examination of the foundation documents can be found in Peres, 2014, pp. 27–40.

4. The relation of the fideicommissum to the aviticitas system.

In Hungarian law, the first legal institution that made alienation and encumbrance impossible was not the fideicommissum, but the institution restricting the inheritance of hereditary family property, called *aviticitas* regulated in detail by the customary collection called *Tripartitum* of István Werbőczy in 1514[52].

In the Hungarian legal system *avicitas* was first regulated in 1351 by a decree of King Louis I, but without doubt it had been an institution already existing in the customary tradition[53]. The way to maintain entailment was by compulsory intestate inheritance, in which the property inherited within the family (with all additions and acquisitions made by the testator in the meantime) was inherited upon the death of the owner being in possession. This meant that, as a rule, the testator could not make a will about such family or ancestral property before his death, since he was not the sole owner, but the inherited property belonged jointly to all those entitled to inherit within the family. After the death of the testator, the legitimate heirs of the same line (sons or, if there were no sons, the brothers of the testator) shared the property equally, with the proviso that to the female relatives of the testator (daughters or granddaughters) the value of a quarter of the inherited property had to be paid out as a daughter's quarter (*quarta puellaris*)[54]. By virtue of *aviticitas*, those who shared the property thus bounded owed each other a mutual legal responsibility for it, and in the event of death they had a claim to each other's property, and for the case of alienation or encumbrance, they had a right to the prior offer and eventual redemption. Consequently, the alienation and encumbrance of the property, prior to its division among family members, was only possible with the relatives' prior consent, or more precisely with the property offered for emption to the next-of-kin heirs. If the making of

52 Murarik, 1938. While there is no proper English term for it, but it is usually referred to this institution as entailment in English academic texts; in this chapter we opted by the use of the Latin form, which is also usual, not to create confusion with the general use of "entailment" throughout the book.
53 Béli, 2010, pp. 131-144.
54 Béli, 2016, pp. 60-74.

such an offer was not possible, because the undivided descendants were not of legal age, the selling of the property could be done with the stipulation of a guarantee as a contractual security — meaning that in case the contract would be declared void later, the seller would pay back the price to the emptor, or give him a piece of land of equal value in lieu of the one he had lost[55]. Property intended for sale had to be offered first to the next-of-kin heirs, even after division. If someone squandered the family's property falling under the *aviticitas*, or did not offer the property for his next-of-kin in case of alienation and encumbrance first, the relatives entitled to the claim could go to court and have the contract invalidated.

When the fideicommissum appeared in Hungarian law in the 17th century, the criticism of *aviticitas* was already on the agenda because of the fragmentation of property, as we have seen already in some of the wills. In fact, the purpose of the fideicommissum was also to allow the founder to place his acquired property under a bond separate from the *aviticitas*, preventing it from becoming entailed (since the fideicommissum property fell outside division), and also to remove the mostly royal donated property, which was the basis of the fideicommissum bond, from the authority of the king. In so far as the king had consented to the establishment of the fideicommissum, he had also waived his right to reclaim the donated property. In this way the fideicommissum property was ensured twice, and neither the King nor the family members could claim it.

Following the emergence of the fideicommissum, the two legal institutions (fideicommissum and *aviticitas*) co-existed, but while the second one was a binding principle in family property, the establishment of a fideicommissum depended primarily on the will of the founder. Thus, when the idea of abolishing *aviticitas* institution was raised in the first half of the 19th century, and even though there were radical ideologues who wanted to abolish fideicommissa as well, the fideicommissum was left untouched by the legislators. In fact, after the abolition of *aviticitas* in 1848, the property freed from the family bond was often restricted by its owners in the form of a fideicommissum, limiting the right of future generations to dispose of the family's property. In Hungary, the institution of

55 Béli, 2011, pp. 47–66.

the fideicommissum remained in place until 1948, when the Communist Party came to power and abolished it, by taking all these properties into state ownership.

Conclusion

As seen from the previously written subchapters the institution called fideicommissum has a broad history also in Hungary despite of the fact that it was introduced later than in other European countries. Although its appearance in Hungarian law was generated by the Hungarian high nobles attending the royal Court of Vienna, based on Austrian and other foreign examples, its regulation was the result of one man's vision — that of Palatine Pál Esterházy, who was the biggest landowner of the country at the time and who recognized that the fideicommissum could serve him well in preserving his family's name and status for later centuries, too. It turned out that he was right about this, as shown by the fact that the name Esterházy is well known both in Hungary and Austria still nowadays.

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The entailment of patrimony in Castile: historiography, lines of research and analysis of the mayorazgo in the 16th–18th centuries.

Isabel María Melero Muñoz
(Universidad de Sevilla / Sorbonne Université)

Abstract: This paper presents the institution of Entail System, its main characteristics, and its functioning. Therefore, a brief historiographical overview is conducted, and the different avenues of analysis and sources to understand entailment are presented. Following the tradition of bibliography, the perspectives of more current studies in the historiographical landscape are presented. One of the most innovative lines of inquiry focuses on entailment as a tool for social mobility in the Ancient Régime. On the other hand, the analysis of judicial conflict surrounding the tied estate, both in the social and family spheres. In this sense, the analysis of entailment and its litigious nature offers new perspectives of study, such as the roles of heirs, the capital and symbolic power of ties, or the leading role of women in this power space.

Keywords: Entail System, Historiography, Social History, Research lines, Conflictiveness, Laws of Toro, Social improvement, Women's History.

Introduction

In the modern centuries, the transmission of patrimony held paramount importance. In Castile, where the inheritance system was egalitarian, legislation mandated the distribution of assets among all forced heirs[1]. Notably, Castilian families employed the mayorazgo[2], a system of patrimonial entailment reminiscent of Italian trusts, strict family settlements, or the Entails System. In Italy, these were referred to as trusts; in Portugal, as morgados; in Germanic regions, as Familienfideicommiss; and in areas under Spanish dominion in France, as substitution fidéicommissaire and majorats[3]. In Castile, the institution of mayorazgo developed and was institutionalized with the *Leyes de Toro* in 1505, although its origins date back to the medieval centuries. Mayorazgo was an institution enabling the transmission of patrimony to a sole heir, with the assets remaining indivisible and inalienable. Consequently, the entailment became a fundamental tool to prevent the dispersion of the wealth of noble elites. Thus, the principal objective of mayorazgo was socio-economic preservation, as the entailment not only transmitted wealth but also a set of symbolic elements, such as the arms and surnames of the founders, seeking the perpetuation of family and lineage memory[4].

1. The main characteristics of the mayorazgo

The practice of entailing properties originated in the medieval centuries. The chronicler of Seville, Diego Ortiz de Zúñiga, in his classic work "Anales de Sevilla", made reference to the mayorazgo established by Juan de

1 Ferrer Alos, 2007, p. 38.
2 The institution of mayorazgo corresponds to the entailed estate. In this work, the Castilian term *mayorazgo* will be employed to distinguish it from other European legal figures.
3 The bibliography on European entailment systems is extensive; we mention only a few examples. For an approach to the French system, refer to: Petitjean, 1975; Augustin, 1989; Cossic, 2006; Descimon, 2007; Haddad, 2012. Para el sistema anglosajón: Bonfield, 1989; The trust in Germanic territories, Lanzinger, 2012.
For the Italian trust: Calonaci, 2005; Chauvard, 2015; Lanaro, 2012; For the Portuguese morgados: Rosa, 1996; Rosa, 2019, 2020, 2021, 2022; Rodrigues, 2021. For a global and/or comparative approach, for instance, Chauvard et al., 2012; Cooper, 1976; Melero Muñoz, 2022d.
4 Melero Muñoz, 2022a, pp. 167–213.

Mathe in 1291, granted through the favor of Sancho IV[5]. The Mathe mayorazgo has been regarded as one of the pioneering entailments, although more recent studies have revealed the existence of earlier property entailments. In his work on Sevillian mayorazgos, Cartaya Baños has identified earlier foundations, notably that of the Toledan mayor Juan Estébanez, dating back to 1229[6]. In any case, to witness the origin of this institution, we must trace back to the beginning of the 13th century. Therefore, the medieval centuries served as the cradle for the birth of the Castilian mayorazgo, with the first foundations appearing during this period. However, to observe the formal regulation of the mayorazgo, we must wait until the 16th century. The *Leyes de Toro* in 1505 were the ones that granted legal status to mayorazgos. During the *Cortes of Toledo* in 1502, an effort was made to unify the law derived from medieval tradition and the new Roman Canon law, resulting in this significant legislative body that marked the Early Modern Centuries[7]. In this context, the entailing of estates, which was already an entrenched practice, underwent regulation. The operational aspects of mayorazgos were delineated in provisions 40 through 46[8]. On the other hand, Law 39 recognized the entailments established through testamentary provisions[9]. Furthermore, Law 27 of Toro established the possibility of founding mayorazgos with a third and a fifth of the assets, without the need to obtain royal permission[10]. Therefore, the *Leyes de Toro* marked a turning point in the history of mayorazgo. The Crown made concessions to the founders, granting them the authority to establish clauses and provisions in their foundational documents[11]. Despite this, mayorazgos, in a general sense, shared a standardized structure and followed common patterns that characterize this Castilian institution.

5 Clavero, 1989, p. 23.
6 Cartaya Baños, 2018, p. 25.
7 Bermejo Castrillo, 2006, p. 408–409.
8 The details of these regulations for the entailments have been addressed in Melero Muñoz (2022b, pp. 67–69).
9 Cartaya Baños, 2018, p. 49.
10 Bermejo Castrillo, 2006, pp. 522–526.
11 These concessions to the founders by the Crown have been interpreted by historiography as weaknesses or ambivalences evident in the Laws of Toro. However, as Corina Luchía pointed out, they were rather a demonstration of the monarchy's ability to adapt to the needs demanded by noble power (Luchía, 2014, p. 315).

The Castilian mayorazgo exhibits distinctive features that unveil the essence of the institution. Mayorazgos were established through a donation deed – *contrato inter vivos* – or through testamentary means – *mortis causa* –, before a public notary[12]. Thus, the foundational document was arranged according to the founder's will, expressing the type of entailment, the succession system, the properties involved, exclusion clauses, and, finally, the conditions and obligations that the heirs were required to successors.

The typology of the mayorazgo was largely established based on the succession order determined by the founders. In Castile, the most common were regular mayorazgos, which followed criteria such as lineage – giving preference to the firstborn – degree (those closest to the founder), gender (favoring males over females), and lastly, age (preferring older heirs over younger ones)[13].

Hence, the ideal heir for regular mayorazgos was the eldest male. On the other hand, there were irregular mayorazgos, a set of entailments that did not follow the succession order of those mentioned earlier. Among them, the most common were those of strict agnation or masculine succession, where the succession occurred through the male line – from male to male – excluding women and their descendants from the mayorazgo. A variant of the latter was the ones with artificial agnation, where women were excluded, but not their male offspring. In contrast to these masculine mayorazgos were the feminine ones – or of femininity – whose inheritances favored the women of the family. Additionally, other types developed, such as *segundogenitura* – where the second line was favored over the firstborn – or elective mayorazgos, in which the possessors had the authority to designate their successors[14]. Therefore, in broad terms, primogeniture and male lineage were indispensable pillars of mayorazgos. Legitimacy was also a requirement – at least in theory – for the possessors,

12 Clavero, 1989, p. 235.

13 Clavero, 1989, pp. 211–214.

14 Concerning this typology of mayorazgos, refer to Clavero, 1989, pp. 214–128. These types of entailments correspond to the classical categorization found in the legal framework, and these were terms already in use during that era. Nevertheless, the practice of entailment was more intricate, leading to the establishment of mixed mayorazgos in which founders combined different succession systems and types of entailments to ensure succession, see Melero Muñoz, 2022b, pp. 97–104.

as expressed in the clause excluding illegitimate heirs present in the foundations. In addition, this clause was accompanied by other crucial ones, such as the arms and surnames clause, requiring each possessor to adopt the surnames of the founder and bear the family coat of arms.

The entailed properties, on the other hand, primarily comprised real estate. Palatial houses, estates, and the entirety of the family's properties were entailed along with movable assets, which could include precious objects, jewelry, libraries, works of art, and significant portrait galleries depicting the lineage. Additionally, noble titles such as marquessates or dukedoms were also entailed for the benefit of the heir, along with offices such as municipal positions. Therefore, every asset of the lineage was susceptible to being entailed to the family's mayorazgo, including the aggregate of incomes, fees, rights, and annuities that provided economic liquidity and enhanced the benefits of the entailment. The entailed properties were inalienable and indivisible, meaning they could not be sold, mortgaged, or alienated, placing the possessors as mere usufructuaries who enjoyed the income generated by the mayorazgo[15]. Although, in practice, the Crown allowed the encumbering or exchange of some assets following the presentation of just causes. Economic incapacity of the possessors or the need to change assets to acquire more advantageous ones were some of the cited motivations that permitted the partial disentanglement of the patrimony[16].

The exclusion clauses and conditions that the possessors of mayorazgos had to fulfill were numerous and varied. First and foremost, an indispensable clause was that of arms and surnames, whereby each possessor had to bear the surnames of the founder and display the lineage's heraldic symbols, which were also to be placed on tapestries and facades of the palatial houses they received. With this clause, founders transmitted the identifying symbols of the lineage, ensuring the perpetuation of their memory.

15 For an approach to the typology of attachable assets, refer to Cartaya Baños, 2018, pp. 100–150, and Melero Muñoz, 2022b, pp. 105–108.

16 Practice frequently reveals how the Crown would grant licenses to encumber or sell certain attached assets (Usunáriz Garayoa, 2009, p. 399). For this purpose, the possessors had to present just public or private causes. Economic incapacity of the possessors to meet debts was one of the most common reasons to obtain the disentailment license (Carmona Ruíz, 2009, p. 119).
Many licenses were also granted among the just public causes under the pretext of joining the king's military service (Mariluz Urquijo, 1969, pp. 71–72).

The matrimonial clause was also indispensable, covering a wide range; this provision regulated the marriages of the possessors. This was fundamental in the strategies of lineage reproduction, where matrimonial policy played a key role. Subsequently, exclusion clauses were established. Among them, the exclusion clause of religious and clerics was ever-present; family members who had taken religious vows were kept apart from family ties. This was primarily due to their incapacity to have legitimate offspring[17], although reference was also made to the vow of poverty imposed by some religious orders. Thus, illegitimate descendants were also excluded; all possessors of mayorazgos had to be born of legitimate marriage.

In the foundational documents, there was also the exclusion clause for those who had committed a crime against majesty and the exclusion of the deaf, mute, insane, and mentally impaired – in other words, those with any physical or mental illness. The extensive range of clauses included in the foundational documents encompassed, among others, the residence clause (compelling possessors to settle where the assets were located), the minors clause (regulating succession in case the heir was a minor and appointing an administrator), and clauses for the proper management and administration of the entailed assets, among many others. Likewise, alongside these clauses, each founder, at their discretion, would establish a series of obligations that the possessors had to fulfill. For example, providing for their brothers deprived of their legitimate share or undertaking certain charitable works for the repose of the souls of the founders[18].

Thus, concentrating the family's wealth in a single heir was a key instrument for the socio-economic perpetuation of noble elites. The possessor of the mayorazgo became the standard-bearer of the lineage, enjoying the entailed assets and the income they generated. Furthermore, the heir was adorned with the identifying symbols of the lineage[19], by signing with

17 For the same reason, members of religious orders who took a vow of celibacy, such as the knights of the Order of San Juan, were also excluded (Clavero, 1989, pp. 243-244).
18 While some clauses were consistently present in the deeds, others depended on the founders. They were highly varied, and, given the discretion of the founders, they could exhibit variations or particularities. For more information and details on exclusion clauses and their specific cases, refer to Melero Muñoz, 2022b, pp. 108-132.
19 The ideal of perpetuating families lay in the transmission of the identifying symbols of the lineage (Chacón Jiménez, 1995, pp. 84-85).

the surnames of the founder and displaying the heraldic symbols that showcased the lineage's pedigree, the possessor of the mayorazgo became the standard-bearer of the House. Therefore, the mayorazgo had a strong socio-economic value that, to the detriment of other family members, was enjoyed by a sole possessor who transmitted the legacy from generation to generation in perpetuity. Notably, one of the characteristics of mayorazgos was the conflict that surrounded them. The ambition of relatives to obtain the valuable mayorazgo, especially those siblings who had been deprived of their legitimate shares, fueled numerous conflicts within families. Disputes over the succession of mayorazgos were arduous and continuous during the modern centuries. However, they were not exclusive; the conflict-ridden realm of entailment gave rise to disputes over demands for support or dowries for those relatives excluded from the entailed inheritance. Beyond the family sphere, it involved administrators, creditors, other property owners, and even tenants or settlers of the entailed properties. Therefore, when we approach the study of Castilian mayorazgos, we inevitably must also address the litigious nature that surrounded them, occupying the courts of justice[20].

2. Studying the mayorazgo: historiography and new perspectives of analysis

The relevance of the institution of mayorazgo garnered early attention from a significant portion of historiography. Legal historians were pioneers in their studies, given the institutional nature of mayorazgo. In 1974, Bartolomé Clavero published the work *Mayorazgo: Propiedad feudal en Castilla (1396-1836)*[21], which marked a historiographic milestone. In this work, the author analyzed the institutional functioning of mayorazgo, delving into its operations primarily through legislative analysis and legal literature. Clavero's work, still a reference today, was followed by numerous studies by other legal historians, which occupied the historiography of the 1980s and 1990s. More recently, legal historians have continued to analyze mayorazgo from different perspectives. Notably, the

20 For a typology of conflicts over mayorazgos, see Melero Muñoz, 2022b, pp. 255-ss.
21 Clavero, 1989.

studies by López Nevot stand out, wherein he examines, for instance, the non-confiscability of entailed assets[22].

Concurrently with this historiographical trend, the entailment of assets began to be the subject of studies by historians, aligning with research on nobility, economic history, and the importance of Family History. On one hand, in the reconstruction of noble houses and their significance in Ancien Régime society, mayorazgos played a crucial role. A significant portion of historiography dedicated studies to prominent lineages where patrimonial entailment was an indispensable element[23]. In this regard, the economic value of mayorazgo for the consolidation of family power was undeniable. Pérez Picazo conducted a significant study on the influence of the entailment in the economy of Murcia[24]. On the other hand, in the 1990s, James Casey published his work on family history[25], which would set a historiographical path. In this context of the revitalization of family studies, nobility gained particular prominence. In the same vein, mayorazgo emerged as a key subject of study to understand the strategies of perpetuation and patrimonial transmission employed by the elites[26].

In recent years, the mayorazgo has been analyzed as a tool for the social ascent of the enriched bourgeoisie. In the early days of the institution, establishing a mayorazgo required obtaining a Royal Faculty that authorized the entailing of the entire patrimony for the benefit of a single heir. However, the *Leyes de Toro* of 1505 changed this paradigm. The provision 27 of Toro allowed for the entailing of patrimony without the need for royal permission, as long as it did not affect the legitimate share of forced heirs[27]. Thus, the so-called mayorazgos of *tercio* and *quinto* were born, as it allowed entailing the *tercio de mejora* (one-third for improvement) and the *quinto de libre disposición* (one-fifth for free disposition), which

22 López Nevot, 2000, 2006.
23 Some reference works include: Atienza Hernández, 1987; Molina Puche, 2009; Montilla García, 1986; Palencia Herrejón, 2002.
24 Pérez Picazo, 1989, 1990.
25 Casey, 1990.
26 It would be impossible to mention all the works done; however, here are a few examples: Chacón Jiménez, 1995; Hernández Franco, 2001; Hernández Franco & Peñafiel Ramón, 1998; Dedieu, 1998; Fargas Peñarrocha, 1999; Soria Mesa, 2000.
27 Bermejo, 2006, pp. 522-526.

in practice represented a substantial part of the family patrimony. Indeed, the 16th century witnessed a significant increase in the establishment of mayorazgos, a trend that continued into the following century, characterized by the so-called short mayorazgos[28]. It wasn't until the 18th century that the obligation of royal permission was reinstated. Carlos III, in the Royal Decree of 1789, imposed the requirement to request a Royal Faculty to establish new mayorazgos, justifying it by the encouragement of idleness that small entailments had caused[29].

In any case, the *Leyes de Toro*, especially provision 27, marked a turning point in the history of mayorazgo. Since then, a new social stratum, no longer limited to the traditional aristocracy, could participate in the entailment of assets[30]. Thus, numerous affluent families on the path to nobility used the mayorazgo as an effective tool in their *cursus honorum*. Particularly within this group, what we term new Atlantic elites stood out – those families enriched through the opportunities provided by the Spanish colonial enterprises. In line with social mobility, studies on mayorazgo as a social elevator intensified, becoming a renewed historiographical trend and leading to abundant research[31].

In this way, recent historiography has been prolific in works focusing on the mayorazgo. However, despite numerous research efforts, the historiographical landscape still lacked more comprehensive studies that approached the mayorazgo from the perspective of social history. Fernández Izquierdo conducted an interesting bibliometric study focused on the mayorazgo[32]. In this study, the main historiographical currents that had analyzed the institution were identified, with genealogy and local studies journals standing out at the forefront, followed by those focused on legal history, medieval history, and modern history. The bibliometric study thus attested to the need for comprehensive studies on entailment.

28 Mariluz Urquijo, 1969, p. 56.
29 Nov. Rec. lib. X, Titulo XVII, ley XII.
30 Cartaya Baños, 2018, pp. 160–161.
31 Some examples, among many others, include: Girón Pascual, 2010; Hernández Franco, 2006; Iglesias Rodríguez, 2019; Melero Muñoz, 2018b, 2020a; Palencia Herrejón, 2002.
32 Fernández Izquierdo, 2020.

However, Juan Cartaya Baños' work, published in 2018, on mayorazgos in 16th-century Seville represents an important and comprehensive reference study in the current landscape[33]. The author analyzes throughout the work the entailment of assets as an economic and social practice employed by the noble elites of 16th-century Seville. Across the pages of this work, Cartaya Baños addresses fundamental aspects of the institution, from foundational writings and their clauses to the typology of assets or the profile of the founders who participated in the entailment of assets. Additionally, this book concludes with an interesting chapter and appendix dedicated to chapels, chaplaincies, and pious works that were often associated with the entailment of assets.

3. New historiographical currents and study horizons

In recent decades, historiography has diversified the currents dedicated to entailment, primarily from the perspective of social history, the history of families, or more recently, at the intersection of the history of conflicts in the modern centuries[34]. The history of violence or conflict has aroused the interest of historians, who glimpsed the conflictive space as an ideal scenario for the analysis of family relationships. In this sense, entailment could not be dissociated from the immense litigation that surrounded it.

33 Cartaya Baños, 2018.

34 In the current historiographical landscape, novel studies related to Family History, Population History, and the History of Conflict are being conducted, which also have a long and consolidated historiographical tradition. Among others, noteworthy projects such as "Familias, trayectorias y desigualdades sociales en la España centro-meridional – 1700-1930 (HAR2017-84226-C6-2-P)" or "Familia, dependencia y ciclo vital en España 1700-1860 (PID2020-119980GB-I00)" directed by Francisco García González and Jesús M.ª González Beltrán, are clear examples, resulting in numerous monographs on this topic. In this field of analysis, undoubtedly, entailment is conceived as a fundamental formula in family strategies. See, for example, González Beltrán & Carrasco González, 2022; Pezzi Cristóbal & Hidalgo Fernández, 2022. Additionally, conflicts generated around the entailments allow tracing the different dilemmas in which noble families were involved. In this sense, other novel works and lines of research carried out by researchers such as Pablo Blanco Carrasco, Máximo García Fernández, Juan Manuel Bartolomé Bartolomé, Juan Hernández Franco, who focus on the conflicts that affected families and their different generations (Proyecto de investigación I+D+i, 2021-25: Conflictos intergeneracionales y procesos de civilización desde la juventud en los escenarios ibéricos del Antiguo Régimen (Fam&Civ), PID2020-113012GB-I00). Once again, a horizon of analysis is opened for these intergenerational conflicts provoked by the possession of mayorazgos.

The numerous conflicts over the succession of entailments that took place within the family bear witness to this. Indeed, conflicts over entailments have been the focus of numerous studies, especially those dedicated to specific lawsuits[35].

In other ways, the conflict over the entailed estates had not been approached as a whole from the point of view of social and cultural history[36]. The analysis of litigation over the entailments revealed that it extended beyond legal battles for obtaining the entailment, although these were the most relevant and transcendent. The transmission of the entire patrimony to a single heir led to other lawsuits affecting the family, such as claims for dowries or rights to maintenance. However, the conflictual universe of entailments transcended the family sphere and affected other members of the community. Thus, numerous conflicts arose regarding the management and administration of the entailed properties, pitting owners against administrators, other property owners, tenants, or settlers of the properties.

Moreover, in conducting this study, the use and cross-referencing of various official and legal sources – especially notarial records, judicial file, and *porcones* – have allowed us to discern the difference between theoretical constructs and documentary practices. Foundational deeds, as mentioned earlier, are preserved in the offices of public notaries. These deeds enable us to analyze the founders' interests, the strategies outlined by lineages, as well as the more personal concerns delineated in the various provisions established.

Judicial sources, on the other hand, are very rich and help complete the puzzle of the entailment phenomenon. Judicial records formed throughout the legal process contain a wide range of information. In these records, in addition to legal documentation (transcripts, proceedings, powers, judgments, etc.), we can find economic information (administration accounts of the entail, charges and data, receipts, lease contracts, etc.) On the other hand, there is evidentiary documentation required by the

35 Carmona Ruíz, 2009; Rojo Gallego-Burín, 2011-2014; Melero Muñoz, 2018c, 2019.
36 This issue was addressed in the doctoral research and resulted in the publication of a monograph on this topic (Melero Muñoz, 2022b).

courts (entail foundations, baptism, marriage, death certificates, family trees, etc.) Otherwise, these records included statements from the parties involved, as well as statements from witnesses, as their testimonies were crucial for the resolution of the lawsuit. Analyzing these testimonies provides the historian with valuable information since these individuals were not directly involved in the litigation. Moreover, the witnesses presented in court allow the tracing of the clientelistic networks (relational capital) of the protagonists in the conflicts. Finally, within the judicial records, another type of documents should be highlighted, as they contain reports from professionals participating in the legal process either at the request of the parties or at the request of the judge. Therefore, there are reports from architects, master carpenters, or land appraisers to assess the entailed properties. Reports from doctors or reports from elementary school teachers also appear. The latter had a fundamental role in verifying the veracity of the documents presented, as genealogical construction and invention, as well as document forgery, were a reality in the early modern centuries[37].

Another essential type of legal documents was the *porcones*, that is, the legal pleadings presented by the opposing parties in a lawsuit[38]. In Castile, these documents were called *porcones*, alluding to the conjunction of the Spanish words 'por' (by) and 'con' (against): "Por María Gutiérrez con Luis López". These legal pleadings were typically printed documents that the parties presented to defend their interests. They included information about the disputed entail, the opposing parties, their points of defense, and other relevant aspects, such as witness statements. The *porcones* did not require a printing license[39], for this reason they were very abundant since their ultimate goal was to create favorable public opinion and, ultimately, convince the court to tip the scales of justice in their favor[40].

37 Soria Mesa, 2007. For an exploration of genealogical falsification in lawsuits over mayorazgos, see, Melero Muñoz, 2020b.

38 Similar documents in France were known as *factum* (Vendrad-Voyer, 2013).

39 Gómez González, 2020, pp. 212–213; Gómez González, 2022.

40 This documentation was pioneeringly studied by legal historians; see Coronas González, 2003; García Cubero, 2004; Cebreiros Álvarez, 2011–2014. In recent years, this source has been revalued by historians. Researcher Inés Gómez González, for instance, has led a research project on this matter: "Los usos sociales de las defensas jurídicas: publicación y circulación de los porcones en el Antiguo Régimen (HAR2017-82817-P)". This project has resulted in a monograph that examines legal documents from a broad perspective, Gómez González, 2022.

In this way, legislation and jurisprudence, rigorously analyzed by legal historians, gave us an idyllic and static image of the institution; however, documentation reveals a much richer reality. Interesting horizons of study are opened, showing how basic and recognized pillars of the entailments wavered in the face of a more complex society. At a first level, the inalienability and immutability of the assets defended by the regulations of the institution, in practice, were a chimera. The monarchy allowed the census and even the alienation of linked assets, after the mediation of just causes, which referred to economic needs or the renewed interests of the new owners. This had the consequence that, not infrequently, many entails did not have great economic benefits. In such cases, one might wonder, why were the legal struggles to obtain the entail continuous despite their economic decline? Although economic benefit was undoubtedly a value and attraction of the mayorazgos, it was not the only thing received with the linked inheritance. The entailment functioned as a transmitter of the identity elements of the lineage endowed with significant symbolic value. Indeed, the heir to the entailment carried the arms and surnames, was anointed with the honor of the lineage, inherited the social capital and privileges that his position granted him. Thus, the analysis of symbolic capital and the intangible heritage transmitted with the entails is an interesting and fruitful line of research[41].

On the other hand, the ideal heir adorned with primogeniture and required legitimacy was not always possible either. The passage of generations, the continuous deaths of heirs, and the interpretations of the clauses favored the entry into possession of entails by family members who were initially excluded, such as clergy or illegitimate offspring. The use of ruses and legal strategies was constant in the courts of justice, allowing the entry and triumph of family members who emerged as heads of the lineage. In this regard, the analysis of these tensions between legislation and documentary practice is extremely interesting, highlighting the protagonism of different family groups.

41 In another work, there has been an approach to the symbolic capital transmitted with the mayorazgos (Melero Muñoz, 2022a, especially the third part, pp. 167–212). The symbolism and rituals in the possession ceremonies of the entailments have also been addressed, Melero Muñoz, in press a.

Alternatively, contrary to a highly masculinized image of the institution, where the male firstborn heir emerged as the standard-bearer of the lineage, the practice reveals how women in the family played a special role in this power space. The analysis of the role of women in mayorazgos, as founders, litigants, and possessors, is crucial and represents a current and innovative line of study[42]. Furthermore, the conflictive context and the presence of women in the courts of justice provide an ideal space for analysis. In an initial approach to the topic, the power of women and the various strategies used by male family members to delegitimize their rights are revealed, such as continuous allusions to the madness and lack of judgment of their female co-litigants[43]. Undoubtedly, this line of research is in need of in-depth analysis and systematic studies that will yield prolific results[44]. Another relevant field of analysis is the role played by women in the family when, as mothers, they assumed the role of tutors or guardians of minor heirs. The legislation of the modern era granted parental authority (*patria potestas*) to the paternal figure. When the father passed away, parental authority was not automatically transferred to the mother[45]. Therefore, mothers had to petition for the guardianship of their children in the courts of justice, generating interesting documents, especially when it came to the managing of the linked heritage in entails. Thus, a new historiographical horizon arises in the thorough analysis of the role played by women in the phenomenon of property entailments, with their presence in the courts of justice being an ideal scenario for observation.

42 Currently, a historiographical review is underway regarding the leading role that women played in the Early Modern period. In this regard, it is worth noting the research project led by researchers Gloria Franco Rubio and Natalia González Heras: "Poderosas, influyentes, comprometidas y útiles. La vida de las mujeres en los espacios cortesanos, domésticos, económicos, políticos y culturales (España en el largo siglo XVIII)" (PID2021-123444NB-I00). Another prominent and active I+D+i project is led by Margarita M. Birriel Salcedo and Inmaculada Arias de Saavedra Alías "Los trabajos de las Mujeres en la Andalucía Moderna (TRAMA)" (B-HUM724-UGR20).

43 There has been a preliminary approach in Melero Muñoz, 2022c, 2021.

44 The historian Enrique Soria Mesa recently highlighted this fact during the XVII Seminar "La vida cotidiana en la España Moderna: Mujeres poderosas, influyentes y útiles" held at the Complutense University of Madrid on April 18-20, 2023. Soria Mesa participated with a conference titled "Ricas y poderosas. Mujeres y mayorazgos en la Edad Moderna". In this presentation, he highlighted the relevance of women in the phenomenon of property entailing, emphasizing the need for quantitative and systematic studies. Similarly, Soria Mesa mentioned that he is working on a research project with the researcher José María García Ríos that addresses this issue and will undoubtedly reveal crucial information.

45 Unlike the Early Modern period, in medieval centuries, the transmission of *patria potestas* to the mother occurred automatically upon the father's death (Gacto Fernández, 1984, p. 44).

On the other hand, the fact that paternal authority did not transfer automatically to mothers meant that guardianship or curatorship of minor heirs could be entrusted to other relatives or even individuals outside the family circle. In this regard, another fundamental perspective of study is opened: the role of guardians and curators in defending the interests of minor heirs. Furthermore, the performance of their duties often led them to conflict and a continuous presence in the courts of justice. Undoubtedly, minor heirs of entails, being in a minority, are a subject of study that can yield interesting results in various aspects, as mentioned earlier, or others such as issues related to education.

Conclusion

In conclusion, the extensive bibliography and historiographical legacy surrounding mayorazgos have not exhausted this field of study. The research avenues that emerge around the entail institution are numerous and approached from different perspectives and fields of analysis. Likewise, historians still face significant challenges in entail research. On one hand, advancing in quantitative studies that provide reliable and comprehensive data to elucidate the real extent of Castilian mayorazgos. On the other hand, a European perspective, conducting large-scale comparative studies, establishing common points of analysis, delineating convergences and divergences among different European systems of entailment. Ultimately, tracing the role played by Castilian entails and their permeability and influence on other European systems.

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Entailment in the Canary Islands. State of the art and new perspectives of historical research.

Judit Gutiérrez de Armas and Juan Ramón Núñez Pestano
(Universidad de La Laguna)

Abstract: The purpose of this paper is to provide a comprehensive overview and critique of the current state of Entailment in the Canary Islands. The analysis will focus on relevant literature, serving a dual purpose. Firstly, it will present the current state of the art regarding the topic, including the number of entails, their chronologies, main properties, and intrafamily and social conflicts. Secondly, the paper aims to identify gaps in knowledge and areas in need of further attention. The study outlines the progress and major contributors, theoretical and methodological frameworks employed, and present challenges in the field of entailment.

Keywords: *mayorazgo*, chaplaincy, elites, disentailment, conflict.

Introduction

Conducting a state of the art is always complex. In the case of Entailment, this task presents additional challenges: because the study of entailment has often been a secondary focus in research on elites, property, or artistic heritage, especially for chronologies after the mid-17th century.

Secondly, because of studies on entails in the Canary Islands are often limited in their scope and approach. Our understanding of the entailment phenomenon on the islands of Gran Canaria and Tenerife remains incomplete, despite the availability of studies with larger scope and more rigorous methodology[1]. As for the other Canary Islands, information about entailment is still in its early stages or practically non-existent. Also, with the exception of the doctoral thesis of Vicente Suárez Grimón[2], which has a strong focus on economic history, disentailment is also unexplored.

Considering the above, rather than carrying out an in-depth analysis of the context in which entailment appears within the research developed in the Canary Islands, this state of the art tries to provide an overview of the most influential and representative studies in this topic, but at the same time recognizing the gaps and emerging areas of research. Thus, the paper is divided into four main sections exploring different aspects of entailment in the Canary Islands. The first section analyzes the relationship between entailment, repartimiento[3], and the formation of large entails in the Canary Islands. This was a central theme in Canarian historiography at the end of the 1980s. In the second point, a descriptive characterization of the entailment in the Canaries will be provide, attending to its foundational chronologies, items entailed and the process of disentailment. We will also offer a comparative analysis of similar peripheral areas of the Spanish Monarchy. The third section presents studies that consider the entail as a corporate body, paying heed to internal hierarchies, its gender dimension, and analizing the succession regime and the familial conflict generated around this issue. Finally, in the fourth section, new readings on entailment from gender studies, environmental history and historical archiving are presented.

From a critical and analytical approach to historiography, this state of the art is expected to contribute to the expansion of knowledge on the Canary Islands' entails and to encourage future research to fill in the existing gaps, promoting a more complete and detailed understanding of this historical phenomenon.

1 Suárez Grimón, 1987; Arbelo García, 1994, 1996.
2 Suárez Grimón, 1987.
3 The concept defines the system of distribution of land and water among the people who had participated in the conquest of the islands (Diccionario Histórico del Español de Canarias).

1. *Repartimientos*, Entailment and Large Property: A Non-Representative Connection.

Studies of land ownership and landowners during the Early Modern Age have highlighted the importance of entailment and the process of land concentration. In the Canary Islands, this topic was initially investigated in the 1970s following the publication by Elías Serra Ràfols[4] of the first four books of the original property documents (data) of Tenerife[5]. The analysis indicated that the repartimiento had benefitted the relatives of governors and conquest captains to a greater extent and provided far less benefit to the soldiers and settlers who arrived to colonize the islands. Also, only the oldest *mayorazgos* were known by historians at the time, such as those belonging to Adelantado don Alonso Fernández de Lugo and Bartolomé de Ponte. That information is similar to what classic historians, such as Millares or Viera y Clavijo, have expressed. It formed the basis for explaining the origin of the large repartimientos of land and water that followed the conquest. Thus, it was applied in multiple studies over the following years[6]. This explanation transferred to the Canaries the thesis developed by Carrión, Malefakis and Vinces Vives about the *repartimientos* during the late medieval period as origin for the formation of big secular property in Castille, especially in Andalusia. This thesis was kept for some time, even though it was refuted by Antonio M. Bernal y Manuel González Jiménez among others. These authors proposed that between the repartimiento of Seville in the 13th century and the rise of the great noble houses during the Trastámara Revolution in the last decades of the 14th century, there had been an important sizeable depopulation, and those repartimientos had generated an important mass of small and medium property owners.

4 Serra Ràfols, 1978.

5 A *data* was a privilege granted by the Catholic Monarchs to their Captains and *Adelantados* for the practice of donations or distributions of lands and other properties in the recently conquered Canary Islands (Diccionario Histórico del Español de Canarias). The *data* books were published in a series in the *Revista de Historia Canaria* and subsequently compiled in a single volume published by the Instituto de Estudios Canarios. Serra Ràfols, 1978.

6 Alemán et al., 1978, pp. 93–101; Jiménez Sánchez, 1940; De la Rosa, 1968; Serra Ràfols, 1978; Guimerá Ramina, 1980.

This alternative explanation had an impact on the research carried out by some of his students at the Universidad de La Laguna. In his doctoral thesis, presented in 1983, Eduardo Aznar laid out the differences between the *repartimientos* in the Iberian Kingdoms and Tenerife, where a small, medium, and big property coexisted[7]. A year later, during his dissertation about the dynamics of land ownership in Icod de los Vinos (Tenerife), Juan Ramón Núñez Pestano demonstrated how in some cases, the land *datas* granted after the conquest were indeed a starting point for the formation of some big property, like the ones of the Ponte or the Hoyo. However, he also noted how other important *datas* became gradually fragmented, resulting in the creation of several small properties. Small *datas* faced similar challenges and were often sold by their owners in the face of economic difficulties[8]. In a contemporary study, Antonio Macías reached similar conclusions, placing the generalization of the *mayorazgo* in the last quarter of the 17th century[9].

The proliferation of studies ended up refuting the idea of large property (entailed or not) having its origin in the repartimiento. In 1991, Juan Manuel Bello León argued that «los resultados de los repartimientos nos son aún desconocidos en su globalidad (...) podemos afirmar es que es erróneo vincular a los repartimientos el origen de la gran propiedad en las islas»[10]. A case study conducted by him on the valley of La Orotava (Tenerife) shows that 98% of the beneficiaries of the *datas* were small and medium-sized landowners, who accumulated 80% of the irrigated land. Thus, the repartimiento would mark a clear trend to the formation of big property but within a slow process along the following centuries[11]. In a later study conducted with Ana Viña Brito, the authors identify two stages in the process of land accumulation and concentration: The first stage involved the distribution of large *datas*, and the second the purchase of *datas* from foreigners and small beneficiaries, as well as the accumulation of property through matrimonial strategies and the usurpation and illegal

7 Aznar Vellejo, 1983, p. 445.
8 Núñez Pestano, 1984
9 Macías Hernández, 1984, p. 2308.
10 [although the results of the *repartimientos* are still unknown to us in their entirety (...) we can affirm that it is wrong to connect the origin of large properties in the islands with the *repartimientos*]. Bello León, 1991, p. 208.
11 Bello León, 1990, pp. 26-30.

appropriation of land[12]. Later, Viña Brito and Núñez Pestano analyzed the evolution of property in Los Realejos (Tenerife) and reached similar conclusions, relativizing the importance of *datas* and identifying the 17th century as a key moment in the process of the formation of large entailed estates in the islands conquered by the crown (Gran Canaria, La Palma and Tenerife)[13]. This juncture coincided with the establishment of social dynamics, stratification, reproduction and construction of social groups.

This new interpretation was confirmed in the exhaustive doctoral thesis by Vicente Súarez Grimón the first extensive research on the phenomenon of entailment in the Canary Islands[14]. Shortly afterwards, and inspired by this thesis, Adolfo Arbelo García published a study of the entails belonging to members of the Tenerife elite as part of his doctoral thesis on the island's power elites during the crisis of the Ancien Régime[15]. Even though both authors coincide in marking that some *mayorazgos* were indeed founded from big repartimiento *datas* of land and water, most of the possessions that made up the entail were inherited, purchased by the founders and possessors, or usurped from royal lands in the 17th and 18th centuries[16]. In the same way, more recent case studies are framed, such as that of Francisco Báez and Roberto González Zalacaín on the dynamics of land tenure in Taganana (Tenerife) in the 16th century, that of Juan Ramón Núñez Pestano on the *dehesa* of the Orotava Valley, or that with Judit Gutiérrez de Armas on the formation and subsequent entailment of the Hacienda de Los Tanques (El Sauzal)[17]. Furthermore, there are more extensive studies, such as that by Mariano Gambín on the first *repartimientos* of Gran Canaria and that by Francisco Báez on the *repartimiento* of Tenerife, or the recent book based on 83 case studies of wine-growing *haciendas* in Tenerife[18].

12 Viña Brito & Bello León, 1993, pp. 572–573.
13 Viña Brito & Núñez Pestano, 1996.
14 Súarez Grimón, 1987, vol. II, 552–557.
15 Arbelo García, 1994, 1996.
16 Suárez Grimón, 1987, vol. II, p. 582.
17 Báez Hernández & González Zalacaín, 2005; Núñez Pestano, 2015; Gutiérrez de Armas & Núñez Pestano, 2016.
18 Gambín García, 2014; Báez Hernández, 2016; Núñez Pestano et al., 2022.

Their findings allow us to conclude two main issues: first, *datas* were not the predominant origin of the large secular property of the Ancien Régime, except in distinct cases such as the lands of the Adelantamiento Mayor de Canarias or the *repartimientos* for the Ponte family[19]; second, that models were erroneously generalised by Canarian historiography prior to the 1980s. On the contrary, for most of the cases, large property and singularly the wine *haciendas* and farmsteads that build the core of the *mayorazgos,* were the result both of fragmentation processes of the large *datas* destined to the sugarcane crops and their transformation into wine crops, and of processes of accumulation through purchase and dowries that were prolonged across the early modernity.

2. Characterizing Entailment in the Canary Islands: Chronologies, Entailed Property and Disentailment

The aforementioned studies of Suárez Grimón and Arbelo García provide a fairly comprehensive perspective in terms of the total number of entails, the socio-economic profile of the founders, the items entailed, the rules of succession, and so on.

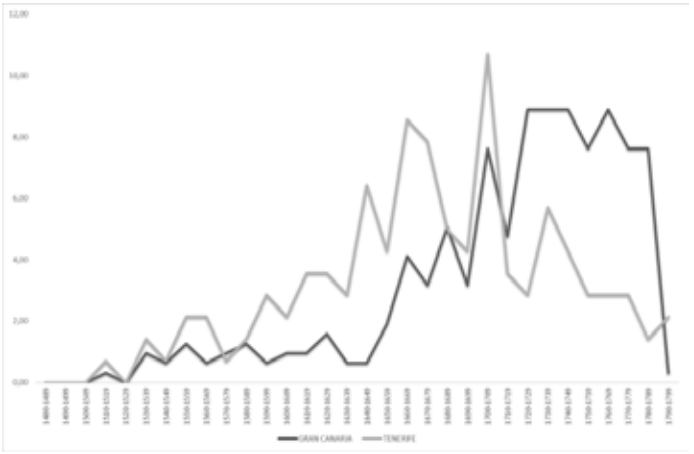
2.1. Entailment in the Canaries: a late phenomenon.

For Gran Canaria, Suárez Grimón has made a systematic tracking of foundational and addition acts of *mayorazgos*, entails and patronages between the 16th and 18th centuries in the notarial records of de Gran Canaria which allowed him to identify 341 entail foundations between the 16th and 18th centuries, 21 from the 16th century, 75 from the 17th century and 224 from the 18th century (21 of which do not have dates). Of those, 171 were entails (four of which were *mayorazgos* founded with royal license) and 170 were patronages[20]. For Tenerife, Arbelo conducted research using disentailment files from members of Tenerife's elite during

19 Arbelo García, 1996, appendix.
20 Suárez Grimón, 1987, p. 459; 552.

the 17th century, without including chapels. Although there were surely many more, he identified 138 entails, of which 17 were established in the 16th century, 65 in the 17th century, and 56 in the 18th century[21]. While the data may be incomplete, the selection is enough to provide a panoramic view of the phenomenon of entailment foundations in two of the seven islands. Currently, Arbelo is researching the case of La Palma, the third island to be conquered by the Crown.

Figure 1. Entail foundations in Gran Canaria and Tenerife during the 16th to 18th centuries.



Source: Own creation. Data from Suárez Grimón (1989), Macías (1984) and Arbelo García (1996).

The data indicates that most of the entail foundations were concentrated between the middle of the 16th century and the end of the 18th century. Second born inheritances were present in some wealthy households but were not common[22].

The data analysis has two possible interpretations. On one hand, Arbelo, Núñez Pestano, and Monzón Perdomo argue that Entailment played a

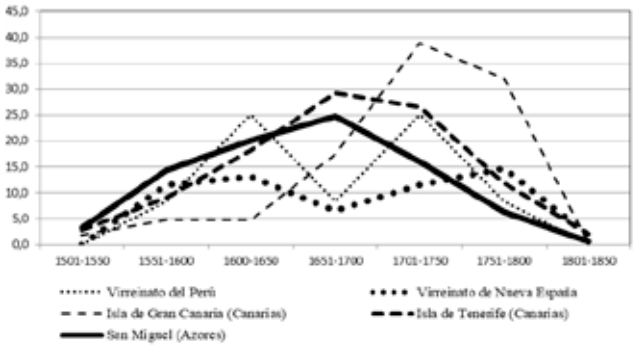
21 Arbelo García, 1996, pp. 767–770, 792.
22 Arbelo García, 1996, p. 791.

significant role in shaping the aristocratic curricula of families in social promotion and in the consolidation of their wealth[23]. According to this perspective, consolidation occurred mainly during the mid-17th century. On the other hand, Suárez Grimón and Macías Hernández contend that the foundation of entails was especially significant from 1680 to 1720, coinciding with an economic downturn in wine exports. Both authors suggest that the foundation of entails was a strategic response to the need to preserve family property in the face of changes in the economic landscape[24].

Also, Núñez and Monzón recently compared these statistics from the Canary Islands to those known from other Atlantic islands and Castilian America[25]. Although the authors caution that these data are only approximations and should be used with care, they have conducted a comparative analysis of the chronologies of the Entailment foundation in Portugal (including Brazil and Cape Verde)[26], San Miguel (Azores Islands)[27], Spanish América[28] and, within Peninsular Spain, in the País Valenciano[29], Galicia[30] and Murcia[31], based on published research.

23 Arbelo García, 1996; Arbelo García, 2020, p. 237; Núñez Pestano & Monzón Perdomo, 2021.
24 Suárez Grimón, 1987, vol. II, p. 1071; Macías Hernández, 1995, pp. 211–212.
25 Núñez Pestano & Monzón Perdomo, 2021.
26 Despite the difficulty in estimating the number of foundations, the evidence provided by the decrees of abolition of the entailed estates promulgated by the Marquis of Pombal reveals that between 1771 and 1777 about 14,500 entails were eliminated in Portugal. Despite this, the register of entails of 1860 shows that there were still approximately 675 large entails that remained intact (Rosa, 2020, p. 7). Furthermore, according to M. L. Rosa, in the Cape Verdean territories and especially in Brazil, the creation of *morgadios* was a common phenomenon once the conquest was consolidated (Rosa, 2020).
27 In his paper on entailment on the island of San Miguel, J. D. Rodríguez (2021) has identified the presence of 1,241 *morgadios* established between the mid-15th century and the 19th century.
28 Through an exhaustive analysis of Americanist historiography, he has recovered 8 entailed foundations in the audiencia of Quito (mostly in the 18th century), 27 in the province of Venezuela, 5 in Nueva Granada, 7 in the province of Tucumán, 2 in Cuba, 75 in New Spain, 84 entails in Peru and 18 in the governorship of Chile (Ramírez Castañeda, 2018, pp. 99–101).
29 P. Ruiz Torres highlighted two junctures in which the foundations of entails in the south of the Valencian Country were concentrated: the first half of the 17th century and above all the central years of the 18th century (Ruiz Torres, 1981, p. 221).
30 R. Villares detected two sets of entailed foundations in Galicia: the first began in the mid-16th century and culminated before 1650; the second, from the end of the 17th century and throughout the 18th century (Villares, 1982, p. 78).
31 M. T. Pérez Picazo estimated that 908 entails were founded in the four areas of Murcia, Lorca, Jumilla and Moratalla. She pointed out the period 1550–1750 as the one with the highest frequency of foundation of entails, at least in the first two comarcas, with a great coincidence (Pérez Picazo, 1990, p. 58).

Figure 2. The cycle of foundation of *mayorazgos* and *morgadios* in the Atlantic archipelagos and Spanish America (1500–1850).



Source: Núñez Pestano & Monzón Perdomo, 2021, p. 34.

Despite the challenges encountered, Núñez Pestano and Monzón Perdomo provide notable findings regarding entailment. Initially, the use of entails to ensure the social perpetuation of aristocratic families and/or as a means of social promotion for wealthy elites transcended the Iberian Peninsula and took on a global dimension. In any case, the "creole *mayorazgos*" had some special characteristics such as the obligation of having a royal license for its foundation. According to Bartolomé Clavero, the creole *mayorazgo* was less frequent than in Castile due to the lesser stability of the nobility in America, although both the family continuity and the antiquity of the foundations were similar[32]. Secondarily, Entailment seem to have been less frequent in the Spanish America than in Brazil, but their existence is beyond any doubt. Despite the limited research available, the *mayorazgo* was a more frequent institution in the major colonial centers, such as Mexico and Peru, with a minor influence in later-settled regions like Chile and Venezuela. Even less so in the periphery. Regarding the Canary Islands[33], both the intensity and the rhythm of the accumulation of wealth and the foundation of entails in the Canary Islands were

32 Clavero, 1989, p. 205–207.
33 This is clearly stated by Suárez Grimón (1987) when he identifies the transfer of the Castilian entailment, which had been studied by Clavero, to Gran Canaria.

similar to those observed by other authors in the other "peripheries" of the Spanish Monarchy, such as Murcia, the Valencian Country or Galicia. This phenomenon was concentrated between the end of the 16th century and the mid-18th century, although the specific dynamics, such as the 1550-1750 cycle, show a certain degree of general similarity.

2.2. Land: the core of the Entail.

In what regards to the assets belonging to the endowment of the entailment, available data points out the importance of real estate, being 78,8% in the case of Tenerife[34] and 75,6% in the case of Gran Canaria[35]. The entailment model not only was used to avoid the family's downfall due to equal partition of inheritance but also was explicitly oriented to guarantee the transmission of properties concentrated geographically. Suárez Grimón detected that a little bit over half of the entailment foundations concentrated the lands in the same town, or surrounding one or more big sized properties, which economy was complimented with some other scattered properties in other places. This way, the hacienda or main property will have a diversified economy with other lands destined to grain, wine, fruits and animal farming[36]. This is the same model that was repeated across the wine *haciendas* of Tenerife, as it was amply proven in a recent study[37]. Families tried to increase the core of the Entail with the acquisition of adjacent properties, through purchase, permute or marriage[38]. These granted lands were usually included added to the entails[39].

34 Arbelo García, 1996, pp. 770-773.
35 Suárez Grimón, 1987, vol. II, pp. 563-596.
36 Suárez Grimón, 1987, vol. II, p. 581.
37 Running a wine-growing estate required the employment of many labourers. Their wages were a combination of money and food, usually cereal, bread, and "conduto", often fish. Mixing wages was highly beneficial for the employer, as grain was a scarce commodity in Tenerife during the 17th and 18th centuries, thus possessing high speculative value. To ensure the combined payment of wages, the master had to secure the provision of cereal, leading to the promotion of polyculture on the estate and the acquisition of "suertes de pan sembrar" (cereal cultivation lands) in the midlands and highlands, many of which were exploited by census. Núñez Pestano & Gutiérrez de Armas, 2022, pp. 86-88.
38 Suárez Grimón, 1987 vol. II, pp. 597-598.
39 Suárez Grimón, 1987 vol. II, pp. 597-598.

Another matter examined in these studies was the effect of the censos on Entailment, which was influenced by Bartolomé Clavero's recognition of the significance of the censos (including the juros) and the feudal rent in the economical core of the Castilian *mayorazgo*. However, Clavero's analysis was limited in scope, primarily focusing on the *mayorazgos* of the great houses of the Court. He failed to acknowledge the numerous *mayorazgos* acquired by elites in peripheral areas, as well as by local and regional landowners who held sway over rural areas where lordships were uncommon[40]. This phenomenon has been confirmed by studies conducted by Suárez Grimón and Arbelo García. The model in the Canary Islands differs significantly, as censuses and urban assets were only a minor part of the overall picture. In Tenerife, they were less than 10%, while in Gran Canaria, they were only 23%. On this island, housing rentals were the main issue. Unfortunately, there is a lack of historical studies on housing rentals that delve deeper into this issue. Both authors agree that censos were more frequently entailed during the late 17th century and the first years of the 18th century, with a sudden decrease in 1705, when the interest rate of the census fell from 5% to 3%. Hence, this shift could be attributed to the reorientation of investment towards the acquisition of land, although the scarcity of free land did allow some investment in censos during this century[41].

The remaining entailed assets have received little historiographical attention. Houses, which accounted for less than 15% of the total assets, have primarily been studied by art historians through the lens of artistic patronage. This is exemplified by Carmen Fraga's study on *mayorazgos* of Ponte and Franchi, which highlights their contribution to the construction of *casonas* (big houses) and other artworks, including religious images, paintings, jewellery, textiles, and even coats of arms[42].

It is known that the presence of sumptuary objects, such as jewellery, artistic pieces and other goods and privileges of a symbolic nature, such as genealogical documents, public offices or *regidurías* and titles of nobility, was not uncommon among the assets of the entail. There is little literature

40 Clavero, 1989, pp. 157–169.
41 Suárez Grimón, vol. II, 1987, pp. 567–569; Arbelo García, 1996, p. 774.
42 Fraga, 2007.

on this subject, but it can be said that, in quantitative terms, these assets represented a very small fraction of the entail, around 0,48% in Tenerife, and 0,25% in Gran Canaria[43]. However, a qualitative perspective is more intriguing, given their potential for significant symbolic importance. However, it can be inaccurate to purely associate jewels or artistic pieces with the symbolic dimension, as Suárez Grimón warned when he presented the case of the entailment of the jewels by Canon Tomás Alvarado Castillo and Doña Jerónima de Ruesa Peñalosa, who determined that jewels could and should be used as capital to invest in land[44].

The entailment of *oficios*[45], titles and other analogue entitlements and their problematic within the political and social characterization of the elites has deserved further examination. Arbelo has shown how in 1766, 29 of the 35 *regidurías* of the Tenerife council were lifelong, and many of those were pieces of an entail that sought to obtain perpetuity in the position and social prestige of the families[46]. Also, the entailment of other *oficios* such as the *alferazgo mayor* or the public notaries in property that were leased was relatively common among the families who had them, many of them with seats of *regidor*[47] in the concejo[48].

In more recent times, the entailment of records has been researched by Gutiérrez de Armas, whose investigation has explored the symbolic sphere and the phenomenon of giving heritage status to certain records through their entailment. With this act, documents not only formed part of the memory that should be preserved and pass on to future generations, but also, the facto shaped, the intrafamilial relations, given that access to those records was not limited to the tenet of the *mayorazgo*, but also included all their kin, giving place to a model of "shared archive"[49].

43 Arbelo García, 1996, p. 770; Suárez Grimón, 1987, vol. II, p. 565.
44 Suárez Grimón, 1987, vol. II, p 565.
45 Occupation, job, work, craft, trade; office, post, position; function; written communication (Brigham Young University Genealogical Glossary).
46 Arbelo García (1994) identified four patterns in the relationship between mayorazgo and regiduría: 1) a parallel process of acquiring regiduría and establishing *mayorazgo* as part of the social ascent process; 2) linking regiduría with *mayorazgos* as a family reproduction strategy in the main local political body. 3) The majority of council members held the position of *mayorazgos*; and 4) a significant number of Castilian titles residing in the Canary Islands held the position of council member.
47 Alderman of a council.
48 Arbelo García, 1994, pp. 775–776; Arbelo García, 2009, p. 248.
49 Gutiérrez de Armas, 2019, p. 213.

2.3. Disentailment: a late and unknown process.

The process of disentailment remains a question with only one study conducted by Suárez Grimón in Gran Canaria. His research covers the three phases of the disentailment in Spain. Firstly, the "pre-disentailment" of Charles IV[50] affected only eight entails[51]. Secondly, the disentailment from the Trienio Liberal (1820-1823) appraised and divided 26 entails, most of which were small or whose proprietors where swamped by debt[52]. Thirdly, the disentailment process that began with the abolition of entailed property in 1836, accelerated by the progressive government since 1841, affected 27% of foundations. From his analysis some interesting conclusions are draw: 1) more entails were divided with greater economic significance than during the Trienio Liberal; 2) unlike in previous process, the number of entails increased over time while the disentailment process was consolidating. Disentailment also affected real estate, which accounted for 98.5% of all divided assets, in contrast to earlier processes that primarily affected buildings[53].

Although it is evident that the discontinuation of entailment facilitated the replacement of the socioeconomic elite with a new one, who transformed land into a commodity and sold it to the latter, the phenomenon seems more intricate than a mere transfer of ownership. According to Suárez Grimón, there were 30 buyers who acquired 83.1% of the sold acreage, including some from the Ancient Regime aristocracy and fortunes forged in America. The specific chronology of this process remains unknown for Gran Canaria; however, it has been examined for Tenerife. Rodríguez Acevedo analyzed the *Caciquismo* phenomenon from a Marxist perspective, which considers land ownership as the primary means of production. However, limited knowledge exists on disentailment in

50 Implemented between 1788 and 1808 to raise funds and alleviate the public debt. The liquid value of sales was required to be deposited in the newly established Caja de Amortización with an interest rate of 3%. However, the measure had little continuity as the Caja de Amortización ceased interest payments from mid-1814 (Suárez Grimón, 1987, vol. II, p. 810). An examination of the Zárate-Cólogan archive (AHPTF) is suggest, because Don Juan Cólogan held the position of director of the Caja de Amortización until 1804.
51 Suárez Grimón, 1987, vol. II, p. 799-805.
52 Suárez Grimón, 1987, vol. II, p. 829-830.
53 Suárez Grimón, 1987, vol. II, p. 855-863.

Tenerife, with a significant research gap in the decades leading up to 1890. No studies have been conducted for the remaining islands.

How did the process disentailment impact the nobility? Limited research exists concerning the effects on non-entailed properties. It is known that with the abolition of the entailment in 1836, the holders of *mayorazgos* became the owners of half of the properties, allowing them to sell and free disposition. The remaining 50% was reserved for the immediate successor of the entail. However, this action could be delayed, maintaining the fiction of a *mayorazgo* for one or more generations. There were several stratagems: the successor could delay reclaiming the reserved half. The holder could donate a substantial portion of the *mayorazgo* to the successor, including the Legitimate inheritance and the portion for free disposition. Or, as Gutiérrez de Armas explains in the case of the Condes de Siete Fuentes, the family could feign the succession of the *mayorazgo* through donations or simulated sales of the properties, at least of the more representative ones, to the would-be successor[54].

3. Defining a corporate entity: Hierarchies, Gender, Succession, and Interfamilial Conflict.

Recently, studies in historical anthropology, such as Maria de Lurdes Rosa's research, have enabled a reflection on the significance of the founder figure in the institutional arrangement of the family as a corporate entity that remained relevant during the early modern period. In her research, she highlighted the significance of the founder of *mayorazgo* as a central authority in familial organization in Portugal and Castile during the 14th to 19th centuries. The decision to prevent fragmentation of familial estates led to its centrality, particularly in establishing rules and prerogatives that guided asset corpus and succession. Technical term abbreviations

54 Gutiérrez de Armas, 2019, pp. 129-130.

will be explained when first used to ensure clarity[55]. The symbolic sphere of entailment, as analyzed by Arbelo, holds significant importance. Arbelo asserts that entail foundations were infused with a strong religious sentiment, exemplified by *memoria de misas*[56], *obras pías*[57], religious festivities and processions, or the foundation of chapels with an entailed nature[58]; in other cases, this symbolic sphere was tied to the patronage rights of parochial temples and monasteries[59]. Entailment allowed the found to reorganize the past, shape the present and condition the future. In a sense, the founder and the inheritors of the entail were depersonalized, turning into the incarnation of the entail and all those who had previously possessed it (whether alive or deceased) and its symbolic capital, understood in its entirety as an atemporal institutional entity[60].

Who were the founders? No studies in the Canary Islands explore the historical anthropology of founder figures, although some social history studies exist. Suárez Grimón identified two socio-economic groups among the founders of the entails in Gran Canaria: the "leading group", which included titled nobility, their relatives, militia and cabildo officers, members of the Inquisition or the Real Audiencia, and those bearing the honorific "don," including some merchants and wealthy farmers; and a smaller but significant number of individuals with ambiguous social status[61]. He analyzing them in bulk made it more difficult to detect the relationships between the always dynamic social hierarchization processes and the founder profiles. Regrettably, no gender analysis was done.

Remarkably, one third of the founders belonged to the clergy[62]. However, the data is not disaggregated by gender or chronology, meaning it is impossible to detect any trends, continuities, or specific case studies. Anyway, it coincides with what was later pointed out by Enrique Soria Mesa,

55 Rosa, 2020.
56 Devout work that shows the number of masses that should be celebrated by the testator's soul (Brigham Young University Genealogical Glossary).
57 Foundation or donation created or given for church work or for charitable works, literally, pious works (Brigham Young University Genealogical Glossary).
58 Arbelo García, 1998, pp. 153-154.
59 Fraga González, 2007.
60 Rosa, 2020, pp. 2, 7.
61 Suárez Grimón, 1987, vol. II, pp. 558-559.
62 Suárez Grimón, 1987, vol. II, pp. 560-561.

who noted the numerical importance of the clergy as founders of entails, usually for the males of the family[63]. Antonio Irigoyen suggests that the clergy, because of their invested authority, acted as role models and directors. Additionally, according to Antonio Domínguez Ortiz, they were the natural guardians of the family in situations such as orphan tutelage, promoting males within the church, negotiating their nieces' marriages, and distributing their personal wealth[64]. The authority of male and female clergy in Canarian families through entailment foundations is still a pending topic, despite some studies by Vicente Suárez Grimón which explored the chaplaincies of Gran Canaria in the 17th century and opened up the field for further research[65]. Also, *La ruta de las haciendas* contains some examples of entailed haciendas that originated in the wealth of clergy members. For example, there is the case of Ruy Blas, beneficiary of San Pedro de Daute, whose assets gave origin to the Boquin hacienda, which was later increased by another cleric, Francisco Leonardo Guerra, treasurer of the Catedral de Canarias and founder of several entailment aggregations[66]; or the hacienda and shrine of San Juan in La Victoria de Acentejo, which comes from the lands that belonged to Captain Antonio González Calzadilla in the first half of the 17th century. Even after the disentailment, Nicolás Calzadilla y García, Dean of the Cathedral of Canaria, gathered the houses and lands during the second half of the 19th century[67]. Another study, currently in progress by Manuel Hernandez Gonzalez, focuses on the actions of Presbyter Don Domingo Jose Naranjo, who created the wealth and mayorazgos for his family, the Marquises of Buen Suceso.

More focused on a specific social group and chronology, Arbelo analyzed the founders of the entails belonging to the elite group during the 18th century, which was the main subject of his study. Inherent to his retrospective approach is the inclusion of founders of entails from previous centuries who constituted the privileged class at the time[68].

63 Soria Mesa, 2013, p. 162.
64 Domínguez Ortiz, 1973, p. 384; Irigoyen López, 2015; Soria Mesa, 2013, p. 161.
65 Suárez Grimón, 1994.
66 Núñez Pestano, 2022, pp. 733–735.
67 Armas Núñez, 2022, pp. 335–337.
68 Arbelo García, 1994, 1996.

3.1. Women, Entailment, and inheritance. A reading against the grain.

Although Suárez Grimón and Arbelo García's studies make valuable contributions to the visibility of certain women's agency, a gender perspective was not explicitly incorporated into their research. Only in recent years the consolidation of gender studies as analytical propositions has allowed to revisit the entailment studies by challenging traditional conceptions and exploring the power dynamics surrounding gender in this historical institution. The recent analysis proposed by Núñez Pestano and Monzón Perdomo exemplifies this approach. By examining eleven cases of female entailment founders, the authors offer a historical overview of the dowry system and emphasise the role that widowed women played in managing their own estates for the benefit of their families. Additionally, they remarked the significant contribution of a "feminine way" to the creation of aristocratic estates. Firstly, the wife's dowry, often comprised the main part of the entailed assets of the House for a generation or two. Secondly, aunts and sisters established short *mayorazgos* in favour of a firstborn nephew, emphasizing their affection towards him, even though his remembrance faded away after one or two generations. Their conclusions suggest that women (both married and unmarried) could participate in strengthening and expanding the House, regardless of whether their involvement was forced or voluntary, in line with the explicit goals of inheritance, which include preserving ancestral memory and lineage continuity[69].

The authors also observed the existence of many entails led by women, further highlighting that strict agnation was not essential to aristocratic lineage contributions. If Joseph Morsel had already demonstrated that the medieval familial structures were profoundly cognatic, rather than George Duby's proposed agnatic model, María de Lurdes Rosa suggests that the very own foundation of the *mayorazgo* contemplated the potential for agnatic failure within the House. This is exemplified by the moral rules and norms of succession, which are a commonly discussed aspect of *mayorazgo* works in Spain[70].

69 Núñez Pestano & Monzón Perdomo, 2021, pp. 41–45.
70 Núñez Pestano & Monzón Perdomo, 2021, p. 37–41; Morsel, 2008; Rosa, 2020.

3.2. Succession Regime: Models, Practices, and Familial Conflict.

Scholars of *mayorazgo* have extensively studied the topic of succession. From a quantitative perspective, Suárez Grimón's research proves a preference for regular succession which favors the eldest over youngest and male heirs over female heirs, although they are not completely excluded. This pattern was observed in the majority of the *mayorazgos* in Gran Canaria, including the five founded through a cédula real[71]. It also prevailed as the dominant entailment type in Tenerife[72].

Research highlights the importance of restrictions, including gender, to understand the phenomenon of entailment in all its complexity. Suárez Grimón already covered the foundation of five female entails or of 'contrarian masculinity', meaning, that only allowed succession to women. All of them were founded in the 18th century by doña Jerónima Ruesa Peñalosa (1713), doña Ana María del Castillo (1776) and doña Josefa del Castillo (1704), doña Elvira del Castillo (1775) and don Blas Marrero (1751). Contrary to Castile, in Gran Canaria female mayorazgos were more common than those of strict masculinity and were often founded for other women[73].

Gender was not the only excluding or condition when determining the succession of an entail. Adolfo Arbelo García warned that, frequently clauses were added with the sole purpose of preventing the succession of inheritors with disabilities, illegitimate descendants, clergymen (except for military orders knights), non-Catholics and criminals[74]. These clauses are comparable to those analyzed by Isabel Melero Muñoz for Castile[75]. It may be worthwhile to investigate the historical issue of ableism during the early modern age and its specific connection to *mayorazgos*, despite some prior exploration from Law History[76]. Additionally, excluding

71 Suárez Grimón, 1987, vol. II, pp. 679–697.
72 Arbelo García, 2020, p. 240.
73 Suárez Grimón 1987, vol. II, p. 697; Clavero, 1989, pp. 214–216; Soria Mesa, 2013, pp. 226–227.
74 Arbelo García ,1996, p. 778; Arbelo García, 1998, pp. 152–153; Arbelo García, 2020, p. 240.
75 Melero Muñoz, 2021, pp. 137–156.
76 López Nevot, 2021.

members of the Church from the succession of entails and *mayorazgos* is better understood. His statement appears to be a brief response to cases where the inheritance of an entailed family estate may have created significant obstacles to the family's social reproduction during its early establishment. The case of the Guerra's family entailment analyzed by Núñez Pestano provides an excellent example. Lope Fernández founded it in Tenerife in 1512 and his successor confirmed it in 1579. During the beginning and end of the 17th century, it was granted to members of the clergy, and during the middle decades of the 18th century, it was administered by the convent and its stakeholders. The case not only limited to the social projection of the secular kin, but also limited the growth of the entailment, resulting in its downfall[77].

There were other known norms that conditioned the succession of the entail. These included requirements to bear the family name, coat of arms and reside in a specific location, as well as constraints on marriage[78]. Suárez Grimón has compiled a list of obligations related to the promotion of surnames in 29 cases within Gran Canaria, and Arbelo García has referred this obligation as "often" in the entails of Tenerife's elites[79]. According to the author, this type of clauses reflects well the "pro-nobiliary mindset" that presided entailment foundations and the associated expectations of becoming nobility[80]. Although these cases have typically been studied within the context of family and property, the subject of matrimonial clauses cannot be overlooked. These clauses were particularly detrimental to women, as they were often required to marry men of a certain lineage in order to maintain the family surname[81]. Analyzed by Arbelo in several studies dedicated to familial conflict and mentalities, these clauses were the origin of complicated confrontations within the family[82]. An example is the study conducted by Gutiérrez de Armas on the hacienda de Interián. A lawsuit transpired between doña Leonor and doña María Teresa del Hoyo, the daughters of the II Señores del Valle de

77 Núñez Pestano, 2022, pp. 220–233.
78 Melero Muñoz, 2021, pp. 128–137.
79 Suárez Grimón, 1987, vol. II, p. 700–701; Arbelo García, 1996, pp. 781–782; Arbelo García, 1998, pp. 151–160; Arbelo García, 2020, p. 241.
80 Arbelo García, 1998, pp. 155–156.
81 Melero Muñoz, 2019b, pp. 334–337.
82 Arbelo García, 1998, pp. 138–155; Arbelo García, 2012.

Santiago, who litigated over succession due to a clause that forced the female holders of the entail to marry a man from Casa de Hoyo, a condition satisfied only met by the youngest sister[83].

The research on other restrictions, such as incompatibility of entails or the mandatory aggregation clause, follows the same pattern of general and detailed case studies. Suárez Grimón identified the presence of incompatibility clauses in nine cases on Gran Canaria[84]. In various studies, he analyzed the impacts of mandatory aggregation clauses found in 17 of the 341 entail foundations. He noted the low rate of execution of these clauses, their contribution to the enlargement of the initial entail and the geographical concentration of the lands, and explained the subterfuges used by the owners in the face of the low availability of land during the 18th century. Arbelo researched this topic in Tenerife, finding eight cases between 1644 and 1779 and pointing out that this clause collided with the strategic objective of accumulating *mayorazgos* to face the economic crisis in better conditions. Similarly, Gutiérrez de Armas concluded the same in a case study on the Salazar de Frías family. The conflict within families during the 18th and 19th centuries arose from the incompatibility clause for mayorazgos implemented by the founder in 1654. Additionally, this clause mandated that each holder combine their rightful paternal and maternal inheritance with the entail[85].

Succession and exclusion norms not only perpetuated the intentions of the founders over time, but also conditioned the marriage strategies and family dynamics. Firstly, by the trend of the elites towards accumulation *mayorazgos*, an aspect amply studied in the Canary Islands by Suárez Grimón, subsequently corroborated by Arbelo and widely confirmed in several case studies of the wine *haciendas* compiled in *La ruta de las haciendas...*, as well as in a significative number of case studies[86]. Secondly, the possibility of a failure in the primogenital transmission line, which

83 Gutiérrez de Armas, 2022a, p. 906.
84 Suárez Grimón, 1987, vol. II, p. 643.
85 Suárez Grimón, 2020; Arbelo García, 1996, p. 785; Arbelo García, 2020, p. 239; Gutiérrez de Armas, 2019, p. 148.
86 Suárez Grimón, 1987, vol. II, p. 643; Arbelo García, 1996, p. 792; Núñez Pestano et al., 2022; Núñez Pestano & González Zalacaín, 2017; Arbelo García, 2009, pp. 35–36.

was common under the old demographic regime, kept succession expectations on the sidelines, including the female ones.

In line with Castile, the possession of mayorazgos in the Canary Islands led to high levels of legal disputes[87]. In the absence of more specific research and considering the enormous documentary gaps in the archive of the Real Audiencia de Canarias[88], it may be said that the 18th century was particularly affected by an increase in these types of litigations. More so in the case of chaplaincies, patronages, and many broken entails on which the foundational succession lines were not completely clear after seven or eight generations[89]. However, litigation was not exclusive to the 18th century, since there are documented examples of important lawsuits over entailed property from earlier times, such as the case of the lawsuit over the *mayorazgo* of Lanzarote, which took place at the beginning of the 17th century, or the multitudinous litigation for the Adelantamiento Mayor de Canarias, to which a great deal of the island's elite posed a claim for[90].

4. The Social Impact of Entailment: Social, Cultural, and Economic Dynamics.

The changing of lens in history research methodologies in recent decades has substantially influenced our understanding of entailment as a historical phenomenon. As we have previously explained, the structuralist perspective, which was dominant in Canarian historiography until the 1980s, focused on analyzing the entailment phenomenon from a class-based perspective. The aim was to understand the *mayorazgo* as a feudal institution of succession and property transfer, and to determine its influence on the economic dynamics and social stratification of the Ancient Regime.

However, post-structuralism broadened the scope of inquiry to other historical perspectives and issues. As a result, topics such as land property

87 Melero Muñoz, 2021; Arbelo García, 2012; Arbelo García, 2020, p. 239.
88 The court or tribunal of the Canary Islands, since 1526.
89 Gutiérrez de Armas, 2019, pp. 290–296.
90 Lobo Cabrera, 1996.

regimes and succession, which included legal institutions such as *mayorazgo*, became less prominent in favor of other emerging issues. Reexamining enduring issues through this lens enables a multifaceted and comprehensive analysis of entailment, for example in terms of gender (already analyzed), the construction and reproduction of noble identities, and the legitimacy of power.

Furthermore, additional emphasis on marginalized perspectives and resistance efforts would provide a more comprehensive and nuanced understanding of the consequences of entailment and its impact on society.

4.1. Entailment and transformation of the rural landscape.

Environmental history is a good example of this paradigm shift. As a counterpoint to a closer lens to the agrarian and economic history of the *mayorazgos*, focused mainly on their relation to the agrarian economy, social organization of the rural areas and landowner dynamics, the environmental history has broadened the vision about the *mayorazgos*, considering also their relationship with the environment and natural resources. As an example, for Tenerife, we can refer to the collective book *La ruta de las haciendas...* Even though the entailment was not the focus of the investigation, the wine *haciendas* were indeed farms that were "the core of the mayorazgo". Thus, a second reading of this work offers swift conclusions about the phenomenon of entailment and poses important questions aimed at a better understanding of how entailment transformed the landscape and changed the relations with its inhabitants[91].

According to some authors, entailment is not simply explained by the possession of farms of high yield and the legal capacity to entail them with the Toro Laws approved in 1505, contemporaneous with the conquest of Tenerife. In fact, very few sugar mills were entailed in the 16th century,

91 Núñez Pestano et al., 2022.

with the well-known exception of the one in Adeje[92]. On the contrary, the fragmentation of the sugar mills into smaller land plots and their transformation into high-yielding wine estates during the 17th century was fundamental. This process ran parallel to the consolidation of social hierarchies in the island and culminated with the entailment of these since the mid-16th century. In the following century, the crisis of the international wine trade pushed the concentration of wealth through marriages and strategies of entailment accumulation in the hands of a few families.

While it is true that not all wine estates in Tenerife were subject to entailment, it appears that most entails did include one or more estates, from which expansion strategies were developed. The situation was similar in Gran Canaria, where the core of entailment consisted of wine estates and *cortijos* dedicated to grain and pasture production in areas close to the capital[93]. The comparative analysis approach to studying the phenomenon of entailment through *haciendas* holds promise as this relation is not exclusive to the Canaries. As noted by Núñez Pestano and Monzón Perdomo, significant parallels exist with Spanish America. In Mexico, *mayorazgos* typically included *haciendas*, urban real estate, and, to a lesser extent, cattle and horse farming facilities[94]. There were very few instances of entailed plantations and sugar mills[95]; or in Perú, where *haciendas* were the most common system of entailed property, although encomiendas and, from the 17th century, obrajes were more common in the earlier foundations. Meanwhile, the number of entails identified in the Spanish Caribbean, especially in Cuba, is remarkably low: in 1790 there were 23 noble titles and 17 pending approval, all criollos, while in 1840 there were 34 marquises and 32 counts. The late emergence of the large sugar mills, true economic engine since the English occupation of La Habana during the Seven Years' War, could be the cause[96]. But nearly every sugar mill was entailed. As noted by other authors, sugar mill owners had to direct their economic practices toward maximum short-term profit, pressured by the demanding conditions imposed by investors. This would distinguish

92 Núñez Pestano & Gutiérrez de Armas, 2022, pp. 17, 31–35.
93 Suárez Grimón, 1987, vol. II, p. 583.
94 Núñez Pestano & Monzón Perdomo, 2021.
95 Fernández de Recas, 1965.
96 Moreno Fraginals, 2001.

them from the large landowners and hacienda owners who allocated a portion of their property rents towards expenses aimed at obtaining honor and prestige for the family organization[97].

The study of Tenerife's *haciendas* has also focused on the symbolic and cultural representations of both the hacienda and its environment. This is especially true for the main *casona* (big house) and often the shrine, which were built in prominent locations on the edges of the road, where they could be seen by everyone. The importance of owning a hacienda was so great that it was considered more than just a farm, it was considered an almost obligatory requirement to strengthen the prestige of an individual who wanted social promotion[98]. Further research is needed on whether possessing a *mayorazgo* or being an *hacendado* was considered equal in social standing. Regarding the environment, researching toponymy and its connection to natural features or historical events, as well as exploring artistic and literary expressions that depict an idealized landscape and emphasize its natural aspects (whether realistic or not), or the significance associated with possessing certain iconic trees like palms, dragon trees, or Indian laurels, suggest some lines of research worth exploring. While it is evident that these are cultural expressions in which the *mayorazgo* was the protagonist, in some ways they are a consequence of their existence and vocation to social and cultural promotion.

However, it is also clear that there are some gaps within the research, such as the social, economic, and cultural implications of the transformation of the landscape associated with the property. These lines of future research would contribute to a better understanding of the relationship between entailment, property, environment, and environmental history.

4.2. Entailment "from below".

The "history from below" approach has a longer historiographical continuity. For several decades now, there has been increased focus on

97 Wolf & Mintz, 1978.
98 Núñez Pestano & Gutiérrez de Armas, 2022, pp. 57–69.

subordinate voices, which has significant implications for understanding entailment as an economic engine of dispossession and inequality, as well as resistance fights against the structures imposed by this institution.

The example of the *heredamiento* de Chasna (Tenerife) and the communal resistance to its expansion is a good illustration of how the problems related to entailment went beyond the family and had more profound social repercussions. Examined through the lenses of social and agrarian history in the early modern period and contemporary times, economic and legal history, and gender studies, this confrontation reveals the social tensions surrounding entailment[99]. The conflict occurred between the Soler–Chirino, who were entitled to the *heredamiento* de Chasna, and the local community. This confrontational dispute lasted for several generations from the late 16th century to the mid-19th century. The conflict was characterized by territorial disputes and community resistance to recognizing the *heredamiento's* property rights. A significant increase in legal disputes and violence employed by all parties denotes the growing tension. The case illustrates how entailment generated conflicts with other social actors, which usually influenced the strategies and stability projections of the family organization. It was common for a wave of social conflict to conclude with a Soler family member marrying the daughter of a wealthy farmer, resulting in the cessation of their opposition[100]. The Soler case sheds light on several questions. Firstly, it reveals that the entailment did not always have control over all of their property and rents (the *Heredamiento* de Chasna never collected all of the rents that were supposedly part of their entail); secondly, claiming these rents in a lawsuit could mean their economic ruin and social unrest; thirdly, the conflict could spill over into other areas, such as the litigation over the divorce of the Marqueses de la Fuente de Las Palmas.

The findings in *La Ruta de las Haciendas* indicate that the *hacendados* (owners) opposed settling on their *haciendas*, while communities were developed around them. Specifically, the influence of entailed *haciendas*

99 Núñez Pestano, 1989; Rodríguez Acevedo, 2008, pp. 203–379; Pérez Barrios, 1998, pp. 28–30; Pérez Barrios, 2005, pp. 267–302; Gutiérrez de Armas, 2022b.
100 Gutiérrez de Armas, 2022b, pp. 152–153.

on the dispersion of settlements along roads and wine enclosures in the mid-heights of Tenerife represents one of the most significant areas for analysis in this book. As clarified in the study, the expansion of wine-growing *haciendas* in the 17th century favored the formation of new towns through small settlements and growth of others founded at the beginning of colonization[101]. It appears that property entailment facilitated the process, but it is worth examining if local communities accepted or resisted these impositions regarding the rights to use and access communal or entailed land. Adolfo Arbelo emphasized the importance of the large tenants in the functioning of the entailment system, even noting the mimesis of practices common in *mayorazgos*, such as the succession from father to son in these contracts[102]. In the same publication, he addressed the transfer of the census regime for small plots of land in the *mayorazgo* of Marquis Villanueva del Prado in Realejo de Arriba (Tenerife) to small farmers. He argued that the paternalism typical of the Enlightenment movement was a decisive factor in this case. Further research into the strategies used to protect the interests of communities, such as identifying potential inter-class alliances, support networks, or common approaches, would be valuable.

Unbetter known is the impact of the process of disentailment on landscape transformation. This process is well understood for the coastal areas, where the banana tree replaced the grapevines until the beginning of tourism in the second half of the 20th century. Nevertheless, it remains less comprehensible for the elevated areas. The authors state that there has been a radical transformation of the landscape in highly urbanized areas. However, it is not yet clear the timing and extent of this process for rural areas, where small self-constructed houses have taken up the space that was previously occupied by *haciendas*. According to the authors' suggestion, the hacienda landscape is now hardly noticeable, though the wine-making landscape has not entirely vanished. On the other hand, the grapevine now occupies an important place in the middle elevations, replacing former crops such as cereals, and even the old malvasia has been reintroduced in some *haciendas* that have been returned to winemaking[103].

101 Núñez Pestano & Gutiérrez de Armas, 2022, pp. 34-39.
102 Arbelo García, 2005, p. 214.
103 Núñez Pestano & Gutiérrez de Armas, 2022, p. 18.

These observations highlight the interaction between culture and nature, challenging the notion of the landscape as something static and noting the capacity for adaptation and transformation of the environment and cultural practices throughout history.

Many more potential avenues for analyzing the implications "from below" have yet to be explored. Specific studies analyzing the relationship between entailment and slavery are lacking. It is known that some entails included enslaved people, but such cases were infrequent and related to large sugar mills, such as that of Cristóbal del Castillo in Gran Canaria or the Ponte sugar mill in Adeje. Despite promising research possibilities in this area, there is currently a lack of exploration into the role these people took in the workings of the entailment and how their agency defied or reinforced the existing power structures, what their strategies of resistance and self-affirmation were, or how they used their knowledge and skills to improve their living conditions. It is unclear whether there were solidarities of cooperation between them or if they employed collective strategies to resist or achieve emancipation.

4.3.A view from the family archive.

Another more recent research line is related to the archival turn and its new view from family archives. Rather than simply emphasizing the obvious connection between the creation/management of the *mayorazgo* and the creation of family archives, the novelty of this perspective finds its problematisation in the analysis, from the beginning, of how this relationship was not always linear[104]. Within the Canary Islands, this perspective can be seen in the research carried out by Gutiérrez de Armas[105]. Her proposal examines the centrality of the *mayorazgo* in the intellectual organization and expansion of the archive. Nonetheless, during the late 18th century, which marks a transformative period for the archive, other symbolic elements like the house or lineage took precedence in the upper

104 Nóvoa, 2021.
105 Gutiérrez de Armas, 2019, 2020, 2023.

levels of hierarchical classification for archival records, despite the continued significance of the *mayorazgos*. It may seem like a small matter, but the filing system used in archives reflects our understanding of the past. Those who reorganise archives often hold a *mayorazgo* and have the power to reshape the narrative of their family's history much like those who founded entails, turning them into "founders of houses" with a central role in genealogies and family histories. Thus, the entail, influenced by the archives of the 18th century, reshapes the House's history and its kin relationships, not only in their present, but also in their past. The thesis currently in development by Gabriela de Luis de Zárate will explore this research further, examining how actions influenced by gender and their effects on archives shape the connection with a space where women were excluded as active participants, even though their agency continued to shape this corporate structure[106].

What is the reason for the *mayorazgo*'s importance in the familial archives? This question lacks a definitive answer, but it appears that conflicts (including those related to entailment) have played a crucial role. It is apparent that organizations that fought more for these rights had an archive that was more comprehensive and better organized. Litigiousness, whether familial or involving external institutions, tended to foster the formation and/or restructuring of archives. Not by chance, the increase in intrafamilial litigation in the 18th century coincides with the documental rearming of elite families[107]. Firstly, it was crucial to comprehend the clauses of the entail succession to accurately calibrate the real probabilities of each candidate to achieve it; and, to design the strategy to be followed by the whole family. Consequently, it is unsurprising that the foundational acts of an entail occupied such a central place in the organisation of the family archives since it was usual to keep copies in the archives of each member of the family. Secondly, the family's extensive knowledge of genealogy and documented history allowed them to litigate over empty entails and to plan their alliances. Núñez Pestano and Monzón Perdomo reiterated the profound connection between *mayorazgos*, archives, and litigation, emphasizing the

106 *Los orígenes invisibles. Identidades y roles de género en los archivos de familia (ss. XVII-XIX)*. Programa de Doctorado Interuniversitario Territorio y Sociedad. Universidad de La Laguna.
107 Gutiérrez de Armas, 2019, pp. 290–292, 499; Gutiérrez de Armas, 2020.

significant role played by family archives for *mayorazgo* holders. They considered the chapter of litigations as operational costs, equally important to other costs like management, production, or rental payment[108].

Entailed societies? Some considerations as conclusion.

There is no doubt that the entailment was much more than a mere legal instrument for landowner families. Its social, economic, and cultural transcendence was the object of discussions and controversies, also of a myriad of social and familiar conflicts. The preserved archives of these structures show us a sort of "society of entailment", in other words, a society that was completely shaped by the presence of entails in its life, although we know that this reality was not uniform or constant. For Tenerife and Gran Canaria, the most thoroughly examined islands, entailment did not appear to be widespread until the 17th century. What were once thought to be causal relationships, such as the creation of large agricultural estates from colonization and subsequent entailment, have been demonstrated to be less straightforward and even inverted (as seen in the fragmentation of sugar factories). It would be interesting to ask about the influence of the archives of the 18th and 19th centuries, which were much more extensive than in previous centuries and in which the entailed property is presented in a very central stage, in the transmission of the first hegemonic narrative that linked the repartimientos, entails and large property, which was refuted at the end of the 1980s and in the 1990s.

Were there then entailed societies? Answering this question overwhelms the scope of this research. However, the lanes opened over the latest decades can provide some venues of approach to this matter. By taking an intersectional approach, we can enhance our understanding of how the *mayorazgo* shaped family structures, both symbolically and culturally, and illuminated certain individuals in the line of succession while rendering others invisible Age, gender, ableism, and birthright were factors

108 Núñez Pestano & Monzón Perdomo, 2021, p. 38.

that frequently emerged in modern familial structures. In many cases, these factors were concealed behind an idealised family structure, enforced through entailment. It appears likely that this entailment further entrenched androcentrism, manifested through agnatic and vertical family representations.

It also seems that entailment had an impact on the consolidation of a specific type of landscape associated with the wine *haciendas* and the roads connecting them, as much in the cities as in the rural areas, coastal areas, and the middle heights forests. The instrument appears to have contributed to the concentration of assets rather than transforming the landscape, while hindering the potential for economic progress in times of economic hardship, when it was not possible to transfer or sell property. In any case, the great transformation of the landscape corresponds to more recent times, when the impact of banana plantations, the creation of a modern road ring and urban expansion have radically altered the centuries-old landscape and its perception.

These are a few examples. Further research and exploration will enhance our understanding not only of Entailment in general, but also of the familial and social relations woven around these structures; in other words, how and when the Canary Islands were socially configured by Entailment, and what the consequences were.

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Free estates, entailed estates: reviewing the mayorazgo (Castile, 14th–15th centuries)

Cristina Jular Pérez-Alfaro
(Institute of History – Center for Human and Social Sciences;
Spanish National Research Council [CSIC])[1]

Abstract: In this contribution I have combined historiographic reflection and case study, proposing a novel topic in the treatment of the entailed estate: the free estates (*bienes libres*), with attention to the process or not of their entailment, based on the scriptural and archival practices carried out by a lineage, that of the Fernández de Velasco, constables of Castile. Knowing the basic lines of their noble evolution – and under a consensual agreement on the relevance of this group – the lineage had not been worked with the application of new technologies, a factor that now becomes evident through the R&D project, *Scripta manent* and the digital platform www.scriptamanent.info. My reference documentary support is the Frías Fund, kept in the Archivo Histórico de la Nobleza (AHNOB, Toledo), second in importance – after Osuna – within the family funds kept in this specialized public archive.

Keywords: Bienes libres (free estates); Constables of Castilla; digital humanities; Frías Fund (AHNOB, Spain); intralinear competence; social promotion; lordship formation; XIV–XV centuries.

1 The proposal that gives rise to this article was prepared for the scientific meeting of the *VINCULUM project – Entailing Perpetuity: Family, Power, Identity. The Social Agency of a Corporate Body (Southern Europe, 14th–17th Centuries)*, directed by Maria de Lurdes Rosa and held in July 2023 in Ponte de Lima (Portugal). The collective discussion was extremely rewarding, I really thank all participants for the richness of their comments.

Introduction

The institution of the *mayorazgo*, the most widespread form of entailment in the Crown of Castile, is a phenomenon of utmost importance, as emphasized by historiography interested in patrimonial transmission during the Late Middle Ages and until the dissolution of the Ancient Régime. However, it is often approached from a legal and normativist perspective, which tends to obscure its complexity and transformations, especially in its early stages, when the formation of *mayorazgos* is just one more among a host of strategies for managing noble patrimonies.

The creation of *mayorazgos* cannot be separated from the processes of formation and expansion of the lineages themselves, and, more importantly, from the extensive networks of relationships they weave with members of other social sectors who, while not belonging strictly to the family, orbit around it and, in turn, they build their positions taking advantage of the resources provided by their relationship with the powerful.

The research presented here is based on a substantial documentary collection that illustrates the earliest stages of the formation of the Fernández de Velasco lineage, Counts of Haro, Dukes of Frías, Constables of Castile and *Grandes de España*. In other words, one the most relevant noble groups in Castilian history during the Late Middle Ages and the Early Modern Ages. Knowning the basic lines of its seigniorial evolution – and under a consensual agreement on the relevance of this group – the lineage had barely been studied from the social history of written culture and with application of digital technologies, factors that are now being revealed through the R&D project, *Scripta manent* and are showcased on the platform www.scriptamanent.info[2].

2 This text is part of the results of the research project *Scripta manent III. From private records to public texts. A medieval archive on the Web*, financed by the state *Investigación, Desarrollo e Innovación* program. Call Oriented to the Challenges of Society, of the Ministry of Science and Innovation of the Government of Spain (Ref. PID2020-116104RB-I00), coordinated by Cristina Jular Pérez-Alfaro, with duration until 2025, and digital developments at www.scriptamanent.info. Among other objectives, *Scripta manent* is working on collaborative applications with other projects with which it shares scientific interests, such as HILAME (*Hidalgos, Labradoras, Mercaderes*) that is dedicated to the study of prosopography and social networks of territories of the Cantabrian coast at the end of the Middle Ages and early modern age, www.hilame.info.
Abbreviations used: AHNOB (Historical Archive of the Nobility), AHN (National Historical Archive), BNE (National Library of Spain), C. (Box), D. (Document), Mss (Manuscript), img-imgs. (image, images). The complete transcriptions of the documents referred to in text are available on the web.

The quantity and density of the documentary information, but above all, the archival practices (such as writing and preservation) applied by the Velasco lineage, advanced in comparison to their contemporaries, allow for a clear tracing of the complex and contradictory process of forming of *entailed estates*. Instead of a univocal family strategy, what is perceived is the struggle among lineage members to secure their respective positions, emphasizing the primary importance of free assets, the true heart of the expanding noble patrimony in these initial stages. In a parallel process, the accumulation of possessions by the aristocratic group stimulates the involvement of a broad constellation of individuals involved in their management and exploitation, whose mutual relationships and connections with the lords are unusually illustrated in the handled documentary corpus.

I have used the expression "reviewing the *mayorazgo*" in the title without intending to provide an overall view with which to tackle the imposing scientific problem it involves, nor have I chosen to offer an extensive review of the usual bibliography. There are so many studies on this subject that a further, abbreviated contribution, with only a few synthetic features, seems to me repetitive and somewhat superfluous, although in my discourse there are authors and readings that I consider essential[3]. There are well-authorized voices in this volume that discuss *mayorazgo tout court*[4]. Nor will my lines present exactly a case study, at least in the orthodox, bio-chronological way that we find in much of modern scientific production, although the Velascos will be the foundation of my approach. In collaboration with Raúl Villagrasa-Elías, and to give a greater dimension to the subjet commissioned by the coordinator, we have opten to carry out a shared research essay between the two of us, in correspondence with the R&D project that relates to us. In this way, Villagrasa-Elías integrates in his text his personal reflection on the most

3 To speak of *mayorazgos* without mentioning Bartolomé Clavero is, for me, hardly conceivable; his global vision has not yet been replaced despite the existence of criticisms and réticence (see Clavero 1974, 1st ed.; 1989, 2nd ed.). There are also other contributions (Clavero, 1986). Of interest is the review of Paolo Grossi (Clavero, 1992), an author with whom he established an important dialogue and who is also an important reference for the question we are dealing with from his perception of medieval jurisprudence and his vision of the theoretical edifice of the divided domain (Grossi, 1992). Federico Devís had already warned of this in another of the reference books for the study of the entailed estate (Devís, 1999). Book of homage to Clavero: Vallejo & Martin, 2019.

4 Isabel Melero and her line of research update the problem, always with a greater production for modern times than for medieval phases. See Melero, 2021, https://idus.us.es/handle/11441/126577.

significant historiographical essays produced in recent years in the study of the *mayorazgo* in the medieval Crown of Castile. He adds to this a historical presentation of the first *mayorazgos* of the Fernández de Velasco family, which we document based on bibliography and unpublished documents. And, in a third axis of his original work, he incorporates a proposal for a digital tool: a database in HTML for the treatment and presentation of the entailed estates of the noble House, which is shown on the web page of the *Scripta manent* project and connects with our already existing databases[5].

For my part, I reflect on some points inherent to the study of *mayorazgo*: the estates (free and entailed), taking into account the social conditions of realization of property[6]. I use diplomas, critically focused on contextualizing the dynamics of writing and documentary conservation produced by the nobiliary House, which I understand as determining phenomena in the interpretation. My approach is based on a historiographical orientation that I believe is not very common in the Hispanic field: the inclusion of the nobiliary archive, the family archive, in the essential nucleus of the research, understanding the documents as manifestations of that information, organizational reflection of the House, configured by specific logics of meaning and not as simple technical or descriptive

5 See in the same volume the text by Raúl Villagrasa-Elías entitled "A historiographical review of the *mayorazgo* (entailed estate) in the Crown of Castile (13th–16th centuries) and a digital proposal". See this "digital proposal" that includes the list of entailments in Raúl Villagrasa-Elías & Cristina Jular Pérez-Alfaro, "Los mayorazgos de la Casa Velasco en digital", *Scripta manent. De registros privados a textos públicos*, *Scripta manent* project web page (last version: 03/01/2024; consulted: 08/01/2024).
6 Congost, 2000. Rosa Congost i Colomer makes a critical approach to the liberal and state conceptions of property that are of great interest to overcome historiographic visions applied to the Middle Ages. She advocates a more complex approach, more sensitive to social and contextual dynamics, wich is acceptable for the problem we analyze (Congost, 2003, 2020). In Congost, 2000, she proposes a double historiographical revision. First, she discusses the idea, inspired by the French model and assumed in many studies on 19th century Spain, that the liberal revolution led to the birth of a new type of land ownership, the so-called perfect property, that is, undivided. Secondly, she suggests the need to approach the study of liberal measures from the perspective of the explicit will of legislators to "sacralize" property. According to the author, the new approach requires orienting the historical research program towards the study of the conditions of realization of property, for which the analysis of legislative provisions is not sufficient and can only be fruitful if it is accompanied by an explicit desire on the part of historians to "desacralize" the concept of "land ownership". "In the faced of a historiographical narrative whose protagonist is the State apparatus and its legislative action, the author proposes an inquiry into the networks or interactions between social groups, institutions and resources", argues Lana Berasain (2010) in a commentary on Congost.

instruments[7]. In this sense, I will highlight the significance for the exercise of power of certain documentary information – for example, inventories and *écritures grises*[8] –, read today with a different perspective than in the past, and which facilitates access to new repertoires of questions to be resolved in the face of the issue that brings us together. Renewal in this field of analysis and interpretation is transcendental not only for archiving science but also for history[9]. There is, in short, a way of combining historiography and case study that I have tried to apply, proposing questions and suggesting a novel issue in the treatment of the *mayorazgo* as an advance for the debate: the estates, with attention to the process or not of their entailment, from the scriptural and archival practices undertaken by the lineage. My documentary support of reference fall fundamentally on the so-called Frías Fund, currently derived from the ducal archive of the Fernández de Velasco, kept in the Historical Archive of the Nobility (AHNOB, Toledo) and second in importance – after Osuna – within the family collections kept in this specialized public archive[10].

1. Intralinear competence and social promotion

Juan [de Velasco († 1418)] quarrels with his mother. María [Sarmiento] has just become a widow and wants to know what she owns. She has no doubts about her ability to support herself, although she is not one hundred percent sure of everything. María orders an inventory to find out. She wants to know but she also wants to manage what is hers, to administer her patrimony, to reward whoever she wants, to forgive or pay a debt, to help a maid get married, to dress well, to fix up her house, the one she likes the most, the one on Cantarranas Street in Burgos raher than the house in the village of Medina de Pomar. But his son argues with her:

7 Geary, 2007; Cook, 2013. On the Family Archives, see Rosa, 2019, 2021b, 2022; Lamazou-Duplan, 2021. About the archive and documentary consciousness in modern times, Navarro, 2003b, 2003c.
8 On inventories, see Fossier, Petitjean & Revest, 2019; Rosa & Head, 2015; Navarro, 2002, 2003a, 2008; Jular Pérez-Alfaro, 2021.
9 Synthesized in the authorship of M. L. Rosa, 2021a; J. Morsel, 2000, 2004, 2021.
10 Lafuente Urién & Gómez Vozmediano in Lamazou-Duplan, 2021.

"How dare he!". She, who has absolutely contributed to her marriage, who has accompanied her husband in the most difficult moments of his relationship with his superiors, even when he had to leave the house because of a change of allegiance and riskily followed the new aspirant in the trone. She has fully integrated the inheritance she received from her parents, she has improved her husband's position since her surname was better known, she has generated a good situation of comfort for her sons and daughters and, yes, she also offered good disposition for those spurious offspring that were not hers. She has been, in short, an active person, with resources, dowry and decision-making abilities. And now that Pedro, her husband, is dead († 1384), it is easy to understand the situation: she wants to dispose *freely* of her assets.

Her son Juan has taken her to court, disputes her estates, and accuses her of being a spendthrift[11].

This story might seem to be an anecdote from nearby, if we read it in a timeless way, but nothing could be further from the reality on which it is based. The codes applied now and in the 14th century are radically different, starting with the first of them that I have forced on purpose: the fact of putting the women in the foreground; and, morever, in this particular case, of surnames with greater public recognition than those of the husband. A second area of divergence is language: María should not dispose *freely* of the goods but only of the *free goods*, of those not bound in the entailed estate. Among the objects of knowledge, she resorts to the preparation of an inventory, a resource that this House applies early on, although her contemporaries do not. There are more contrasts: the son, Juan, not only fears losing part of the inheritance, but also stakes his leadership over the *House*. The first son has died, and he must come to the forefront of the action to lead the *mayorazgo*. The economic capital and the equally or even more important symbolic capital come into confrontation.

11 The details about this conflict in Alfonso Franco, 2009. Previously, unpublished, the conflict was documented by Antonio Moreno Ollero's thesis dissertation (Moreno Ollero, 1999), which was finally edited by the author in 2014. I have alluded to this mother-son confrontation in Jular Pérez-Alfaro, 2013. I presented some of these ideas at the Seminar on Agrarian History. I thank the participants in the collective debate and particularly Pablo Ortego for the discussion of the paper, as well as the critical reading of Julio Escalona and Raúl Villagrasa-Elías.

The conflict, very long and occupying the rest of this widow's life and a fundamental time for the consolidation of the dominion and the exercise of power of this man, as *patron* and *lord* of goods and dependent people to different degrees, is important and representative. With respect to the significance of the intervening parties, the resolution of the conflict is by compromise trial, in the direct presence of the king himself, in the houses where [he] dwells – *en las casas donde [este] mora*. Monarch and royal court, intraline jurisdiction, feudal lordship and property, public fame, social leadership and male preeminence, as well as symbolic capital, deeds and archives serve us to attribute solid medieval pillars to the [hi]story.

Rivalries due to the division of inheritances are a common phenomenon, often sustained from generation to generation, through long periods of conflict before finding solutions to resolve them. Moreover, these solutions are in many cases temporary, and litigation is often resumed. It is also a phenomenon known by the authorities; it was contemplated in *Las Partidas* ("*ca se tiran por ella desacuerdos muy grandes, que nascen entre los omes a las vegadas, por razón de las cosas que han de so uno*")[12]. This has generated an enormous amount of literature that has fed an infinite number of legal *corpora*. It is also an uncomfortable phenomenon for different sets of intervening parties: first, the interested parties themselves and the members of the family, but it also concerns all the people positioned around one succession or another; it will also matter to all those arbitrators and mediators of the conflict who have the capacity to intervene. It is licite to think that a succession conflict would hinder the agents and clients of the lord, but we could also ask ourselves: what about the dependents? How was managed the entailed property and the free property belonging to the same House? Did the situation of *pecheros*, vassals and dependents change depending their position inside or outside the *mayorazgo*? When introducing historiographically the concept of *mayorazgo*, we are more prepared to answer one type of questions than others. When we think of it as a solution to the succession conflict, we reflect more intensely on top--down effects than on possible bottom-up views. Is it perhaps because the question of the entailed estate and the elites have been incorporated into the *grand narrative* but *free property* and dependents have not?

12 Partida Sexta, tit. XV, law I: "Qué cosa es partición y qué pro sigue della".

The amount of documentary traces left by one and the other type of assets are completely different. If we do a simple search for the word "*mayorazgo*" in the *Portal de Archivos Españoles* (PARES), the digital tool provides a very high number of results, so many that it cannot process an answer without further refining the search[13]. If we limit this query to the *Archivo Histórico de la Nobleza* (AHNOB) we will obtain 8,657 results within 30 documentary collections held by this Archive[14]: 150 documents will refer to plenomedieval centuries, adding 667 for the 15th century, increasing notably the examples for the 16th century onwards (with 1,720 references for the 16th century, 1,908 for the 17th century, 1,920 for the 18th century); 3,139 pieces digitized and 5,518 without digitizing. And I am simply indicating one archive, that of the Nobility, among other possible ones. If we were to repeat the operation in the *Archivo General de Navarra* (AGN) we would find more than 5,000 judicial processes to dive into[15]. If we go to the *Archivo de la Real Chancillería de Valladolid*, the lawsuits on matters related to *mayorazgos* would completely choke us with information. Within the AHNOB itself and the aforementioned 8,657 Documentary Units, the Frías collection provides 723 results, with the following distribution: 25 Documentary Units dated in the 14th century, 105 in the 15th century, 204 in the 16th century and we would have to study the 136 that the computer application returns without indication of date[16].

13 See the following link to replicate the search: <https://pares.mcu.es/ParesBusquedas20/catalogo/find?nm=&texto=mayorazgo&archivo=3>. We warn readers not experienced in PARES that it is preferable to use version 2.0. and that the system is currently undergoing improvements with Artificial Intelligence techniques that will lead to more profiled searches and text recognition on digital images. For the time being, the trial does not affect medieval backgrounds.

14 Consultation updated in January 2024. The number of individual diplomas is much higher since of this group, 5,122 have been registered as Single Documentary Unit, but 2,642 are described as Composite Documentary Unit, that is, integrating more than one individual document. Of the aforementioned set, 4,304 documents are undated.

15 Jesús María Usunáriz (1997), for Navarre in the modern period, resorts to the Royal Court collections of the AGN, which include more than five thousand judicial processes, in addition to four volumes of Permits of alienation contained in the subsection of Books of Government and Administration of the Royal Courts, whose main protagonists are the *mayorazgos* and their holders in more than five hundred cases (Usunáriz, 2009). The process of abolition of the seigniorial regime in Navarre can be consulted in Usunáriz, 2004.

16 Of these, 540 are Simple Documentary Units and 66 are Composite Documentary Units; 612 are not digitized and 111 offer online imaging. The review and detailed reading are not easy tasks. To give an example, the entailed estate founded by Pedro Fernández de Velasco in favor of his son Fernando de Velasco, of Medina de Pomar and Briviesca, with copies from 1380, 1392 and 1420, is one of the few digitized by the AHNOB. It consists of 101 images (AHNOB, Frías, C. 234, D. 5–8).

If we search for *bienes libres* (free goods) in the set of archives that make up PARES, the application will return 719 documents. Of these, 375 correspond to the AHNOB and, within the nobiliary colletions of this Archive, 46 correspond to the Frías collection without outstanding mention for the 14th century, 3 examples for the 15th century, 21 for the 16th century and 1 without date. All these files, with the exception of three, are not digitized, although there are digital images of memorials of free goods belonging to other noble houses to study and perhaps compare[17]. Always, as can be observed, there is a scarce presence of plenomedieval documentation and a progressive growth as we move towards the modern age.

I give these data without claiming to be rigorous, but I do give them as a warning, since the difference in the labels used in the cataloguing and in the selection of images to be digitized by today's archives shows symptoms of preference in historiographic choices, even prejudices. This is further proof that the concept of "*mayororazgo*" is unavoidable and has taken the leading role and priority in recent archival action. However, the chosen House does not disappoint us. Precisely, two documents (of the three I have just mentioned) that we can read through the digitization of the PARES system are the following: a) Declaration before the notary of the Constable Pedro, by his brother Juan de Tovar, Marquis of Berlanga, that the places and lands of Hoz de Arreba are free property and not of entailed estate (1533)[18], b) Pedro Sánchez de Tovar renounced his father's free assets that remained from his father's Condestable (1587)[19]. In short, I use these two examples to point out that the protagonists of the past did

17 For example, *copia de un memorial de los bienes libres que quedaron tras el fallecimiento de Pedro Girón, duque de Osuna* (AHNOB, Osuna, C. 1523, D. 45, without date); or, also without a specific date but with references to the 17th century, *informe sobre los bienes libres, no agregados al mayorazgo del señorío de Mocejón, que posee el conde de Torrejón* (AHNOB, Baena, C. 176, D. 233, 12 images). Of the three digitized, one of them incorporates information on both the free and the estate assets; this is the *carta de fundación y donación del mayorazgo de Villar de Grajanejos, por los Condes de Benavente a su hijo, Juan de Zúñiga y Pimentel, marqués del Villar, datada en Nápoles en abril del año 1661* (AHNOB, Frías, C. 203, D. 4–5); in reality it is in book format, bound in brown leather, decorated and very carefully made, in 54 images, with the list of the free goods being an addition to the codex (pages 48 to 54).

18 *Declaración ante el escribano del condestable Pedro, por su hermano Juan de Tovar, marqués de Berlanga, de que los lugares y tierras de Hoz de Arreba son bienes libres y no de mayorazgo* (AHNOB, Frías, C. 393, D. 2).

19 *Repudiación y renuncia por Pedro Sánchez de Tovar de los bienes libres que quedaron del Condestable su padre* (AHNOB, Frías, C. 311, D. 45–48).

care (*emic* approach) which assets were or could be untied by means of agreements or obligations. These nobles interested in profiling property, goods and rights do investigate and record what belongs to the lineage (therefore, to the leader) and what belongs to the individual (secondary relative), a basic question in the investigation. The above examples are, moreover, well illustrative for the collective debate as intraline actions after the Laws of Toro (1505) and which are sanctioned through the use of written evidence (without the need for direct intervention of the king). I will come back to this.

My suggestion to advance in the study of the *mayorazgo* involves delving into the question of the assets prior and contemporaneous to the entailment. We must think in terms of extension, comparison: the goods that are subject to an entailed estate and that are in relation to what is not fixed and is susceptible of increasing it or remaining separate. These reflections would help us to incorporate new elements to understand the growth of the noble Houses, the expectations of the heirs and heiresses and, therefore, in the hypothetical internal (and external) competition of the lineage. We do not know how much the bound property occupied in the 14th and 15th centuries with respect to the cultivated area[20], and even less do we know the volume and location of the free property. The direction should be the general seigniorial situation and here we are better equipped with knowledge, at least as far as Castile north of the Duero river is concerned, as we shall see[21]. I mentioned above the need to reflect on the ways of exercising property and manorial possession from the historicity of the phenomenon, that is, from the changes that the historical process produces, since a dominical lord does not function in the same way in the 14th–15th centuries as in the 16th–17th centuries. Nor does the same written information about a noble house appear at one time or another, nor are all the testimonies that certify the possession of a property preserved. I am, therefore, aware of the complexity derived from trying to penetrate with greater rigor into the property and the free goods generally noted only when they compete with the bound.

20 There are valuation works done for later centuries (Pérez Picazo, 1990).
21 Estepa, 2003.

Let us return to the initial anecdote to move on to the second part of this contribution. Juan, the son, is a Fernández de Velasco and María, the mother, is a Sarmiento[22]. Both already bear the representation of surnames and families that refer to recognized plots of land in the general context of the kingdom and the Court. This son is about 15–16 years old when the first-born Fernando dies, together with his father Pedro, in the war that confronts Castile with Portugal. Therefore, from being an economically and politically well-established second brother, he will become, fortuitously, the emblematic and responsible head of the seigniorial House[23]. He already knows what an estate foundation is because his grandmother generated that documentation. The dispute with his mother seems legitimate to him. The conflict over the performance of free and inherited property is bitter, goes to court and ends with an agreement between the two parts and the direct mediation of the king. It is not surprising that the monarch intervenes in this conflict: María and the deceased Pedro gave a very high contribution to the military campaign in Portugal, in money (one million maravedis) and men. The one in charge of collecting and moving the money was the chief steward, the Moorish Don Haly[24]. In the royal siege itself, the nobleman and the eldest son called to succeed the House died: a great service that deserves the attention of the superior (royal grants are in the offing). The nuclear territory of the nobleman will know an unprecedented expansion, which involves the action of various agents and dynamizes various resources and strategies. To speak of free-bound goods, the formation of the lordship and the exercise of power leads our gaze through more than one focus of attention: the lineage, the ties with the superior, the relationship with dependent actors. And, undoubtedly, the question calls for new archival research by applying questions to the situation represented in the sources. The approach (now *etic*) calls for a critical return to the family archive.

22 Urcelay, 2009, 2014.
23 Atienza, 1983, 1987, 1990.
24 I have analyzed this conflict (Jular Pérez-Alfaro, 2013), with a different approach to the one cited in note 10 (Franco, 2009).

2. Which Velascos, which archive, which first *mayorazgos*?

The laboratory that constitutes the Frías collection, as a family archive for historical research, is one of the best equipped for its richness in documentation, resources and practices used for the benefit of the noble expansion and creation of the written memory of the Velasco lineage. Its longevity as a group of influence is historically relevant and, consequently, the scientific production that could be reviewed is very abundant[25]. To the catalogs published on paper, now outdated but still in use, I will recall briefly that this collection of documents is being published digitally in the *Computerized Corpus* that we are carrying out from the research project *Scripta manent*, which I have been coordinating from three successive R&D projects. The results can be followed in the platform www.scripta-manent.info as well as in friendly projects with which we closely collaborate (www.hilame.info). As I have already mentioned, this contribution focuses on the initial stages of lineage formation and the formalization of the first entailed estates, orienting the ideas towards "the conditions for the realization of property" and the "modes of exercise of power" applied. I try to do so from an approach sensitive to the social dynamics and the context in which it takes place[26].

At the end of the Ancient Regime, among the accumulation of titles that accompany the title of Duke of Frías, the definition of the *mayorazgo*, and the most connoted of symbolic consideration in the family memory, associates the following domains: lord of Frías, Arnedo, Siete Infantes de Lara, Villalpando, Villadiego, Briviesca, Herrera de Río Pisuerga,

25 More than a bibliographic list that can be easily accessed, I find it interesting to comment on the proliferation of doctoral dissertations dedicated to this noble family: Alicia Montero, 2017; Elena Paulino (2020) Osvaldo Víctor Pereyra (2014), Raúl Villagrasa-Elías (2022) and Marta Vírseda (2019), which show methodological interests and advances (network analysis, comparative perspectives, cross-sectional approaches) with respect to those first investigations, remarkable for their documentary contribution. We have indicated in the final bibliography academic works, unpublished, focused on issues relevant to archival practices, written culture and the exercise of lineage power by master's students and collaborators of *Scripta manent*, among them Beatriz Benito (2018), Celia Castro (2018), Daniel Cristóbal (2021), Cristina Pastor (2023), Graciano León (2023).

26 I allude in the expressions in quotation marks to Rosa Congost and Carlos Estepa (my translations).

Medina de Pomar, Pedraza, Castrillo-Tejeriego, Cuenca de Campos, Belorado, Cerezo, Puebla de Arganzón, Briñas, Casalarreina and Saja, Valleys of Soba and Ruesga, Villaverde, Hoz de Arreba and from Zamanzas[27].

This description sums up the aggregation of *mayorazgos* that were born in some individualized moment. These territorial centers with their areas of influence are spaces over which the action of the Velasco family unfolded in the 14th and 15th centuries in the northern plateau and north of the Duero River. The enumeration is not exhaustive since some other spaces (Gandul and Marchenilla in the surroundings of Seville, for example) functioned as tests of expansion towards the south peninsular, in principle destined to the central trunk of the lineage although they ended up disintegrated towards secondary branches. I will now draw attention to the second half of the 14th century to highlight the process prior to obtaining the great titles that followed one another throughout the 15th century, that is, before becoming Counts of Haro (1430, King Juan II), before receiving the *Condestablía* of Castile hereditarily in the Velasco surname (1473, Enrique IV), before being titled Dukes of Frías (1492, Isabel y Fernando, Reyes Católicos) and being one of the first twenty-five *Grandes* of Spain (1520, Carlos I).[28] The granting of noble titles is one of the most illustrative examples of the gap between the *social time* of action of the lineage on the territory (already fully active in the area of Frías

27 The news is from Josefina de Silva y de Velasco who enunciates with Diego Fernández de Velasco, the XIII Duke of Frías (1754–1811), the sum of aggregate titles (I do not translate for the simplicity of the text): "*Duque de Frías, duque de Uceda, duque de Escalona; marqués de Frómista, marqués de Caracena, marqués de Berlanga, marqués de Toral, marqués del Fresno, marqués de Villena, marqués de Villanueva del Fresno, marqués de Jarandilla, marqués de Frechilla, marqués de Villarramiel, marqués del Villar de Gajanejos; conde de Castilnovo, conde de Salazar, conde de Alba de Liste, conde de la Puebla de Montalbán, conde de Pinto, conde de Peñaranda de Bracamonte, conde de Luna, conde de Fuensalida, conde de Colmenar, conde de Oropesa, conde de Alcaudete, conde de Deleitosa. Siete veces grande de España*". The last Duke, the XVIII Velasco in internal computation, was nine times *Grande de España* and needs pages for the complete annotation of the titles (he was also the one who favored the modern cataloguing of the seigniorial Archive); the titles show in numerous occasions the arrival to them after the resolution of internal conflicts and lawsuits for the succession. The title of Count of Salazar, for example, appears as follows: "title that *had been taken away by lawsuit* from the legitimate descendants of the Constable Bernardino" (translation and italics mine). The internal conflict is the most well known in the different case studies, but it seems essential to go further in this discussion.

28 Among the titled, the distinction of Grandeza de España granted a political and social weight of preeminence in the Kingdom. Charles I granted the distinction to 20 families and 25 titles, among them: "Uno de la [Casa] de Velasco (el Condestable de Castilla, duque de Frías)" (Quintanilla Raso, 2006).

since a century before) and the royal sanction. But let it be noted that we are talking about a lineage that, from the characteristics shared by a wide range of groups defined as regional nobility[29], will diversify in the ascent to the most restricted levels of the peninsular high nobility.

The Velasco generations and, attending to the individuals who hold the leadership in the passage from the fourteenth to the fifteenth century, the ones that are of interest now are those starring:

1) Pedro Fernández de Velasco (†1384), whose father Fernán Sánchez de Velasco is of little relevance due to his early death (1347), but not his mother, Mayor de Castañeda. It is she who grants the entailed estate of Salas de los Infantes (1371), one of the first documented and whose deed process, which we preserve in an unusual succession of three successive diplomatic pieces, will end up making the woman's handwritten signature disappear[30]. With Maria Sarmiento this Pedro will have four children: the three boys will receive differentiated entailed estates and for the daughter an advantageous marriage is prepared. Other children born out of wedlock, at least two of them, Pedro and Sancho, will have full access to inheritance distributions; the fact does not generate conflicts at this moment but, on the contrary, they function with integration in the organization and global development of the *House*[31]. It is a fact to retain if we think of the *mayorazgo* as a solution within a dynamic process subject to changes.

2) Juan Fernández de Velasco (1368–1418) has as his only legitimate wife María Solier, lady of Villalpando, who is also his relative. They needed papal dispensation. He granted entailed estates for two of his surviving sons, Pedro and Fernando; the daughter was married to Admiral Fadrique Enríquez. He also had illegitimate children but the relationship here is more problematic as conflictive was the relationship with his mother as we have indicated. The seigniorial action of Juan de Velasco takes place

29 Estepa, 2003; Álvarez Borge, 1996.
30 For the data of these entailments, in general, and for the documentary references and signatures, in particular, I refer to the digital tool we have created: Raúl Villagrasa-Elías & Cristina Jular Pérez-Alfaro, «Los mayorazgos de la Casa Velasco en digital», *Scripta manent. De registros privados a textos públicos*, *Scripta manent* Project web page (last version: 03/01/2024; consulted: 08/01/2024).
31 Pedro el de Soto will develop a secondary house in Rueda and Sancho in Revilla and Valdeporres.

between three reigns, those of Juan I (1379–1390), Enrique III (1390–1406) and Juan II (1406–1454), who, let us remember, acceded to the throne when he was barely two years old, so that the adult Velasco must develop within a complicated and conflictive game of balances between the tutors, the queen mother and the royal relatives. In fact, he should have taken care of the child king's upbringing; he will not do it, but in return he will be compensated (*ygualado*) with a large sum of money[32].

3) I will not go much into the domains of Pedro Fernández de Velasco (1399–1470), the first Count of Haro, because I consider that a new stage of analysis in the composition of the lordship and the exercise of the power of the House opens from him. But I will remember for this monograph that the entailed estate of 1458 that this nobleman instituted becomes a historiographical model, widely quoted and used, for rigorously eliminating female succession (a lasting effect until the end of the 18th century, when a successor will accede through the female line after a lawsuit).

The master lines of the evolution of the Velasco family are known, although perhaps we know more about the process from a top-down view. We know somewhat less about the family strategies put in place and practically nothing from a bottom-up view, looking for the protagonism of people involved in the management and exploitation of the domains and, by extension, concerned about the ways in which the slow process of seigniorialization was reported, recorded, and preserved in writing.

32 The will of Enrique III granted the upbringing of the infant to the chief justice, Diego López de Estúñiga, and to the chief steward, Juan de Velasco, with 150,000 maravedíes per year, in addition to a salary for the guards. The conflict with the queen Catalina is bitter, until the agreement (*avenencia*) by which he will receive the mentioned maravedis in addition to 6,000 florins (that is to say, 312,000 maravedíes). I point out the data to illustrate the position of force reached by the Velasco and to indicate the legal expression: they were evenly matched (*quedaron ygualados*), also used in the lawsuit between María Sarmiento and her son. In other words: political struggle settled by means of agreements and negotiation (Alfonso et al., 2004).

3. Combination of strategies: a huge increase in assets, between free and entailed

What significance do we attribute to the process of seigniorial growth embodied by Juan de Velasco? In the second half of the 14th century, we find ourselves in an intermediate stage between the photo-fixation of the general seigniorial property of the kingdom of Castile, which we know from the *Libro Becerro de las Behetrías* (LBB)[33], and the readjustments made after the first Trastámara kings. Much of the specialized literature has given more relevance to the issue of the royal grants than to the follow-up of the acquisition policies developed by the noble Houses themselves, at least until the recent contributions of J. M.ª Monsalvo Antón that resituate the relationship between nobility and monarchy[34]. There is still a wide field of work to be done in the knowledge of manorial consolidation and the formation of manors, although the rich production of Ignacio Álvarez Borge paves the way.[35] The first *mayorazgos* are developed in the context of the internal organization of the lineage and the relations with the king (sanction or clause of reversion to the Crown), but it is also on another level where the positions of vulnerability or strength of the lineage under construction are settled, in the competition with its equals and in its effect on the dependents.

Our knowledge about the process of formation of the lordships and, in general, about the lordship structures and the exercise of power in Castile, has a backbone based on the work of deconstruction-reconstruction of the content of a source, the LBB, as highlighted by the studies of Carlos Estepa[36]. The line of research advocated by him, centered on an interpretation of a relational nature, has completely changed the panoramic

33 The source was edited by Martínez Díez, 1981.
34 J. Valdeón as a classic reference. For the indicated review see Monsalvo, 2017, 2019.
35 His work, extensive, deserves a general citation, although in the final bibliography I have indicated only works from 1996, 2010, 2019, 2021. He also discusses the excessive prominence given to the Trastámara, advocating other approaches: "The development of the jurisdictional lordship under medieval times should not only be related to the royal concessions of the Trastámara dynasty, nor to the lay lordships or the passage of the royal villas to lordships; it is a broader phenomenon that can be interpreted in general as the strengthening of manorial power" (my translation: Álvarez, 1993, p. 6).
36 Carlos Estepa is the main reference. Also his disciples: I. Álvarez Borge; C. Jular; J. Escalona.

view and the approach to the seigniorage. This is sufficiently well known, although not always well applied, but I would now like to allude to another type of LBB reference. Because of its transformative value, the LBB deserves a few lines.

The LBB is a register that provides information on 2,402 population centers in Castile in the mid-14th century (1352); it includes the names of populated and unpopulated places, the names of all persons and institutions enjoying some kind of lordly status (including the king) and details the rents to be received. We have, therefore, a reference model for comparative studies and, in addition, we have a register with thousands of items, which is crying out for a digital treatment[37]. Let us remember that it was originated because of a petition of the *hidalgos* in the Cortes of Valladolid (1351), consisting of the distribution of the *behetrías* among their natives, as *solariegos*, and that the petition was justified by the numerous conflicts generated by the perception of rights over this form of lordship of the lay nobility[38]. The general survey ordered by the king was to cover the entire territory of the *Merindad Mayor de Castilla*, between the Cantabrian Sea and the Duero River, some 400,000 km^2. The research was carried out by five groups of researchers, formed by two people, a clergyman and a layman, who were distributed among the different *merindades menores* (15 of them were completed). The work was completed in one year and has provided information on 2,402 localities and 300,000 km^2. An area, for what interests us now, with a high density of settlements (1/12 km^2) that we can understand as numerous "plots of power" to be acquired, in the mentality of the medieval lord, over a territory that, having constituted the original central area of the county, then kingdom, of Castile, also enjoyed a high symbolic meaning in the whole of the territories of the Crown, even

37 Initiated with my colleague Julio Escalona at CSIC, but still without public access.

38 Véase Jular & Estepa, 2009. A glossary is provided at the end of the volume. Hence the definition of *Behetría*: A category, or type of seigneurial tenure that was well documented from the twelfth century onwards. A peculiar form of seigneurial tenure that was dominated by the lay nobility. A fundamental difference between *solariego* (lay hereditary) and *behetría* lordship was defined by their respective signeurial structures. In the case of lay hereditary lordship, the authority of lords was exercised over individual estates by individual lords. In the case of *behetría* lordship, by contrast, seigneurial authority was exercised at two levels: the superior of the two was occupied by individual lords, and the inferior by the *naturales* or *diviseros* who held a stake in a system of shared lordship. The authority of the *diviseros* or *naturales*, rather than being subdivided, was exercised jointly over the sum of the *behetrías's* dependants.

in the mid-14th century. Because it is not the same to be a lord in Medina de Pomar (*realengo* in the LBB and head of entailed estate in the following generation) as in Gandúl and Marchenilla. The fact that the petition arises from the *hidalgos* is also a significant feature as an indicator that the individuals and groups involved want to know and differentiate the manorial rights and conditions more clearly than the existing ones[39].

I note here the fact that we do not directly know the names of the investigators of the regions (*merindades*) of Burgos-Ubierna, Castilla Vieja and Santo Domingo de Silos, and that the result of the investigation of four regions, those of Bureba, Rioja-Montes de Oca, Logroño and Allende de Ebro, has not been preserved (if it was made). And I point this out because they are, and will be, key territories in the expansion of the Velasco family, documented in the year 1352, in six of the fifteen *merindades* as lords of ancestral estates and of *behetría*. They are, therefore, consolidated lords as well as "lord projects" and, this is the main thing, in general conditions of marked fragmentation, dispersion, sharing of rights over the same place and coexistence of more than one type of lordship: royal demesne (*realengo*), ecclesiastical lordship (*abadengo*), lay hereditary lordship (*solariego*), *behetría*, *encartación*[40], shared lordship (*condominios y señoríos compartidos*) in many of these places and regions. The seigniorial structure of the kingdom of Castile is undoubtedly extremely complex, but it should not be simplified if we want to obtain a realistic view of what the aspiring leaders faced. In this brief approximation, let us retain in short that the Velasco family forged themselves as lords in a complex situation of extreme fragmentation and high competition; in a potentially rich territorial scenario to acquire properties, goods and rights, but with a high level of demand to achieve triumph. Knowledge of the territory

39 A recent review of *hidalguía* in Dacosta et al., 2018. It is important for comparative study: Díaz de Durana, 2009; and, in general, the production of the research group led by this author.

40 Véase Jular & Estepa, 2009. *Encartación*: a rare seigneurial structure, found only in some areas in the north of Castile, which combined some elements of *behetría* lordship with others more characteristic of the royal demesne. The subjects of *encartaciones* were free to choose their own lords and delivered their dues to the king. *Condominio, Condominium*: Mixed lordship; a term we use to denote lordships in which lay hereditary lordships and/or ecclesiastical lordship and/or the royal demesne coincided.

and access to information will prove to be key elements in highlighting this complex of coexisting demarcations and jurisdictions. The archives generated by the Velasco nobles attest to these different strategic perceptions. I will come back to it.

If I call attention to the LBB research in this monographic volume, it is not only because of its quantitative importance but, above all, because it denotes a high organizational level of the royal administration at that time and because it raises the need to think about the mobilization capacities of the local societies that generated that information: mayors, *merinos* and other royal officials, members of the curia or persons of special dignity, rank or social position, ecclesiastics (abbots, priors, archdeacons) or lay people (*milites*, *cives*); and who testified, such *homines bonos* and other sets of individuals who swore. Did the lay lords participate in the information, and did they provide people to do so? We know that the Velascos appear in the information of the LBB, but we have not yet said that, unlike other nobles with whom they compete, they were officials of the monarchy (*merinos*, *camareros*, justices). They knew, therefore, the ways of producing information, the registration practices that the court and the royal chancellery developed. They themselves possessed a copy of the LBB and used it. Circumstances such as these differentiated the resources that this nobiliary group used to their advantage.

The LBB offers a scheme of the seigniorial and power scenario that at least three Velasco generations visited. Pedro Fernández de Velasco (Juan's father, inheriting rights from his grandfather Sancho and father Fernando) was the main actor in the concurrence of another 150 lords only in the *merindad de Castilla Vieja*, which I cite as the main area of development. He passed away in 1384, leaving behind *mayororazgos* instituted. When, sixty years later, his daughter-in-law María de Solier was widowed, she found herself as the manager of a domain so enormously increased "that she alone did not dare to carry out the administration (...) because the said estate was long and diffuse, spread over many parts".

The complex situation led the lady to ask for help.[41] In this enormous set, the free assets of the House were once again important, the substantial community property that she gathered with her husband Juan and that, given the bad experience with his mother, the nobleman tried to leave clearly specified and distributed in his will[42]. In the stately journey between the point of departure (Pedro and the LBB) and the point of arrival (the inheritance left by Juan de Velasco) the domain has grown exponentially and the difficulties generated by the disintegration of the property seem to be a problem. Does this phenomenon affect the clientele? María Solier – again a widow – outlived her deceased husband by many years. She also ordered an inventory of her own property and that of her minor children[43]. Who was the real manager of the free estates? Did he improve the care, conservation and projection of the entailed estates? A new Pedro, Count of Haro since 1430, initiated a new stage in the development of the lineage.

Between Pedro and Juan there is a variation in their respective conditions of access to property and subsequent exercise of the lordship. Although both contributed to the progress of the House, there are differences in the way and pace of acquisition of properties and goods, as well as in the strategies employed. A difference to be added is also the number of descendants, which grew significantly throughout the 15th century in nobiliary models like the Velasco family, a fact that conditioned the distribution

41 See AHNOB, Frías, C. 363, D. 12–13, September and November 1418 (15 images): "Request made by D.ª María Solier, widow, wife of Juan de Velasco, (...) before Juan Sánchez de Avendanno, mayor of the *villa* de Briviesca, asking this as well as D. Rodrigo de Velasco, bishop of Palencia, and Sancho Sánchez de Velasco, her brother-in-law, to appoint a good person, so that together with her, they would take care of her children, since she alone was not enough, nor dared to do the administration". Let the rhetoric not deceive us: the requested *concuraduría* supposes to give entrance (and distribute resources) to the action of relatives in the lordship, who were not ruled by testamentary disposition of the deceased husband; thus, the entrance of the powerful *adelantado mayor*, Garci Fernández de Sarmiento. The rhetoric of the document is illustrative of the struggle to control controversial situations. Cristina Pastor has done her master's dissertation (TFM) on this lady.

42 The will, codicil, and other documents of interest to the succession are extensive pieces with a great deal of descriptive detail, a symptom of the close knowledge that this man possesses. The difference between the assets of both and what should be done with them respectively is noted more than once: e. g.: AHNOB, Frías, C. 596, D. 12–15 (will); AHNOB, Frías, C. 598, D. 41 (inventory of the assets of the estate). Both documents edited for *Scripta manent*.

43 "and that all the property that she knew belonged to the said minors and belonged to them, that she make an inventory of them and that she keep them safe and secure as far as she could, and that during the time of the said guardianship that she not marry". (AHNOB, Frías, C. 363, D. 12–13).

of inheritance and *mayorazgos*. This House faced on more than one occasion the exhaustion of the direct line of descent in the succession of the main entailed estate, having to resort to alternatives. These alternatives substantially nourish the archive. We cannot dwell on them now, but for modern times numerous and suggestive situations can be documented: changes of ownership in goods, modification of deeds, agreements and before and after litigation agreements, legitimacy of children born out of wedlock, renunciations to the inheritance and a long etcetera. Let us return to the archive.

4. Notes on the new documentary material: to what extent is it new and why is it important?

I announced in the proposal that the research is based on the identification of a substantial set of documents that has hardly been worked on to date. In fact, there are several sets of documents, unknown or little valued until now for various reasons, which, by changing the interpretative approaches, have become relevant. Some records were simply not known, other diplomas have been cited many times without review (the letters of *mayorazgo* among them), others were undervalued by research. From the *Scripta manent* project and through different actions, we are revealing these vast packages of information[44]. There are positive and not so positive elements in this fact: the "discovery" of documents for the researcher is always a cause for rejoicing, however, care must be taken to ensure that the documentary revelation does not detract from the critical interpretation. The documents to which I refer are many, very complicated and, really, they make full sense if they are analyzed as a whole after a complete reading of their thousands of pages[45]. I have already drawn

44 The master's dissertations (TMFs) are providing relevant contributions, whose documentary apparatus we are uploading to the web. For this reason, I have included them in the final bibliography.
45 For example, the collection published by Elisa Álvarez Llopis, Emma Blanco Campos & José Ángel García de Cortázar, 1999, is extremely valuable but, nevertheless, partial with respect to the overall dominance of the Velasco family. Dissertations focused on this collection therefore suffer from starting problems.

attention on other occasions to the documentary wealth of the Casa Velasco and its significance in the kingdom as a whole. I will outline four blocks of interest composed of this "new" material:

1) Files in the form of factitious codices that remained in the Archivo Histórico Nacional (AHN) in Madrid (AHN, Colección Códices y Cartularios, CÓDICES, L. 1127 and L. 1128) and did not pass to the AHNOB in Toledo. Both codices bring together deeds of *mayorazgos* and wills of the House (23 the first and 11 the second). They are original pieces, dated between 1369 and 1510, compiled by order of the Dukes of Osuna in 1697. I will not dwell on this first block because Raúl Villagrasa-Elías devotes an important part of his contribution to it. I will only remind that these compilations are a consequence of the conflict between lineages, which forced the search for documentary evidence to contribute to the judicial files. The existence of originals such as these places us before the infinity of copies, simple or authorized, that are produced and about which we must investigate more explanations than those usually found in academic texts, in response to processes that go beyond the merely documentary. The fortune of both codices, forgotten in the AHN, also conditioned their state of conservation[46]. It is worth asking when and how these documents were "neglected", in some cases, royal privileges of exceptional workmanship and all with essential supporting content for the memory of the House.

2) A second set that we reveal from *Scripta manent* project are the inventories of the House. If we think of the appraisals, registers, and inventories of goods, we will be immersed in more than 200 documentary pieces if we consider the lineage in the long duration (and its revisions backwards, for example the compilation of royal privileges since Fernando III)[47]. Among these inventories we will find one specifically dedicated to the registration of the free goods, carried out in parallel to the written determination of the goods bound by entailments.

46 A description of what is contained in www.creloc.net, an R&D project that I directed starting in 2003 and that facilitated the restoration through an agreement (Archive and CSIC).
47 AHNOB, Frías, C. 252, D. 1. By testimony dated May 1489, it cites antecedents dating back to 1219.

Within this block are also relevant, in the sense that I am giving to this proposal, the inventories of deeds made by order of the leaders of the House; among them, we have already revealed the first ones preserved, corresponding to the years 1432 and 1461–1464[48].

They are relevant for the kingdom of Castile because we do not know of similar examples made (and preserved) by other nobiliary and minor groups. And they are significant records to testify that the House of Velasco was well acquainted with different ways of annotating or, in other words, of providing management writings and advanced *écritures grises*. Thus, the first of these two inventories gathers 65 deeds on a specific micro-spatial area (the House of Extramiana), the second one refers to more than 1,400 documents. The entries that refer to documents of *mayorazgos*, originals or copies, in the inventory of 1461–64 attributed to Juan de Porres[49], are approximately 40, enough within the set for the scarce number of entailments that the House had created at that time. The mentions of these deeds are scattered or gathered in notebooks, some appear as framed and protected with velvet wrapping, thus indicating the dignity that was intended to be given to the written piece, to its protection and, perhaps, to its exhibition. Among them:

> *Mayorazgo* of Juan de Velasco, son of Juan de Velasco, which four *mayorazgos* are wrapped in a black waxed cloth.
>
> A privilege of King Don Enrique encased in wood so that the count can make *mayorazgos*.
>
> Charter of *mayorazgo* that Juan de Velasco and doña María de Solier, his wife, made with respect to Pedro de Velasco the monastery of Rodilla and other goods, which is signed with their names, and sealed with their seals, and signed by a notary (...).

48 AHNOB, Frías, C. 253, D. 1–9. The one from 1432 is the first of the nine documents compiled in the box; it occupies images 1 to 9; the second one mentioned in text also belongs to this composite signature (AHNOB, Frías, C. 253, D. 1–9) and occupies images 10 to 34 (of the 103 total).
49 Jular Pérez-Alfaro, 2021.

> *Mayorazgo* made by Juan de Velasco to Ferrando de Velasco, his son, of the Puebla de Arganzón and other places and goods, which is signed in his name, and that of his wife and others, and signed by notary.
>
> Simple copy of a *mayorazgo* that is written in seven sheets (...).

It can be observed that the description is quite exhaustive, indicating format, length, existence of signatures (including the woman) and other validation elements, etc. These are matters, in principle formal, that dignify the conservation but, above all, that provide for a vigilance of the registry[50].

3) To the previous block must be added the "simple inventories" arising from the archival process carried out at the end of the 18th century and the beginning of the 19th century in which, once again, we can ascribe a certain pioneering character to the practices used by this noble House[51]. These documents also reveal (for what is of interest today) a significant increase in the movement of information and documentary conservation that took place during the time of Juan de Velasco's leadership in proportion to other periods. Among 14 simple inventories produced in the period, which refer to documents dated between 1295 and 1800 (although practically all date from the second half of the 14th century), with the following distribution by centuries: 99 (14th century), 237 (15th c.), 259 (16th c.), 105 (17th c.) and 37 (18th c.). The large proportional amount of 225 documents is due to actions undertaken by Juan de Velasco. These are not all the existing inventories, nor are they all the businesses that the nobleman

50 Julár Pérez-Alfaro, 2021, pp. 112–115. The original texts: "Mayoradgo de Juan de Velasco, fijo de Juan de Velasco, los quales quatro mayoradgos están envueltos en vn paño negro ençerado. / Vn preuillejo del rey don Enrrique encaxado en madera para quel conde pueda fazer mayoradgos. / Carta de mayoradgo que Juan de Velasco e doña Maria de Solier, su muger, fizieron a Pedro de Velasco de monesterio de Rodilla e otros bienes, que es firmado de sus nonbres e sellado con sus sellos e sygnado de escriuano. (...) / Mayoradgo que fizo Juan de Velasco a Ferrando de Velasco, su fijo, de la Puebla de Argançon e otros lugares e bienes, que es firmado de su nombre e de su muger e de otros e sygnado de escriuano. / Traslado synple de vn mayoradgo que está escripto en syete fojas (...)".

51 In Julár Pérez-Alfaro, 2023, in a tribute book to Gemma Avenoza, I allude to the innovative work of the archivist Juan Manuel Manzano at the beginning of the 19th century. I include the iconographic plan of the archive according to the archivist's own design.

signed or delegated to his officials, but this figure does constitute a relevant reference to appreciate the modes adopted by this lineage leader[52].

4) I have left for the last block a huge set of transactions, especially sales and purchases, from the second half of the 14th century and the beginning of the 15th century, during the leadership of Pedro and Juan. There are hundreds of transactions and once they have been uploaded to our web page, their systematic study with database processing will open up – is opening up – new considerations on the process of the formation of the lordship, the lordly power exercised, and the archival practices used in the creation, annotation and conservation of the information. From the protagonism of the leader, we move on to highlight here the various groups of people involved in the management and exploitation, the manorial agents, the networks, the dependents. I have avoided making tables on this group in order not to give hasty information and not to overwhelm this text with references. Unlike the synthetic news of blocks 1, 2 and 3, these documents to which I now refer are complete originals (not regesta) and through them it is possible to analyze the deployment of a whole arsenal of means used for the patrimonial expansion with greater elements of detail and, therefore, with better possibilities to face the manorial pressure exerted. Agreements, barters, exchanges, but also numerous judicial sales (i.e. resulting from seizures), are added to the sales and purchases from large to tiny plots of land. They are important in themselves and, in my argumentation today, important for their exceptional contribution to the knowledge of the free goods before and during the passage to become entailments. This very rich microinformation will contrast the existing writing on the *mayorazgos* and will become truly relevant if are studied together.

We will be able to present well-adjusted conclusions, and with statistical rigor, at the end of the project, but we can already place these data in the argumentative field in which I affirmed "the primordial importance of

52 See a more detailed analysis in Jular (2017b, p. 270), made from 764 digitized images. It is made from what the archive records (AHNOB) indicate as simple "inventories of deeds referring to *Medina de Pomar* and *merindad de Castilla la Vieja*", that it only computes diplomas of a territory within the manor, not of the whole domain. They are descriptive instruments made by an archivist of the House and not computations made from our project.

the *free goods*, authentic heart of the nobiliary patrimony in expansion in these initial stages", as I pointed out at the beginning of this text.

Conclusion: the acquisition of ownership, the exercise of lordship and the written record

We know how to explain, for example, why in a short time and with very few *mayorazgos* still created in the middle of the 15th century, the Velasco House generated a hundred copies of these deeds? Who were they addressing? Do we know the internal process of written within a House and the steps followed in its distribution until it reaches the king? Do servants know relevant information about how the management of the house is forged? Why does Juan de Velasco take documents again for confirmation and royal sanction? Why, precisely, has the will of Pedro Fernández de Velasco been "lost"? Why has the will of the grandmother of another Pedro Velasco conveniently "appeared" when the free assets of others entailed to competing leaderships were being discriminated against? How many times are manipulations detected and, even more so, denounced by coetaneous?

The aforementioned files constitute a part – important but only part – of the Velasco archive, conceived in the times in which we speak through diverse archival spaces not yet fully centralized. Both the medieval and modern diplomas that I have synthesized in the previous blocks will help to specify the research on the formation of property, the constitution of the lordship and within it the analysis of the entailments in coexistence with free goods in transformation. In the case of the Velascos, the practices of annotation and documentary conservation are offered as one more strategy to consider in the methodological rethinking of the study on the process of formation of manorial property. And, I insist, this question of writing and the conditions of *archivage* in the relationship between actors and performers is an area in which we still have great methodological deficiencies, although the work of Joseph Morsel and previous authors

helps us inestimably[53]. The Velascos can contribute significantly to filling gaps and positing new questions.

The questions scattered throughout my text can serve to suggest aspects that I consider problematic and on which there is work to be done. I opened the proposal by saying that the institution of *mayorazgo* is frequently approached from a legal and normative perspective, which tends to obscure what is dynamic and changing about the phenomenon. If we pay attention to formulations that rigorously follow this line when reading the sources, and that are insensitive to the observation of change, we will continually encounter paradoxes when dealing with administrative documents.

A simple example, a condition that is in principle prohibited such as the alienation of entailments is, however, a frequent phenomenon, permeable to negotiated changes and also made possible from the legal field. Could the entailed assets not be sold? The rules reiterate the prohibitions ("cannot be divided, sold, or alienated, neither in whole nor in any part of them"), they indicate in negative the causes for carrying them out ("by honorable or lucrative title, nor by dowry, nor by deposit, nor by donation propter nuptias, nor by liberation of captives (...) and although they are more pious and more favorable than those already mentioned"). But the documents also reveal every type of possible modification: increases, revocations, dissolutions, separation of assets with respect to the original endowments are made. All types of entailed assets are moved: large and small places, *maravedíes*, castles, *tercias*, houses, fortresses, pastures, vassals... Assets are mobilized through different and numerous actions: taking out, obligating, mortgaging, selling, donating, exchanging, transferring, dividing, sometimes even paying with them the processes and lawsuits arising from claims on the entailments themselves. These situations are frequent, a practice intensified since the end of the 15th century, especially since the Catholic Monarchs, and they leave numerous documentary traces in the archive that we work with[54].

53 I have already pointed to the work of Joseph Morsel as a spur to theoretical renewal. But classical contributions are still important to us: Geary, 2007; Cook, 2013.

54 Quintanilla Raso, 2004, 2009. The original texts: "*no poder ser partidos ni vendidos ni enajenados, ni todo ni en parte alguna dellos* (...) *por título honroso nin lucrativo nin por dote nin por arras nin por donacion propter nupcias nin por redencion de cautivos* (...) *et aunque sean mas pias e mas favorables que las desuso nombradas*".

Theory must be contrasted with practices. When among the 83 Laws of Toro (1505), the law 40 stipulates a description of the *mayorazgos,* resorting to an extensive typology, with a decalogue of models (irregular *mayorazgos*) we should not think that the noble Houses automatically apply casuistry. Many of them will solve the problem by resorting to negotiated solutions between different families or with superiority when they do not use any other type of solution.

The chancellery is also a research place and an open door to asking ourselves about what a House can know about the "world of paper". An approach to the royal document forms of the Chamber of Castile, dating from the 16th century, will illustrate the level of integration of this issue of the mobility of entailed goods in daily administrative practices[55]. Thus, you can find instructions for creating papers that respond to a wide range of situations:

> "[...] licenses to establish entailments [*mayorazgos* for all the quote], faculties to increase entailments, licenses to extend the succession of an entailment after the death of the heir, faculties to accumulate entailments, licenses to pledge assets of an entailment as a guarantee for dowry and wedding gifts, licenses to allow a noble or knight to provide maintenance after their days and those of their wife, obligating the assets of the entailment, license for husband and wife to establish an entailment with their assets while retaining usufruct during their lifetime, faculty for the holder to leave a lifetime income to their wife, faculties to impose fees by taking them from the assets of the entailment, faculties to redeem fees and impose them again at more advantageous prices, with the consequent alienation of the income of the entailment, licenses to sell assets of the entailment and, with the obtained price, substitute others in their place, licenses to alienate and exchange assets of the entailment, faculties to sell assets and incomes of the entailment to defray the expenses of "journeys" that the holder of the entailment undertakes accompanying kings and princes, licenses to establish

55 I take it from De Dios (1996–1997, pp. 80–81). In his speech, the quote endorses the king's power "in defense of privilege, as demanded by a seigniorial society during the 16th century" (my translation).

agreements and settlements between parties in pending lawsuits about entailed assets, royal confirmations of agreements about entailed assets made to avoid litigation, or confirmations of entailed deeds, by which any defects they may contain are corrected"[56].

Let us reject the idea that the ancients turned their backs on administrative knowledge or that leadership in power actions disdained or was disinterested in information resources and instruments. The Velascos of the 15th century were well aware of administrative resources used in the royal chancery with licenses that they left noted in their early inventories of deeds. They were territorial officers (*merinos*) and therefore knew the development space on which to program hypothetical expansions or in other words. They could know strengths and weaknesses for their expansion. They were officials in the King's House (*camareros*) and, therefore, knew the most advanced information routines. They applied royal sources

(the LBB) that they copied in their own investigations[57]. And, of course, they knew how to manipulate the information.

Free and entailed goods are not frontally opposed. They can respond to objectives consistent with the interests of the House. It is common to admit that the *mayorazgo* represents an attempt, carried out by the dominant groups, to fight against the threats of patrimonial disintegration derived from an egalitarian inheritance system that fragments the hypothetical

56 "[...] *licencias para fundar mayorazgos, facultades para acrecentar mayorazgos, licencias para alargar la sucesión de un mayorazgo ante el fallecimiento del llamado a suceder, facultades para acumular mayorazgos, licencias para obligar bienes de mayorazgo en seguridad de dote y arras, licencias para que un grande o caballero pueda dejar mantenimientos después de los días de él y su mujer, obligando los bienes de mayorazgo, licencia para que marido y mujer puedan hacer mayorazgo de sus bienes reservándose el usufructo mientras vivan, facultad para que el titular pueda dejar a su mujer renta de por vida, facultades para imponer censos al quitar sobre los bienes de mayorazgo, facultades para redimir censos y volverlos a imponer a precios más ventajosos, con la consiguiente enajenación de renta del mayorazgo, licencias para vender bienes de mayorazgo y con el precio obtenido subrogar otros en su lugar, licencias para enajenar y permutar bienes de mayorazgo, facultades para vender bienes y rentas de mayorazgo con que sufragar los gastos 'de jornadas' que el titular del mayorazgo realiza acompañado a reyes y príncipes, licencias para establecer igualas y conciertos entre partes en pleitos pendientes sobre bienes de mayorazgo, confirmaciones regias de concordias sobre bienes de mayorazgo celebradas con el fin de evitar litigios, o confirmaciones de escrituras de mayorazgo, por las que suplen cualesquier defecto que pudieran contener*".
57 Jular Pérez-Alfaro, 2017a.

consolidated nucleus to be distributed. Even if this consideration is correct since, in effect, the primogeniture pursues as its goal the non-disintegration of the heritage and the preservation of it in the successors, the conflictive aspect that it drags in the face of internal competition, within the lineage, cannot be avoided. The *mayorazgo* looks at the entire progeny, establishes a hierarchy and generates individual expectations for those who aspire to exercise leadership or dispute the distribution of generated goods. Pablo Sánchez León alluded to that (only apparent) paradox between two concurrent logics, the accumulation and the redistribution, in a work from a few years ago[58] and the statement still seems relevant to me to continue delving deeper into the issue that here summons us.

It is worth reflecting even more on the stages of formation of the Castilian lordship, especially when we are talking about ways of forming property and ways of exercising power that are plural. The notarial formulas and the administrative deed do not indicate a simple property-possession binomial, but rather something much more diversified: the coming manor domain. The lordly capacities derived in the kingdom of Castile of the 14th century from a general panorama that was fragmented, dispersed, shared, concurrent and with a high degree of competition; in which the same protagonists can combine conflictive situations and harmony within a few kilometers of proximity. We indicated it before: more than property in the abstract, we are interested in the conditions of realization of property, that is, the meaning of rights in concrete historical and social contexts, assuming that property rights can change and evolve even if the laws do not change. This implies understanding these rights "as a dialectical process, as an arena in which different groups and interests compete; in short, as a reality in permanent construction"[59].

In my proposal, when talking about entailed assets, I have wanted to inextricably unite free assets, to better understand the historiographical issue of *mayorazgo*, in some essential aspect of its complexity: the use of information and the domain of the written record.

58 Sánchez León, 1991, 1993.
59 J. M. Lana Berasain (2010) in review to Rosa Congost.

Archival material

Archivo Histórico de la Nobleza:

AHNOB, Baena, C. 176, D. 233.
AHNOB, Frías, C. 203, D. 4–5.
AHNOB, Frías, C. 234, D. 5–8.
AHNOB, Frías, C. 252, D. 1.
AHNOB, Frías, C. 253, D. 1–9.
AHNOB, Frías, C. 311, D. 45–48.
AHNOB, Frías, C. 363, D. 12–13.
AHNOB, Frías, C. 393, D. 2.
AHNOB, Frías, C. 596, D. 12–15.
AHNOB, Frías, C. 598, D. 41.
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A historiographical review of the *mayorazgo* (entailed estate) in the Crown of Castile (13th–15th centuries) and a digital proposal

Raúl Villagrasa-Elías
(University of La Laguna [ULL])[1]

Abstract: This chapter is based on two pillars: first, a state of the question about the mayorazgos (entailed estates) in the Crown of Castile in the late Middle Ages, before the promulgation of the Laws of Toro (1505); second, a commentary on the literature on the important lineage of the Fernández de Velasco with a Digital Humanities proposal for the systematization of the data on the entailments of this noble family. Thus, it is proposed to advance in the knowledge of transversal elements of the subject, the application of comparative studies and new ways to analyze the mountains of data generated by the entailed estates in the Ancien Régime.

Keywords: Mayorazgos, entailements, Middle Ages, Crown of Castile, Spain, Fernández de Velasco family, nobility, lordship.

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Introduction

The exploration of entailed property in late medieval times in the Crown of Castile inevitably leads to a focus on the "*mayorazgo*". Through this institution, the nobility managed to prevent the dispersal of their estates by linking family properties for the benefit of the main usufructuary. With this review, I have set three interconnected objectives. Firstly, and in a broader sense, I will discuss publications from the last decades centered on the centuries preceding the promulgation of the Laws of Toro (1505), a historical milestone, as well as those following the publication of Bartolomé Clavero's book, a historiographical milestone (first part of this chapter). Secondly, I will reflect on entailments and the literature on the Fernández de Velasco family, an exemplary lineage in terms of patrimonial accumulation and family distribution since the end of the 14th century. Finally, I will conclude with a digital proposal that, hopefully, will help the systematization of information for the study of the late medieval *mayorazgo* using digital resources (second part).

1. Historiographic review

There are two elements that have marked the entailement in the Crown of Castile: first, its regulation in the Laws of Toro (*Leyes de Toro*) in 1505 and, later, the work of Bartolomé Clavero[2]. More than a milestone, the 1505 regulation[3] has come to be considered as the start of this institution: "already in Castile, the Laws of Toro will be the initial moment in the history of the entailed estate, as they contain the regulations on succession"[4], Álvaro Romero[5] mistakenly notes. As we will see, the

2 Clavero, 1974.

3 The characteristics of research in modern times are different, with a greater number of sources, authors and schools dedicated to the study of the elites. In this regard, for the family, the nobility, the House or the entailed estate in this period see the works of Francisco Chacón Jiménez, Juan Hernández Franco or Enrique Soria Mesa. For a bibliometric and historiographic review on the *mayorazgo* in modern Spain I refer to Fernández (2020) and Melero (2023, pp. 26–35), respectively.

4 Translation ours. There is no bibliography in English used for this chapter, therefore, all translations of quotations from other authors or historical documentation have been made from Spanish to English and have been carried out by the author. In this way, I avoid the repetition of identifying each quoted passage as a translation and I only add the most important original quotations.

5 Romero, 2019, p. 221.

development of the entailment in the decades and centuries prior to Toro is well-documented. The second milestone I mentioned, the historiographic one[6], corresponds to Clavero's omnipresent essay, always quoted and scarcely criticized. Among the former, Isabel García[7] pointed out that "the scarce bibliography on the subject will force us to refer continually to the work of B. Clavero"; among the latter, few have really criticized this complicated book[8]. José Luis Bermejo describes this essay as an "aggregate of parts" and heterogeneous sources, "language of the most difficult and convoluted in our historiography" and, perhaps what is of most interest here, the identification of the entailed estate as feudal property. In the words of Bermejo[9]:

> "It seems preferable, therefore, to continue more modestly with a traditional type of characterization, in the double aspect of strict entailment of assets in perpetuity and the signaling of a succession order based on substitutions, under the control – it might be added – of the royalty. Although the characterization is less comprehensive and spectacular, it is more precise and calibrated".

An essential is raised here in a debate that, on the other hand, has not been carried out, which is to include (or not) the *mayorazgo* within a larger entity such as feudal property. Paradoxically, although Clavero's essay is the inaugural quotation in many subsequent works, the literature on the entailed estate in the last decades hardly links "feudal" or "feudalism" with this institution[10].

6 Before Clavero, there were other authors who approached the issues of entailments in Spain in the 19th century: Juan Sempere y Guarinos, Francisco de Cárdenas, José S. de Biedma, and Gumersindo de Azcárate. Nelly R. Porro (1962, 1970) also anticipated this by noting the lack of contributions on the subject.

7 García Día, 1989.

8 For example, José Martínez Gijón's review (1974) serves more as a summary than as a review.

9 Bermejo, 1985, p. 288.

10 Julio Valdeón (1998, p. 135) includes Clavero among the authors in Spain in the 1970s who used the term feudalism differently, distinguishing it from the classical perspective of Sánchez Albornoz. At that time, international historiography was also renewing the landscape, with some advocating for a juridical-institutional conception of feudal-vassal relations, or feudalism as a mode of production. Regarding lordship and feudalism, Álvarez Borge (2010, p. 120) criticizes the juridical rigidity of Clavero's conception of seigniorial power before the 14th and 15th centuries, where the *behetría* was excluded. As a complement, I refer to the historiographical reflections of Víctor Muñoz (2018, pp. 35-49) on seigniorial domination in Castile in the Late Middle Ages.

Due to its brevity and as a starting point, the *Diccionario panhispánico del español jurídico* defines *mayorazgo* as the "institution that subjects property to a privileged regime to avoid its transmission outside a specific line of succession"[11]. Isabel Melero[12] complements this definition with one of the clearest expositions:

> "The *mayorazgo* is defined as an institution of the Ancien Régime that functioned as a system of entailment of the properties and titles of nobility, by which the heirs, commonly the eldest male son, inherited succession rights. The entailed properties were immutable and could not be sold, alienated or subjected to an annual charge, except with prior royal authorization. Thus, the heir of the entailed estate was the representative of the family and was the usufructuary of the patrimony, being able to increase the entailed properties in the *mayorazgo*. In this way, the entailed estate as a legal institution was a key element in the development of the nobility, allowing the conservation of the patrimony and the preservation of the lineage's memory"[13].

Before the *mayorazgo*, the Castilian succession regime was already regulated in the 13th century. Alfonso X (1252–1284) established in the *Fuero Real* the possibility of using the fifth part of the donor's estate freely, as well as the right of legitimate children to inherit equally in cases of intestacy. The *Siete Partidas* also regulated the concepts of "*legítima*" (legitimate portion) and "*mejora*" (improvement). The first corresponded to the right of children to receive the inheritance from their elders. The second applied to the possibility of parents or grandparents to benefit a successor to a greater extent, establishing conditions that the beneficiary had to accept. The origin and generalization of the *mayorazgos* seems to be in the 13th–14th centuries, having precedents both in Roman law (fiduciary trusts) and Germanic law[14].

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11 The original: "*institución que somete la propiedad a un régimen privilegiado para evitar su transmisión fuera de una determinada línea sucesoria*".
12 Melero Muñoz, 2022.
13 Original: "*Los bienes vinculados eran inmutables y no podían ser vendidos, ni enajenados, ni censados, salvo excepción de una previa autorización real. Así, el heredero del mayorazgo se erigía como el representante de la familia y era usufructuario del patrimonio, pudiendo incrementar los bienes vinculados en el mayorazgo. De este modo, el mayorazgo como institución jurídica fue una pieza clave en el desarrollo de la nobleza, ya que permitió la conservación patrimonial y la preservación de la memoria del linaje.*"
14 Ayerbe, 2022, pp. 49–51.

Juan Hernández Franco and Antonio Peñafiel Ramón[15] insert this process in one of greater dimensions, such as the crystallization of the agnatic structure of the lineage in Castile, with a certain delay with respect to other European areas such as the north of France and Italy[16]. The 12th century allowed a glimpse of the agnatic system with the county families, warrior and military in nature, and holders of command by royal delegation. The 13th and 14th centuries marked the definitive consolidation of previous trends, in which temporary donations became hereditary, mainly benefiting the first-born[17]. Marie Claude Gerbet[18] perceptively observes this awareness of lineage when analyzing the nobility of Extremadura in the second half of the 15th century. The economic concentration acquired by way of *mejora* or *mayorazgo* is accompanied by the moral, political, and family value of the *pariente mayor*[19]. Although in Galicia the consolidation of the *mayorazgo* was late, well into the 16th century, Ana María Framiñán and Antonio Presedo[20] observe changes in social reproduction model that coincide with this type of entailment.

Possibly the aspect that has been most discussed is the origin of the institution or when it functioned in its fullness. Clavero comments on the case of Juan Maté [Mathé] de Luna (1291). In 1292 this entailment was rectified for lacking the approval of the wife and, finally, Fernando IV confirmed it in 1307. This entailed estate was already known by Sempere, who gathered the information from the *Annales de Sevilla* of Ortiz de Zúñiga (17th century) and granted it the title of "first *mayorazgo*". However, Clavero does

15 Hernández & Peñafiel, 1998, p. 162.
16 "It basically meant establishing the following as organizational values of kinship: primogeniture, masculinity, and lineality, and developing and affirming a consciousness and a symbolism that materialized and reproduced the above through the fixation, repetition and succession of names by a family, identification with a heraldic emblem, and funerary (graves), religious (chaplaincies) and memorial foundations (anniversaries, masses and suffrages)" (Hernández & Peñafiel, 1998, p. 162).
17 Beceiro & Córdoba, 1990, pp. 16–20, 35–107, 231–242.
I cannot delve here into the role of women founding and benefiting from the entailed estates. However, the theoretical consolidation of the agnatic system in the late Middle Ages with the *mayorazgo* did not eliminate women in inheritance and family disputes. Proof of this are the lawsuits in which they participated to claim their rights concerning the *mayorazgo*, dowries and marital property (Montero & Muñoz, 2022).
18 Gerbet, 1989, pp. 95–118.
19 In the same way and in connection with the previous note, it was common to establish more than one *mayorazgo* in certain families to favor the rest of the sons. There are cases of use of goods inherited by the mother for the founding of entailed estates of second lineage (Quintanilla Raso, 2006).
20 Framiñán Santas & Presedo Garazo, 2005.

not consider that the legal constitution of the *mayorazgo* occurred until the second half of the 14th century during the reign of Enrique II (1366–1367/1369–1379) and the arrival of the Trastámara dynasty[21]. In fact, he considers the previous period as "the prehistory of the *mayorazgo*"[22].

Clavero's perspective, largely focused on juridical aspects and the use of printed sources, has been reconsidered by several authors in the 1980s. José Ignacio Moreno[23] was the first to do so with the use of the concept of "archaic *mayorazgos*" and the Dávila lineage from 1294. Blasco Ximénez promoted two entailed estates in favor of his eldest sons, granting them Navamorcuende and Cardiel. This author adopts the term again in a successive essay with the *mayorazgo* of Villanueva de Gómez, also in the surroundings of Ávila[24]. In an article a year later, José Luis Bermejo[25] detailed a series of *mayorazgos* established during the reign of Alfonso XI (1331–1350). Thirdly, Jean-Pierre Molénat[26] used the term "*pseudo-mayorazgo*" for the case of Alfonso Mateos in the city of Toledo (1266). The French scholar also opposed placing the beginning in 1369, even though royal authorizations for this purpose already existed before 1291[27]. The dates, to a greater or lesser extent, coincide with the development of entailed estates in other Iberian territories such as Portugal – *morgadios* –, Navarra – *mayoríos* – and the Crown of Aragon. However, the latter two areas had greater freedom to make wills, resulting in less use of entailment[28].

21 For this king and the "*mercedes enriqueñas*" see the book by Julio Valdeón, 1965, pp. 117–126 and 274–305.
22 Clavero, 1989, pp. 23–27.
23 Moreno, 1984, 2007.
24 Moreno, 2009.
It refers to other essays of similar chronology for the reigns of Alfonso XI and Pedro I: first, the double confirmation of the *mayorazgo* of Almaraz and Deleitosa (1343 and 1351), founded by Juan Alfonso Gómez de Almaraz (Ávila Seone, 2004); second, the donation of Galve de Sorbe to Iñigo López de Orozco by Pedro I and the authorization to establish *mayorazgo* (1354) (Ávila Seone, 2006).
25 Bermejo, 1985.
26 Molénat, 1986.
27 Clavero published the first edition of his book in 1974. He corrected and expanded his second version in 1989. In this second edition, the considerations of Moreno, Bermejo and Molénat are not included. Clavero (1986) did reply to Bermejo in an article on the origin of the *mayorazgo*.
28 Álvarez Borge, 2016, pp. 93–101.

There seems to be a certain consensus regarding the periodization and social structures from the last decades of the 14th century, seeing the high nobility as the main promoter of the *mayorazgos*[29]. Gerbet[30] presents a similar dialectic by providing data on Extremadura. Of the 51 documented *mayorazgos*, 50 correspond to the Trastámara period. In addition, the high nobility had 24 founding, of which 15 occurred between 1387 and 1474. On the contrary, knights established 27 entailments, with 20 of them falling within the reign of Isabella (†1504) and Ferdinand (†1516). Given this periodization, I consider there are two aspects to consider.

> 1) Firstly, I believe that there is little appreciation of the forms of preservation of documentation and archival practices around the lineage, that lineage that emerged in the 12th century but did not consolidate until the late 14th century – with the consequent regional and social variations. Where does the information we use in our research come from? If it does so from noble archives – as in the case we will later see of the Fernández de Velasco family –, their archive starts mainly at the end of the 14th century with the assumption of their patrimonial core – Briviesca and Medina de Pomar – and a full conception of the lineage[31]. The archives of other great houses start later. Therefore, it is logical to see in the last decades of the 14th century and the first half of the 15th century, with the Trastámara dinasty and the "*mercedes enriqueñas*", not so much an intensification of the entails of the high nobility, but rather a greater preservation of charters and wills regarding this aspect in the nascent archives of this social elite. Which families were able to produce a notable mass of documents and develop archival practices over the centuries? If, on the contrary, we have archives and records of the monarchy, the councils, and the notaries, which in Castile, despite local differences, did not become generalized until well into the 15th century, it is normal that we expand the entailed estate to other no

29 Ruiz, 2012, pp. 318–319.
30 Gerbet, 1989, pp. 102–118.
31 Jular Pérez-Alfaro, 2017, 2021.

ble sectors – knights, urban oligarchies, *hidalgos* – in successive stages to the most powerful nobility[32].

2) On the other hand, it is worth considering the level of those nobles cited in the bibliography dealing with the early *mayorazgos*. Were they high nobility? At what level did they move: around the kingdom and the court or at regional level? The classification of the nobility with respect to the *mayorazgos* has been done, as in the case of Gerbet[33], when the sources have allowed it, when there is sufficient data, but not so much with respect to the previous entailments. Quintanilla[34], as we shall see, deals with the alienation of the entailed property largely using the *Registro General del Sello* of the General Archive of Simancas, a collection with serial sources from the second half of the 15th century. Before the enthronement of Enrique II (1366/1369), the discussion on the origins of the institution has prevailed often using isolated cases.

A topic with many possibilities for study is the social rise of certain urban lineages in which the *mayorazgo* represented, to some extent, their economic-social culmination. Many already enjoyed the status of knights and held positions in the municipal administration. Andalusian cities prove to be the most prolific in this type of studies, where the entailment of the family house within the city walls with a series of agricultural incomes outside them was very common. Rafael Sánchez Saus[35] follows Clavero in the periodization of the *mayorazgo* and documents in and around Seville 4 examples before 1370, 16 before the middle of the 15th century

32 Ángel Riesco (2004) details the problems of notarial practices in the late 15th and early 16th centuries, with the reform attempts of the Catholic Monarchs. For this same period, it is convenient to also consider the archival practices of these monarchs (Castillo, 2014). It is worth remembering that the *Registro del Sello* (chancellery) of the General Archive of Simancas has a serialized character from 1475. See the description of the collection in the *Portal de Archivos Españoles*: <https://pares.mcu.es/ParesBusquedas20/catalogo/description/117090> [consulted: 2023/11/23]. I leave aside in this reflection the uneven preservation of municipal sources in the Crown of Castile because of their lesser usefulness for analyzing entailments.
33 Gerbet, 1989.
34 Quintanilla Raso, 2004.
35 Sánchez Saus, 1989, pp. 55-64.

and 21 between 1456 and 1504[36]. Juan Cartaya Baños has recently restart the topic[37], focusing on 16th century Seville and analyzing the following evolution: to the high nobility and municipal lineages, many linked to the monarchy, were added numerous beneficiaries of American mercantile trade. From the University of Cádiz and applying efforts to Jerez, several case studies have complemented the more general overview for Seville. First, Enrique J. Ruiz Pilares[38] analyzed the *mayorazgo*'s establishment of Pedro Camacho and Teresa de Suazo for the benefit of their grandson Pedro Camacho (1507) and, later, Ruiz himself together with Javier E. Jiménez López de Eguileta[39] did the same with that of Gonzalo Pérez de Gallagos (1527). The oldest *mayorazgo* established in Jerez was that of Alonso Fernández de Vargas in 1390, after obtaining the approval of Juan I the previous year to entail the Extremaduran towns of La Higuera and Burguillos. Margarita Cabrera[40] includes numerous data in her work on the oligarchy of Córdoba. Although the earliest date is 1307, the phenomenon does not become widespread until the final decades of the 14th century with the entailments of Luque (1374), Chillón (1375), Aguilar (1377), Lucena and Espejo (1377), and Fernán Núñez (1382). All of them coincide with the government of Enrique II of Trastámara.

Alongside urban oligarchies, the high nobility has received the most attention. However, and I will later detail with the case of the Fernández de Velasco, much of these analyses are scattered in general studies of each lineage[41]. The most important book takes us, once again, to the Sevillian countryside with Federico Devís[42] and the House of Arcos. The author observes that the centralization of political power of the Castilian monarchy was not to the detriment of the titled nobility. What's more, the *mayorazgo* of this lineage represented the patrimonial culmination between the end

36 Sánchez notes the increase in the time of the Catholic Monarchs and the protagonism of knights and, compared to the previous time, the tendency to found entailments on second sons, daughters, grandchildren and nephews by ecclesiastics or women without direct descendants. An example of this intensification is Gonzalo de Saavedra, founder of three *mayorazgos* in 1475.
37 Cartaya Baños (2018, pp. 23–45) for the *mayorazgos* between 1291 and 1499.
38 Ruiz Pilares, 2012.
39 Jiménez López de Eguileta & Ruiz Pilares, 2022.
40 Cabrera, 1998, pp. 285–299.
41 Include here the abundant essays by María Concepción Quintanilla Raso and the numerous doctoral dissertations she has supervised.
42 Devís, 1999.

of the 14th century and 1492, within a process of conquest by the high nobility: the fief mutated into an entail with the elimination of the reversion of the assets granted in donation. Isabel García's article[43] on late medieval Murcia can be included in this section[44]. From the selection of entailments analyzed, the Fajardo stands out, the most important family in the region since Alonso Yáñez Fajardo obtained the charge of *adelantado mayor* of the kingdom of Murcia. The core of the lineage materialized around Librilla, purchased from the Marquis of Villena (1381) with the *tercias* obtained from Juan I, and Alhama, received by royal concession. The *mayorazgo* crystallized in 1438. Perhaps the most characteristic fact, although not extraordinary, is the existence of two *mayorazgos*, one for Librilla and Alhama, and another for Mula and Molina, although the beneficiary was the same person: Pedro Fajardo[45]. García Díaz concludes with three ideas: first, that the increase in noble patrimony in Murcia was carried out at the expense of the royal domain and the town councils; second, that despite all this, at the end of the 15th century the institution of *mayorazgo* had not been imposed in the kingdom of Murcia, and, third, that the Murcian *mayorazgo* was influenced in its application by the Valencian and Catalan forms of entailment.

One of the main characteristics of the analysis of late medieval entailment is the applied perspective of case studies around well-defined lineages, cities, or regions. We have seen essays on Seville and its rural area[46], Jerez[47], Córdoba[48], Extremadura[49] and Murcia[50] and to them we can add[51] those related to Toledo[52], Cuenca-Albacete[53], Jaén[54], Huelva[55],

43 García Díaz, 1989, pp. 152–162.
44 The author does not include the entailments founded by Juan Pacheco in 1472 and refers to Franco (1987, pp. 158–159) for this purpose.
45 For the Fajardos, see also Franco (1994, pp. 21–30).
46 Sánchez, 1989; Devís, 1999; Cartaya, 2018.
47 Ruiz, 2012; Jiménez & Ruiz, 2022.
48 Cabrera, 1998.
49 Gerbet, 1983, 1989.
50 García, 1989; Franco, 1994.
51 Below, I use toponyms of regions, current provinces or known cities for a better understanding.
52 Molénat, 1986; Romero, 2019.
53 Torres, 1987.
54 Porras Arboledas, 1989; Carmona, 2009. Ángel Reina Aguilar (2021) uses the three *mayorazgos* studied by Porras (1989) to make a legal comparison with the Islamic institution *waqf*.
55 Ladero Quesada, 1983.

Cáceres[56], Ávila[57], Soria[58], Galicia–Asturias–Cuenca[59], and Vizcaya[60] – Portugalete[61] and Balmaseda[62] –[63]. Undoubtedly, more titles could be added, but this is the main result obtained from the different biliographic databases[64]. María Concepción Quintanilla Raso's essay[65] is possibly the most complete and transversal for the chronology used, combining case studies of noble families, especially titled nobility. She addresses topics such as the substitution of equitable inheritances by the *mayorazgo* – a discriminatory and hierarchical form –, the principal and multiple entailments, and the inalienability and alienations of property.

From the previous enumeration it is observed that, except for the Vizcaya and Galicia–Asturias, most essays are limited to the regions south of the Duero River: Extremadura, Castilla–La Mancha, Andalusia and Murcia, both in the countryside and the cities. In fact, this last separation of countryside–city is most of the time fictitious because entails estates combined properties in both spaces, for example, the main house and chaplaincies in cities and towns to which was added the exploitation of rural assets.

Finally, there are two sets of works that emerge from the aforementioned axes – major lineages, urban oligarchies and local[66] studies. The first

56 Muñoz, 1948; Ávila Seoane, 2004.
57 Moreno, 2007.
58 Rodríguez–Picavea, 2015.
59 Calderón, 1986.
60 Ayerbe, 2022.
61 Díez, 1989.
62 Ayerbe, 2006.
63 In this geographical distribution we cannot include the lords of Maqueda and Torrijos with a main *mayorazgo* created in 1503 and with properties and rents spread throughout multiple kingdoms of the Iberian Peninsula (Palencia, 2002).
64 The search focused on Spanish–language titles in databases such as Dialnet, Google Scholar or Google Books, without considering the indexing or impact levels of the journals or publishers, which have varied greatly over the last four decades. In the selection, priority was given to those essays with the word "*mayororazgo*" in the title, abstracts, or keywords. For this reason, this state of the question has not focused so much on general studies on lineages, families, lordships or nobility, literature that would go far beyond the limits of this chapter. For example, to the titles on Vizcaya we could add the book by Arsenio Dacosta (2003, pp. 191–202) or some of the publications by J. Ramón Díaz de Durana (2009), in this case extensible to the north of Spain. In the case of Dacosta, it is of interest for its exposition of previous or parallel entailments to the legal figure of the *mayorazgo*, as is the case of the transmission of royal grants and offices. This one locates the diffusion of the *mayorazgo* late in Vizcaya, concretely, from 1450.
65 Quintanilla Raso, 2009.
66 I use the term "local" for much of the historiography of the entailed estates or the nobility because of the choice of the historical coordinate referring to space, and not so much to evaluate its scientific quality.

group focuses on the inalienability of the *mayorazgo*. This is an aspect on which there is consensus. In a detailed article María Concepción Quintanilla[67] addresses the constant alienations of the entailments in the last decades of the 15th century, which would go against the theory and logic of the *mayorazgo* represented in the founding charters and wills. The documentation that she analyzes from the General Archive of Simancas shows the continuous modification of the assets included in the entailments to obtain more benefits or to favor their relatives[68]. This work aligns with the second essay on entails by Nelly R. Porro[69], who also notes that "the distance from saying to fact is usually always great". Carmona[70] in her case study also observes this. Finally, Corina Luchía[71] talks about the constant alteration of the institution, either to avoid fragmentation or to adapt to family evolution. Therein lies its importance for the lineage strategy and for the reproduction of power: in its plasticity and contradictions.

The second group is recent and limited in number, but interesting for approaching the charters of *mayorazgo* due to its materiality and cultural component. The first example is the workshop conducted by Cristina Jular[72] at the Estella medieval history conference on the nobility in the Iberian Peninsula. The author, who knows the Velasco lineage perfectly, dissects word by word, detail by detail, the entailment established by Mayor de Castañeda for the benefit of her son Pedro Fernández de Velasco (1371). This moves beyond a descriptive approach to historical documentation and revalues elements such as the signature of this 14th century lady[73]. This perspective is complemented by that of Ángel Fuentes and María Teresa Chicote[74] in two contributions where the image receives more attention than the written. The authors argue that a notable part of the *mayorazgo*'s charters of the high nobility were excellent scriptural supports in which to invest through artistic decorations and illuminations.

67 Quintanilla Raso, 2004.
68 She returns to this topic in Quintanilla Raso (2006, pp. 159–164; 2009).
69 Porro, 1970.
70 Carmona, 2009, p. 119.
71 Luchía, 2014.
72 Jular Pérez-Alfaro, 2016.
73 The image of the signature can be consulted in the *Scripta manent* database: https://www.scripta-manent.info/?firmas=mc_codices_c1127_d1_4_i3-jpg [consulted: 2023/10/19].
74 Fuentes & Chicote, 2017; Chicote & Fuentes, 2021.

The fact of spending on gold and pigments points to the importance of certain diplomas with symbolic functions beyond the legal aspect so highlighted by historiography. Logically, these proposals by Jular and Fuentes-Chicote are only possible if we go to archives and libraries in search of documentary evolution and paratextual elements, sometimes obscured by copies where the text predominates, and which derive from the infinite lawsuits that the nobility faced during the Ancien Régime[75].

***

I conclude this first section with a series of general ideas about the historiography of the *mayorazgo* in the Crown of Castile before its regulation in the Laws of Toro (1505):

> • Starting in the 1970s and 1980s there was a certain revitalization of the topic, although, in my opinion, with little academic debate, focused mainly on the *prehistory of the mayorazgo*, the *archaic mayorazgos* or the *pseudo-mayorazgos*.
>
> • Initially, approaches from the history of Law prevailed in which the reflections were more general. A large set of increasingly descriptive and local publications took over, partly due to the legal complexity of the subject and the difficulty of verifying everyday life from social history[76]. Some historians (Gerbet, Beceiro-Córdoba, Quintanilla, Cabrera) depart from this first description by using the founding charters of the *mayorazgos*, not so much for an institutional study, but to understand the historical evolution of the noble families.
>
> • Although Clavero included such a powerful term in the title of his book as *feudal property*, this and feudalism have disappeared from

75 Jiménez & Ruiz (2022, pp. 289-292) also highlight the incorporation of a modest coat of arms in the charter of the Gallegos.

76 Corina Luchía (2014, p. 309) explains it this way: "social history has shown less interest in its specific study, usually being recovered as another legal tool within the heritage policies of the great houses. It is possible that this is a result of the adoption of the assumptions of the first investigations, which inscribed the *mayorazgo* on a strictly doctrinal level. Outside of the legal fact, it would seem then that there was little to say about this privileged form of heritage; whose appearance in the Castilian sphere is relatively late and presents nuances with respect to other European regions".

the historiographic discussion. María Concepción Quintanilla[77] no longer says anything about it in her exhaustive analysis of the academic production on the nobility – not even the list of titles that she attaches[78].

• In relation to the above and from a terminological point of view, most authors use concepts such as *heritage*, *lineage*, *perpetuation of memory*, *identity*, but very little the *control*, *domination*, and *power* that the establishment of entailments implied.

• The cited bibliography is spatially framed in the territories south of the Duero River, for historiographic but also historical reasons, with differences in terms of the urban framework and associated social structure.

• The latest contributions come from a cultural history of archives and art that has revalued the diploma beyond its textual dimension and legal formulas.

2. The entailed estates of the Fernández de Velasco family and a digital proposal

As a complement and because of my relationship with the *Scripta manent* project, I present below a brief historiographical and historical description of the entailments of the Fernández de Velasco family. Its analysis is interesting due to its proximity to the monarchy, the creation of lineage elements since the beginning of the 14th century in what would become its capital – Medina de Pomar – and, as a counterpoint with the historiography of the previous section, due to its location north of the Duero River. On a general historiographical level, the interest in this lineage in

77 Quintanilla Raso, 1997.
78 The *mayorazgo* does not appear as a topic of academic debate either. The same can be said of the lines of research analyzed by José Ignacio Ortega Cervigón (2008).

the late medieval centuries has focused on other aspects: firstly, the lordship as a whole[79]; secondly, its artistic and architectural patronage[80]; thirdly, its political activity[81]; and fourthly, its developed written culture[82]. The following authors have written the basis for the entailments of the Fernández de Velasco family between the end of the 14th century and the beginning of the 16th century.

• Esther González Crespo[83] defended her doctoral dissertation at the Universidad Complutense de Madrid and focused on the three men who settled the lineage from the end of the 14th century, who in turn established various *mayorazgos*: Pedro Fernández de Velasco (†1380: 193–194), Juan (†1418: 264–275) and Pedro (†1470: 336–342).

• Antonio Moreno Ollero completed his doctoral thesis in 1999 at the University of Cádiz, directed by Alfonso Franco Silva. It was entitled *Los dominios señoriales de la Casa de Velasco en la Baja Edad Media* and he published a monograph of the same name in 2014[84]. In the introduction Moreno stated the repeated plagiarism suffered by his academic supervisor. Moreno focused on the *mayorazgos* founded by Pedro Fernández de Velasco (†1380: 31–33) and Juan de Velasco (†1418: 72–79).

• Alfonso Franco Silva, Professor of Medieval History at the University of Cádiz, who died in 2020, published in 2006 the book *Entre los reinados de Enrique IV y Carlos V. Los condestables del linaje Velasco (1461–1559)*[85]. It devotes two sections to the entailed estates. On the one hand, he analyzes those inherited and founded by Bernardino (†1512: 119–127) and Íñigo Fernández de Velasco

79 See essays by González (1984, 1986), Jular (2009), Moreno (2014) and Pereyra (2013, 2017, 2018).
80 Refer to the works of Begoña Alonso and Elena Paulino. To avoid the saturation of bibliographical references, I avoid these citations and those of the two successive notes.
81 I refer to the publication of Alicia Montero's academic essays. Likewise, Ana I. Carrasco has assessed the role of the Count of Haro in the preparation of the Seguro de Tordesillas.
82 I include here the latest essays by Cristina Jular and those derived from the doctoral dissertations of Marta Vírseda Bravo and Raúl Villagrasa-Elías. In fact, complement this chapter about *mayorazgos* with Cristina Jular's chapter in this same book.
83 González Crespo, 1980.
84 Moreno Ollero, 2014.
85 Franco Silva, 2006.

(†1528: 164–182). As far as the description of the entailed estate inherited by Bernardino is concerned, Franco actually goes back to the domains that were already within the entailed estate in the time of the Count of Haro in 1458. With a single footnote, the author develops all the properties of the House of Velasco in the second half of the 15th century, based, precisely, on the aforementioned doctoral dissertation by Antonio Moreno. From the latter author, although also signed by Franco[86], seems to be the essay on the wills of Sancho de Velasco, brother of Pedro Fernández de Velasco, the Good Count, and uncle of Bernardino and Íñigo. Sancho obtained a *mayorazgo* in 1458 and developed a secondary branch of the family in Arnedo (La Rioja). His wills and codicils (1482, 1490 and 1493) are preserved, in which he planned the succession of the entailed estate and the continuity of his progeny. On the other hand, although it does not focus on the *mayorazgos*, it is worth mentioning here the article by Franco[87] on the unentailed assets of Pedro Fernández de Velasco. This work is also denounced by Moreno who, in the introduction of his monograph, declared that it was "identical to the sixth chapter" of his doctoral dissertation.

• Osvaldo V. Pereyra defended his bachelor's thesis (*tesina de licenciatura*) at the University of La Plata with the title *El régimen señorial castellano. Estudio del proceso de acumulación patrimonial y político llevado adelante por la Casa de los Velasco en los territorios pertenecientes a la Merindad de Castilla Vieja, entre los siglos XIV y XVI*[88]. He dedicated a section to the institution of the entailed estate in chapter VI *Los medios de acumulación patrimoniales y políticos*[89], focusing on the period between the entailed estate founded by Mayor de Castañeda (1371) and those of the Good Count of Haro (1458).

86 Franco Silva, 2003.
87 Franco Silva, 2009.
88 Pereyra, 2004.
89 He continued his education and scientific production with his doctoral dissertation (Pereyra, 2014); however, he does not seem to delve into the *mayororazgos*.

The raw material of these authors is different. Esther González largely used the Salazar y Castro Collection of the Royal Academy of History, while Antonio Moreno and Alfonso Franco employed the Archive of the Dukes of Frías, today the Frías collection of the Archive of the Nobility (*Archivo Histórico de la Nobleza*). Therefore, the documentation that we will present below – the codices 1127 and 1128 of the Spanish National Historical Archive (*Archivo Histórico Nacional*) –, although they have been cited on more than one occasion, have not been analyzed in depth beyond the approach of the CRELOC project. The historiographical characteristics of this set of works are as follows:

> 1) The approaches are not specific[90], meaning they are studies focused on the lineage or the lordship.
>
> 2) A significant portion of the analyses stems from doctoral dissertations that, in many cases, are not included in bibliographic searches[91]. At other times, the information is contained in non-digitized books[92]. Accessibility, therefore, is limited.
>
> 3)The reflections are scarce and there is a tendency towards a positivist approach which, nevertheless, is essential to advance in the knowledge of this legal institution and the Velasco family. In this sense, the lists of properties within the entailed estate[93] prevail.
>
> 4) There is clearly a break in the chronology of the lineage around the figure of Pedro Fernández de Velasco, the Good Count of Haro (†1458). Only Alfonso Franco focused on his successors – although regarding his namesake son, the II Count of Haro (†1492), he always follows the works of Antonio Moreno.

This historiographical break coincides with the one proposed by Pedro Fernández de Velasco (1485–1559), this time the Duke of Frías in the 16th century, who ordered the compilation of the genealogical work *Origen de*

90 González Crespo, 1980; Moreno Ollero, 2014; Franco Silva, 2006; Pereyra, 2004.
91 González Crespo, 1980; Moreno Ollero, 2014; Pereyra, 2004.
92 Moreno Ollero, 2014; Franco Silva, 2006.
93 González Crespo, 1980; Moreno Ollero, 2014; Franco Silva, 2006.

la Ilustríssima Casa de Velasco. In this volume I have only once found the word "*mayorazgo*" and it was precisely with his great-grandfather, the homonymous Pedro Fernández de Velasco, first Count of Haro:

> Being such a great augmenter, he reinstated the *mayorazgo* of the House of Velasco once again and excluded women from inheritance. He designated the succession of his house to his male descendants in the line of males, and in their absence, to the male descendants of his brothers in the line of males. After them, the male descendants in the line of females were to inherit.[94]

Finally, in the last decade Cristina Jular has made approaches to the family archive of the Fernández de Velasco family, as I have already mentioned in the previous section. This interest already began when she described codex 1127 of the National Historical Archive for the CRELOC project, an initiative from which I benefit[95].

2.1. The codices of the National Historical Archive

At the end of the 17th century the House of Osuna faced multiple lawsuits, and because of these judicial processes two diplomatic compendia were compiled and are preserved in the National Historical Archive. In codex 1127, it reads "House of Velasco, year 1697. Here are 23 documents presented by the Lords Dukes of Osuna" and in codex 1128 "eleven privileges on parchment concerning the Estates and Entailments of the House of Velasco". We find, therefore, a succession of parchments and papers that

94 The original: "*Y como fue tan gran acreçentador, tornó a ynstituyr de nuebo el mayorazgo de la casa de Uelasco y excluyó de la herençia a las mugeres, que llamó a la suçesión de su casa sus deszendientes uarones por línia de varones y, a falta dellos, los desçendientes uarones de sus hermanos por línia de uarones y, tras éstos, a los desçendientes uarones por línia de mugeres*" (National Library of Spain, Mss. 3238). I have handled the CRELOC project version available at http://creloc.net/los-documentos/ [consulted: 2023/10/19].

95 The description of codex 1127 of the National Historical Archive is available on the CRELOC website, section "documentos" and "Casa de Velasco. Instrumentos Varios". Use the link in the previous note.

recorded the *mayorazgos* established by the lineage and the subsequent royal confirmations, as well as the certificates that accredit the possession of certain towns. These range from large parchment scrolls, for example, multiple *privilegios rodados*, to paper transcripts from the 16th century.

The analysis of this documentation is complex and for the purposes of this book chapter I will limit myself to providing some data:

- Codex 1127 contains 21 diplomas: 14 are directly related to entailments – either founding charters or ratifications by the monarchy – 5 are related to the lordship, and 2 are testaments.

- Codex 1128 has 12 diplomas: the number of texts is reversed with respect to the previous compendium, with 1 diploma relating to the entailed estates and 11 to the government of the manor.

- In terms of documentary production, most of the diplomas are dated between 1369 – the year of the royal donation of Medina de Pomar – and 1383. Most of the successive diplomas refer to the periodic ratifications by the monarchy that resulted in a continuous rewriting of the original diplomas.

Clearly, the House of Osuna was interested in the 17th and 18th centuries in defending certain privileges over Medina de Pomar, Briviesca, Frías (Burgos), Herrera de Pisuerga (Palencia), Cuenca de Campos (Valladolid) and Villalpando (Zamora).

As for the entailed estates, emphasis was placed on the creation of these tied assets: first, with Mayor de Castañeda over Pedro Fernández de Velasco (1371); second, with Pedro Fernández de Velasco over Fernando and then Juan (1380–1392); third, with Juan de Velasco and María Solier over Pedro (1412–1414). Therefore, and as authors such as Esther González and Antonio Moreno have detailed in their studies, numerous entailed estates established by the lineage throughout these centuries, and which were not transmitted through the first-born sons, are left out of this compilation.

2.2. A digital proposal

José Luis Bermejo[96] stated that the *mayorazgo* was a complex institution that gave rise to multiple conflicts and consequently generated a vast amount of documentation, "fundamentally archival and very difficult to cover as a whole. Few institutional figures have such a mass of documentation. Casuistic and repetitive documentation, enough to overwhelm even the most enthusiastic"[97]. Therefore, considering the complexity of the subject, the overwhelming and challenging archival documentation, the scarcity of comparative studies, the singularity of the Fernández de Velasco in northern Castile, the early *mayorazgos* founding, the difficult accessibility to the bibliography, and the relationship of entailments with lineage and archival policies, we have developed a digital tool from the *Scripta manent* project that complements this state of the art and the brief description of the codices from the National Historical Archive.

With the aforementioned bibliography concerning the Fernández de Velasco family and codices 1127 and 1128 – previously described by Cristina Jular for the CRELOC project – we have designed an HTML document to catalog and systematize the vast amount of data: from the numerous names of men and women who led the clan and formalized the entailment deeds, the firstborn and second sons and daughters, the extensive parchments rewritten with the enthronement of the new monarchs and the authentic partchwork carried out by the House of Osuna in the late 17th century. Just from 1371 to 1522, we can document more than ten entailed estates which, in my opinion, should be comparatively re-studied. However, such an effort requires a prior organization of the available data before the detailed reading of the texts. For this reason, this book chapter has not focused so much on the historical evolution.

The objective of this digital proposal is the systematization of the information contained in the publications, based mainly on the family archive of the Fernández de Velasco (Frías collection of the Historical Archive of

96 Bermejo, 1985, pp. 284–285.
97 Translations ours. Isabel Melero (2023) has recently published her doctoral dissertation on lawsuits and *mayorazgos* in modern times. See also the work of Carmona (2009).

the Nobility), and the codices 1127 and 1128 of the National Historical Archive, which contain a great deal of information on the entailed estates of this House. Likewise, this proposal is made available to the scientific community for its possible implementation by other researchers and projects and to extend this type of systematization to the large amount of data generated about the entailed property during the Ancien Régime. Finally, it allows to quickly relate the edition of texts and the signatures of leaders and scribes, if any, in an open and updated way, such as the already mentioned Mayor de Castañeda[98].

Besides, the use of an HTML file as a database is beneficial for multiple reasons: it helps to organize and update the contents, allows for quick web implementation and the relationship with other web pages, provides multiplatform compatibility, integrates with other technologies, and is based on an open and free language.

This database on *mayorazgos* can be consulted at https://www.scripta-manent.info/mayorazgos/ thanks to the adaptation made by Teresa Jular and her team at XLI design+thinking. In this link users can navigate through the evolution of the entailed estate in this Castilian lineage and easily obtain access to the transcription of certain documents or to the signatures of some of the people involved. At the present time, 18 *mayorazgos* can be consulted, ranging from 1371 – with the one established by Mayor de Castañeda – to 1522.

Conclusion

I conclude by distinguishing the two previous sections of the chapter. In the first section I have presented an overview of historiography on the *mayorazgo* in the Crown of Castile, focusing on its pre-regulation before the Laws of Toro (1505). From the 1970s and 1980s, interest in the topic resurfaced, but without much academic debate, primarily

98 Villagrasa-Elías & Jular Pérez-Alfaro, 2024.

centered on the prehistory of *mayorazgos*. Early works, largely from legal historians, took general, descriptive approaches. Over time, studies became more localized due to the legal complexity of the mayorazgo and the challenges of exploring social history aspects. Interestingly, terms like *feudalism* have faded from discussions, replaced by concepts such as heritage and lineage, but with little attention given to the power dynamics inherent in *mayorazgos*. The latest contributions have also incorporated cultural history, valuing archival and artistic elements of founding charters of the *mayorazgos*.

In the second section I have shifted focus to the historiography related to the Fernández de Velasco family. Here, studies tend to lack specificity, either focusing broadly on lineage or lordship. Much of the relevant analysis comes from doctoral dissertations or non-digitized sources, making them difficult to access. The scholarship remains sparse and leans toward positivism, emphasizing property lists within entailed estates, though this approach is crucial for understanding the legal institution and the family's history. Considering the complexity of the topic, the vast and often inaccessible archival material, and the need for comparative studies, the *Scripta manent* project offers along with this chapter a digital tool to organize this knowledge. To the project's databases focused on documents and signatures of notaries, we have added on the occasion of this book, a web page with HTML development for the presentation of the entailed estates related to the Fernández de Velasco, a fundamental lineage for the history of Castile in the 14th and 16th centuries.

Image 1. Enrique III confirms to Juan de Velasco part of the properties of the entailed estate that Juan I had granted in privilege to Pedro Fernández de Velasco for his firstborn son Fernando, Juan de Velasco's brother (1392, Archivo Histórico Nacional, C.1127, d.8). © MECD, State Archives (Spain).

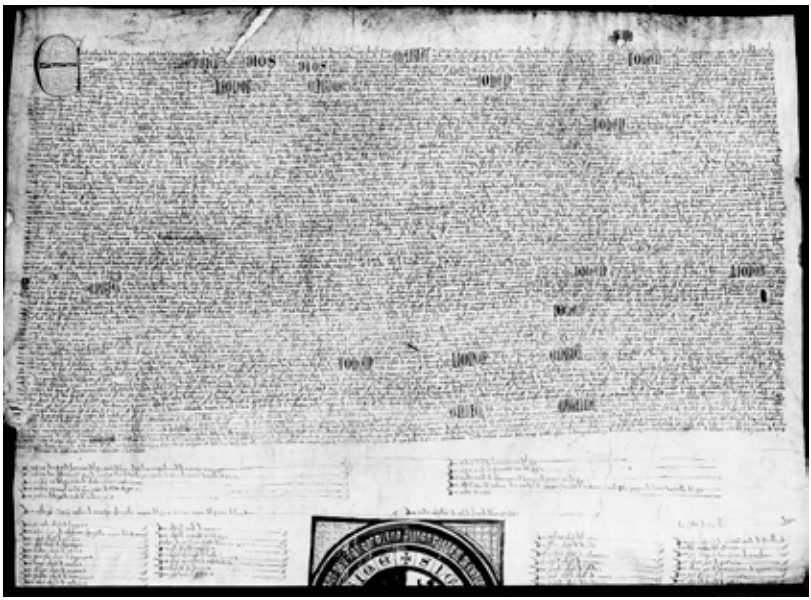

Image 2. Screenshot of the first *mayororazgo* registered on the *Scripta manent* website.

Mayorazgo n.º 1

Año	Otorgante	Beneficiario	Bienes vinculados	Sucesión
1371	Mayor de Castañeda	Pedro Fernández de Velasco (PFV)	Casa de Salas	Hijo (PFV), nieto (Fernando), nieto (Juan), cualquier nieto, cualquier bisnieto, nieta (Mayor), el pariente varón más propincuo en la línea de PFV, el pariente varón más propincuo, la pariente mujer más propincua.

Paradójicamente, fue una mujer la que asentó el liderazgo masculino de los Velasco creando este primer mayorazgo que junto a otros actos fundamentaron el linaje en las últimas décadas del siglo XIV.

Diplomas

1. 1371, septiembre, 2. AHN,C.1127,4,d.1. Doña Mayor de Castañeda, viuda de Fernando Sánchez de Velasco, establece el mayorazgo de la Casa de Salas para su hijo Pedro Fernández de Velasco y sus sucesores. Firma de Mayor de Castañeda.
2. 1371, noviembre, 14, Burgos. AHN,C.1127,4,d.2. Doña Mayor de Castañeda, viuda de Fernando Sánchez de Velasco, establece el mayorazgo de la Casa de Salas para su hijo Pedro Fernández de Velasco.
3. 1371, diciembre, 12, Burgos. AHN,C.1127,4,d.3. El rey Enrique II confirma el mayorazgo otorgado por doña Mayor de Castañeda a su hijo Pedro Fernández de Velasco. Firma de Enrique II.

Archival material

Archivo Histórico Nacional:

1392, Archivo Histórico Nacional, C. 1127, doc. 8.

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Majorate conglomerates in Spain and lineage structure

Antoine Roullet
(Centre de Recherches Historiques, CNRS, Paris)

Abstract: This article looks at the patrimonial uses of cadet majorates in Castile. The historiography of majorates has undergone considerable change over the last thirty years, with studies extending to previously neglected regions, going well beyond noble cases, and looking beyond the financial aspects to the anthropological implications of *vinculos*. In most cases, however, the work still focused either on majorates in general or on the study of a single majorate within a family. This article looks at the conglomerates of majorates which belonged to certain families, and the interplay that this accumulation made possible in terms of perpetuating cadet younger branches of the lineage in a context where noble families were supposed to switch from one model to another: from lineage to household.

Keywords: *mayorazgo*, lineage, household, nobility, Spain, family, early modern

Introduction

The *Leyes de Toro* (1505) are often considered to mark a turning point in the history of Castilian majorates, which has long been the subject of comment. From this date onwards, with a few rare exceptions, it is

generally stated that all the majorates founded were based on strict primogeniture, with systematic priority given to male descendants. As the number of majorates multiplied during the early modern period, this model has become a *topos* in historiography[1]. The majorate, while not reserved for the aristocracy, was seen as a necessary step in the upward social mobility[2], as an element of prestige for all urban oligarchies[3] and as one of the clearest signs, along with patronage, of belonging to the nobility[4]. Its proliferation, including in very small majorates, has been studied well beyond the aristocracy and in very different areas of the Hispanic monarchy, beyond Castile[5]. It is deemed the preferred instrument for establishing primogeniture within the nobility, since the division of property in Castilian law was mostly egalitarian. However, the oldest and most powerful families still had majorates, sometimes several, some of them founded in the second half of the fifteenth century – a period of intense renewal of the noble elites – whose conditions of succession varied. Some of these majorates served purposes other than the perpetuation of a single, uniformly and allegedly patrilineal lineage. They could be reserved for cadets or daughters, or made subtler choices that shifted the logic of primogeniture, which was much less crucial in the context of the 15th century than it was in the 17th. Even beyond these particularities, which became rarer from the 16th century onwards, the accumulation of majorates within the same family does not really fit in the traditional historiography which usually studies the majorate in its generality or through case studies that focus on a single majorate in a single family. Majorates for cadets – in other terms secondary majorates – require a lineage-wide approach. While many classic studies of the largest households have taken into account the jurisdictional, administrative and economic aspects of the accumulation of seigneuries, few pieces of scholarship have focused specifically on majorates assembled in conglomerates, with the notable exception of Juan Ramón Palencia Herrejón's study of the ducal house of Maqueda[6]

1 Pérez García, 2021.
2 Girón Pascual, 2010.
3 Hernández Franco & Peñafiel Ramón, 1998; Cartaya Baños, 2018.
4 Dedieu, 1998.
5 Rodrigues, 2007, 2015; Rosa, 1996; Garayoa, 2009.
6 Palencia, 2002.

and Antonio Terrasa Lozano, who insisted on the rise of intralineage conflicts in an increasingly transnational nobility[7].

The aim of this contribution is to observe how majorates interplayed within families or between families, in order to re-examine questions relating to the forms of the noble family and in particular to the notions of "lineage" and "household". Our examples will be taken from the Zúñiga and Sotomayor families, two "lineages" allied from the 1520s onwards, but whose most important majorates date back to the end of the 14th century, in the case of the oldest lineage, which continued to found new majorates in the 17h century[8]. Five majorates, those of Béjar, Belalcázar, Ayamonte, Villamanrique and Valero, which were passed down within the family or circulated in its periphery, will be analysed. The first of these is the most prestigious, dating back to 1397 and enshrining primogeniture from a very early date. The second, dated 1484, is a majorate of cadets shared between two lineages. The third, which came from the Sotomayor family and was founded in 1453, has more specific rules which also favour the cadet. The fourth, which is more recent, was founded in 1575 and relies on primogeniture and agnation, designed to support a third line in the lineage. The last one, the Valero majorate, was founded in the 1630s with a similar ambition. We will map out their circulation, uses and articulation within the family patrimony. Since the passing of each majorates from one generation and one line to the other can be hard to follow, each description is backed up by (simplified) genealogical diagrams.

1. Majorates and the confrontation between "lineage" and "household": a critical overview of historiography.

This contribution proposes to take these specific features of the largest families as a starting point in order to show that majorates may have been

7 Terrasa Lozano, 2012.
8 Gerbet, 1979; Vega 2008; Ruibal Rodríguez, 1993; Cabrera Muñoz, 1977; Lop Otín, 1993; Lora Serrano, 1987; Paredes, 1903; Ladero Quesada, 1977, 1998; Saus, 1988; Vicens Hualde, 2017a; Zurita Chacón, 2015; Herrera García, 1986; Vicens Hualde, 2017b; Roullet, 2018, 2021; Herrera García, 1990.

the instruments, then the causes and the framework for the perpetuation of a lineage logic that encompasses the strategies of households. In the largest families, the seniority of the majorates and the accumulation on the same head of very diverse majorates over time, each one bearing rights and conditions on the name, the coat of arms or the impossibility of their aggregation, make it possible to argue for the fairly enduring persistence of a form of lineage solidarity, despite the very strong conflicts within the lineages for the control of all these *vínculos*[9]. The cases I am going to discuss provide an opportunity to revive some of the research carried out in the first half of the 2010s, in particular by J. H. Franco[10], on the relationship between the logics of "lineage" and "household" in noble families, based primarily on case studies of the Marquisates of Vélez and Villena. These articles have done the most to revitalise studies of noble kinship, drawing on anthropological categories before later shifting towards cultural history. They rekindled a debate that had been going on in European historiography since at least Lawrence Stone, around the link between the emergence of the "State", the decline of "kinship" and the strengthening of "households", which were very early on studied for their own sake and more often than not as an alternative to lineage[11], making it possible to compare the French, English, Portuguese and Spanish trajectories of the European aristocracy.

What are their conclusions? As the generations passed, the logic of the lineage, ever larger and ever wider, withered away and the authority of the *pariente mayor* lost much of its significance and power. The lineage tended to be transformed into different, even competing, "households", each associated with a particular majorate based on strict primogeniture. As a result, kinship shrank to the closest relatives and the household became the structuring family framework. It virtually became equivalent to the nuclear family, but dependent on a set of symbolic and material assets, as well as rights, united in the majorate. This is the most convincing line of force in this scholarship, which should have fuelled an even broader

9 Melero Muñoz, 2021.
10 Hernández Franco & Rodríguez Pérez, 2014; Hernández Franco & Molina Puche, 2010.
11 Atienza Hernández, 1987; Cunha, 2000; Haddad, 2009; Salas Almela, 2008; Quintanilla Raso, 1979; Devís, 1999.

debate on the European kinship system[12], on the rise of a patrilineal logic, on the agnatic emphasis within lineages, on the reduction in the number of heirs in a single line, and on the weakening, if not disappearance, of solidarity between the lines of a single "lineage". The rise in the cost of dowries and the over-indebtedness of noble families largely explains this tightening on close kinship, also characterised by marriages very close to the main trunk, with degrees of consanguinity that are probably greater in the Iberian nobility than elsewhere. Juan Hernández Franco, faithful to a long Spanish tradition of discussing the legacy of Laslett and the Cambridge school – hence the emphasis on the rise of the "nuclear" family[13] –, also linkens these changes to a very early form of "lineage individualism" and, he contends, to the emergence of "blood" ties, and even of an interest into the "transmission of genes", in opposition to "collective kinship", referring to the supposedly more distant kinship of the "lineage".

It may be necessary to distance ourselves from such psychological and culturalist interpretation of family reunification, hypotheses that are of interest but rather difficult to demonstrate as they stand, especially as the "rise of individualism" is an enduring teleological narrative hard to demystify. This shifting from kinship to households is primarily the result of social, economic and political factors specific to the politics of majorate managing, and there appears to be no point in resorting to a change in attitude towards one's family or offspring to comprehend these transformations. On the contrary, the majorates themselves did lead to a tightening of family ties, which may have had an impact on the nobles' idea of solidarity within the family. Yet the model remains convincing and is applicable to many families. This article will attempt to explore the issue in greater depth with a new case study, arguing for a more nuanced, less systematic transition from one model to the other. For several generations, these two categories of analysis – lineage and household – were able to adjust to each other, although scholarship tends to see the majorate as an instrument for marginalising the lineage in favour of the "household", since it was first and foremost characterised by the exclusion of the elders.

12 Delille, 2007, 2000, 2001; Haddad, 2012.
13 Devís, 1999.

It is by observing the clauses of the majorates and their transmission that these adjustments between the two models become conspicuous and their opposition less clear-cut.

To appreciate this situation, we first need to clarify the definitional issues surrounding each of these terms, since the popularity and growing association of these two terms from the early modern period ("*de mi casa y linaje*") – to the extent that casa replaced *linaje* among some genealogists and in many treatises on nobility – is one of the arguments in favour of replacing the latter with the former. According to Covarrubias (1611), *linaje* is "he offspring of houses and families", who, ideally, carry his name. This definition reflects both the desire, from the Middle Ages onwards, to claim a mythical ancestor, in the largest families, and the need, for reasons of memory, heritage and religion, increasingly after the 15th century, to refer to a more concrete founding ancestor, i.e. the founder of the majorate. In a sense, this *emic* definition of *linaje* – the set of descendants of an individual, set up as the founder of the lineage, who bear his name – looks like the *etic* definition of the descent group given by anthropologists, but the historiographical uses of the term differ and refer, behind the word lineage, to realities of very variable sizes. Within the European kinship system, which is cognatic, lineage cannot refer to a "descent group" in the strictest sense. The shifting from the "lineage" to the "household" is all the more striking when we assume a broad definition of the lineage, fairly close to how it was used by the actors of the time: people who shared a name – in our case, Zúñiga – and were subjected to the distant authority of a *pariente mayor*. The Zúñigas, who theoretically came from a small town in Navarra but settled in Galicia, Andalusia and Chile, with very disparate social situations within and outside the nobility, numbered hundreds of people in early modern times, the majority of whom were remote from the main households of the lineage – the Duchy of Béjar, the County of Miranda, for example – and were not subjected to any kind of lineage discipline whatsoever. In this respect, the defence of each individual household within the lineage is essential, and very early on. However, once we take on board the tightening of kinship analysed by the historiography and scrutinise the choices made by these noble households, the transition from lineage to household is far from being this

clear-cut. The persistence of patrimonial and matrimonial policies that take into account the preservation of different cadet branches in addition to the eldest branch or the interplay of alliance and transmission between several households descending from the same ancestor point to the underlying persistence of lineage solidarity.

However, in the case of the Fajardo family studied by Franco and Rodríguez Pérez, the trajectory of the transformation into households is very neat, as they split into two lines, which began to develop independently and were no longer tied after the 1630s[14]. It is undoubtedly difficult to state that this example constitutes the norm and that cases to the contrary are exceptional, but it is certain that they are far from isolated. Still, in other cases, such as the Álvarez de Toledo family, this split only endured until the eighteenth century when the different households reunited. This resulted from a deliberate policy that seems to point, underhandedly, towards the loose maintenance of lineage[15]. As long as there was inter-generational solidarity between several lines of the same family, it can be argued that lineage-based logic persisted, despite the conflictuality surrounding succession, and even if these younger branches were at the service of the elder one. In cases other than the Fajardos, from families whose conglomerate of majorates were more ancient, the trajectory is different and seems almost contradictory. On the one hand, we observe the reduction in the number of children to a single heir and the tightening of family policies on the transmission of households, each following its own policy, and, at the same time, lineage solidarities endured through the majorates transmitted in the cadet lines. In other words, there is not necessarily a contradiction between the persistence of lineage and the blossoming of households. Our models are most often built with families with a single majorate in mind, but when numerous majorates circulated between the lines of the grand families, they were the architects of both the preservation of lineage solidarities and that of particular households – with their own territorial base and, more often than not, their own pantheon, in a conventual and, more rarely, parish chapel. This raises the question of their organisation: what was the structuring element? What determined

14 Hernández Franco & Rodríguez Pérez, 2014.
15 Hernández Franco & Precioso Izquierdo, 2020.

what? Is it possible to highlight lineage logics without implying that they were strongly structuring? The interplay of majorates is a good indicator of these issues, and this article aims to give a few examples, bearing in mind that these questions remain tricky because the lineage was both the framework and the instrument of household politics.

At last, the majorates also provide an opportunity to question the emic and etic uses of the term household. The emic meaning of the term is particularly abundant, but is congruent with its etic one. The *casa* may refer to the *casa solar*, the original dwelling of a lineage, which is a particular place linking the living to their ancestors through the land, as well as to all the family members to the head of the family living under his roof, beyond the circle of close relatives, up to and including the *criados* – i.e. much more than the "nuclear" family. From the *etic* point of view, the household designates a form of legal entity – the term is anachronistic – defined by the fact of holding and passing on property, a set of symbols, coat of arms, a name, which organises the lines of succession and the defence of which takes precedence over everything else. Majorates were the props of households. While this definition seems very close to the anthropological concept of the household, heir to a long tradition[16], the "household system" of the European nobility had, as Godelier pointed out[17], a much more restricted social extent than the most canonical examples in anthropology, such as the Kwakiutl, since in early modern Europe, brothers could belong to different households if there were several majorates within the family. The resort to anthropology also raises the question of the social and emotional extent of the household, which is to be found differently in the historiography. For a long time, scholarship has tried to overcome a narrowly legal and patrimonial approach to the majorate, which was a form of projection of critical conceptions dating from the end of the eighteenth century and the nineteenth century, reducing the majorate to mortmain property, considered an obstacle to economic development[18]. The majorate was indeed inextricably linked to a legal system that conferred rights (seigniorial, feudal), but also protected symbolic

16 Haddad, 2014.
17 Godelier, 2014.
18 Abreu, 2001; Clavero, 1974.

assets (name, coat of arms, palace, etc.) that constituted the identity of the "household". It guaranteed both the relationship with the ancestors and a set of family practices and traditions making it the instrument for crystallising the family itself, the way in which it took shape, was disciplined and institutionalised, right down to its "family spirit", its "family customs", as a category "actualised" in the minds of its members. It was a family law and practice far more than a legal and economic instrument. In this sense, the majorate was the heart of the noble household in its broadest sense. More than a term describing the functioning of noble kinship, it was – as well as the lineage –, a performative watch word and a normative instrument whose very purpose was to formalise and discipline family practices by influencing matrimonial and marital choices, thus strengthening the power of heads of family by endeavouring to make this "desired kinship" correspond to an actual one[19]. Without calling this into question, the attention paid to conglomerates of majorates and majorates of cadets invites us to investigate what became of theses disciplinarian, symbolic, cultural and even affective dimensions when the accumulation of several majorates in a family led to their juxtaposition and when some of them, inherited or relics of previous generations, no longer corresponded to any "household" and were therefore stripped bare to their legal dimension.

2. The end of a household: the Sotomayor's false cadet majorate

This is the case of a majorate from the Sotomayor family, which creates a particular tension between the lineage's older and younger branches and illustrates the very common situation of a majorate that eventually finds itself without a household. It dates back to 1453 and brings together the domains (*señoríos*) granted by Juan II to the Grand Master of Alcantara, Gutierre de Sotomayor, who founded two majorates for his two sons, in the idea that they should develop separately: the county of Belálcazar and the viscounty of La Puebla de Alcocer went jointly to the elder branch, and

19 Bourdieu, 1972.

Alconchel to the younger son[20]. The former is characterised by a particular clause that had far-reaching consequences and privileged the second-born. Even though it seemed to emphasise primogeniture, it commended that, at the time of the holder's death, a living second son should succeed to the detriment of his nephew born from the dead first son. This nurtured the hopes of the cadets, whose expectations to succeed in their fathers' estates was greater than in a traditional majorate, built upon a stricter primogeniture. This clause shaped the very strong bond that the household forged with religious vocations, not strategically or cynically, but as a very specific family culture in which the elders paradoxically entered the convent. This solution to the internal tension built from the majorate between first and second sons was not set in stone: it did not arise mechanically, it was also the result of circumstances, but it was reproduced, with variations, over the generations. In the first generation, the first son inherited. In the next one, the eldest, a religious and then founder of a Franciscan province that had been placed under the close patronage of the family, left the patrimonial estates to his younger brother, before becoming, after the latter's premature death, one of the protectors of the county entrusted to the sole heir, his nephew Alfonso[21]. This Alfonso had four sons and a daughter, the first of whom died prematurely. In 1517, he began negotiations to marry his eldest surviving son, Alonso Francisco, to Teresa de Zúñiga, a potential heir to the Duke of Béjar's majorates. Alonso Francisco was still under threat from his two younger brothers, who, if he were to die before his father and leave a child, would take precedence over his sons in the succession. The father's strategy for protecting his eldest son is entirely in accordance with the family spirit: during his lifetime, he renounced his estates to become a Franciscan in a convent run by the family, as his uncle once did, thus hastening the timing of his own succession, since his entry into the convent meant his civil death[22]. Alonso Francisco succeeded him immediately, while he was still alive, and after a few years the younger brothers gave up the possibility of inheriting one day: first the third son, who also became a religious, and

20 Archivo Histórico Nacional, sección Nobleza (Toledo), Casa de Osuna, leg. 325, exp. 15. Testament of Gutierre, 1453.
21 Beceiro Pita, 2014; Roullet, 2021.
22 Archivo Histórico Nacional, sección Nobleza (Toledo), Casa de Osuna, leg. 326, exp. 39.

then the second son[23], harder to convince since he was closer in the succession line, who negotiated a position for a natural child before also becoming a Franciscan, a after spending his life as a soldier in the entourage of the emperor. The convent saved the family property from being passed on, albeit in a different way to previous generations, forcing the cadet to support the preeminence of the first-born son. Beyond the majorate, this capitalisation on the eldest reached the so-called free properties (*bienes libres*) of the succession, since the younger children, in their successive wills – and following their fathers' command – left their share to the eldest when they embraced religious life[24].

The Sotomayors had built their uniqueness on this osmosis between convent and majorate. As soon as they joined forces with the Zúñiga, whose majorates were older, more powerful and also more prestigious, the system jammed up significantly. The clauses of the marriage of Alonso Francisco de Sotomayor and Teresa de Zuñíga, which have long been commented on[25], gave way to the formation of a conglomerate of powerful seigneuries, complementary in geographical terms. Yet they did not merge and were transmitted through discordant rules. When Alonso Francisco died in 1544, his eldest son bore both names and became Count of Belalcázar. He did not become Duke of Béjar until the death of his mother, who held the title, more than 20 years later, in 1565. The Sotomayor family culture had been passed on to him, and support for the Franciscans was still strong during his lifetime. On his death, however, his son, who was the first to inherit both titles at the same time, was more inclined towards the Zúñíga tradition. Was the county of Belalcázar still a "household" at that time? It was built around a majorate, which certainly implied rights over men and land, and very powerful patronage over a network of clients, servants and so on. But it was no longer a "household", in the sense that it was no longer held exclusively for itself: the palace was no longer inhabited, the seigniory was governed by a *corregidor*, support for the Franciscans waned without the patronage disappearing, etc.

23 Archivo Histórico Nacional, sección Nobleza (Toledo), Casa de Osuna, leg. 326, exp. 60. Also see Guadalupe, 1662, p. 301.
24 Archivo Histórico Nacional, sección Nobleza (Toledo), Casa de Osuna, leg. 326, exp. 45 (his daughter Felipa).
25 Gerbet, 1979; Nassiet, 1995.

In a way, it became a weak majorate, if we can make this distinction, or even a dead majorate, as we speak of a dead language, reduced to its economic and legal dimension, transmitting rights and property yet stripped of its family, emotional and symbolic dimensions, in short of its capacity to formalise family relationships. When two majorates are combined, only one household remains in the full sense of the term. There is, however, a downside to this logic: the eldest children of the Duke of Béjar got into the habit of bearing the title of Count of Belalcázar, and then that of Marquis of Gibraléon after their marriage, so that the titles were occasionally reactivated and made temporarily more autonomous. Thanks to this policy, there was a "household" of Gibraleón – with its palace, its servants and its income – for several decades, but also with a title that was the antechamber to another, which was non-transferable and which, for some, who died before their father, who remained a Duke, was only the title of a lifetime, before the House of Gibraleón returned to the family patrimony.

During this transitional period, the specific nature of the majorate that governed the transmission of the Sotomayor seigneuries kept on weighting on the relationship between elders and cadets, as the discrepancy between the majorates of Béjar and Belalcázar became a source of tension. The eldest son was bred to succeed and expected to become a duke of Béjar, but his position in relation to the County of Belalcázar was weaker, as his future offspring remained under threat from his younger brothers. The situation was harmonised with difficulty at the beginning of the 17th century. The 5th Duke, Francisco Diego de Zúñiga y Sotomayor (†1601), tried to impose the traditional solution on his firstborn in the hope to prevent a dramatic separation of the two majorates: he placed him in a Dominican convent – most likely against his will –, an order that was under the Duke's protection in Andalusia, so that the younger one could inherit both the Duchy of Béjar and the County of Belalcazar[26]. Judging by the very secular life of this brother Francisco de la Cruz[27] and, even more so, by the younger brother's fear when he inherited his father's titles, it is certain that this situation was by no means accepted. The new Duke's letters to

26 Archivo Histórico Nacional, sección Nobleza (Toledo), Casa de Osuna, leg. 228, exp. 58.
27 Archivo Histórico Nacional, sección Nobleza (Toledo), Casa de Osuna, leg. 389, exp. 93. The reference was found in Mira Toscano (2014).

his Roman procurator in anticipation of his elder brother's eventual renunciation of his religious vows and his ultimately successful attempts to merge the two majorates in the beginning of the 17th Century clearly show that the system was unsustainable[28]. The Sotomayor majorate, now anachronistic and overly original, depended on a whole family system and a form of reverence for the choices made by the founding generations in the late 15th Century. Had the marriage between the two lines been later, the Sotomayor majorate could perhaps have become a cadet majorate, by virtue of a pragmatic rule of 1534, which has been discussed for long, requiring that in the event of two majorates being united by marriage and exceeding two million maravedis in rent, one of the two should pass to the cadet, with the argument of preserving the honour of the founders[29]. The choice to merge the two majorates proves *a contrario* that although the convent housing the Sotomayor pantheon continued to be one of the many patronages of the lineage, the cult of these ancestors has undoubtedly waned, without their memory – which implied rights – disappearing. The growing popularity in the 16th century of the phrase "su casa, estados y mayorazgos", in the plural rather than just the singular, is a clear indication of this transformation: many majorates were now simply parts of patrimonial conglomerates without being the support of a real household. Under these conditions, it is hard to argue that the county of Belalcázar was still a household. After the fusion, no eldest member of the Zúñiga and Sotomayor lineage entered any religious order whatsoever.

3. The younger branches of the Zúñigas: a long-lasting lineage policy

The solution of moving this majorate to a younger branch would undoubtedly have been a delicate one, as the lineage already maintained its younger branches with other majorates.

28 Archivo Histórico Nacional, sección Nobleza (Toledo), Casa de Osuna, leg. 329, exp. 3 and leg. 233 exp. 133.
29 Clavero, 1974; Dedieu, 1998.

At first glance, however, the case of the Zúñiga family might seem to provide an early illustration of the process of transforming lineages into "households". In the 15th century, Diego López de Zúñiga (†1417), the most illustrious member of the Zúñiga family in the broadest sense of the term, had accumulated a number of widely scattered seigneuries, which he divided among his children in his will, just as Gutierre de Sotomayor would a few decades later. Although, strictly speaking, these were not always majorates but *vínculos*, the intention to found several branches, while entrusting the most prestigious to the eldest, is quite clear. In the successive wills he left, each son received a share of the estate[30]. The eldest one, Pedro (†1453), received Béjar, Burguillos and Capilla – which had been associated in a single majorate since 1397 –, properties in the Douro and along the Esgueva, near Valladolid, as well as Curiel, Encinas, Esquera, Traspinedo and Villaconancio in the same region, and also rights to the tercias of Peñafiel and properties around Palencia, in Extremadura. The Mariscal of Castile Sancho (†1450) received seigneuries in the provinces of Logroño and Alava (Verantevilla, Grañon and Bañares). The third son, Iñigo (†1420), inherited in Navarre and La Rioja (Estuñiga, Mendavia, Clavijo, Huércanos y Bovadilla, etc.). The fourth, Diego, received Hacinas and its castle, Quintanilla, Moradillo and inheritances in the Burgos region. Finally, the last son, Gonzalo, bishop of Palencia and Jaén, received Bodón and Urbal, around Salamanca. Although there is of course nothing egalitarian about this division per se, it is more indicative of a desire to strengthen solidarity between these legacies, which are sometimes close to each other, rather than concentrating everything on one strong line. In the event of the defection of one line, the other branches were meant to inherit its patrimony, with priority given to the eldest. This was the case for Iñigo's and Sancho's descendants after two generations.

The sharing of its properties, seigneuries and majorates carried out by Diego López de Zúñiga follow a logic that may appear to be based on lineage. It encouraged coordination between the lines and organised their solidarity over time. The children of Pedro de Zúñiga (†1453), the eldest

30 Archivo Histórico Nacional, sección Nobleza (Toledo), Casa de Osuna, leg. 124, exp. 21 (testament, 1401), leg. 214, exp. 130 (codicilio 1397), leg. 213, exp. 65 (testament, 1397), ecaja. 214, exp. 60 (testament, 1407), leg. 214, exp 26 (testament, 1410). We follow the last one.

son, shared their father's inheritance in a way that seems to conform to the grandfather's model[31]. The eldest, Alvaro I (†1488), inherited the rights to Béjar, which was raised to the rank of dukedom during his lifetime, while the younger son, Diego López (†1479) bred the counts of Miranda del Castañar. Afterwards, each of these two branches pursued an independent policy: neither failed for several decades, so that the two households became autonomous. From the 1520s onwards, both houses were counted among the *grandes* and had no matrimonial or patrimonial ties. It seemed unthinkable for either of them that their patrimony would circulate from one to the other. Each developed a policy of alliances with other families outside the Zúñiga lineage. When the eldest branch failed, in the person of Álvaro II, who married without a legitimate heir, the ducal household did not pass to the original cadet branch but circulated through a woman, Teresa, a descendant of a closer cadet line.

Is this estrangement between the two branches, from the second generation onwards, symptomatic of the shift "from lineage to household" diagnosed by historiography? Generations after the division that is considered original (on what criteria, when each generation establishes new majorates?), the initial elder and younger branches are indeed too far apart not to be fully autonomous households. But this is less a matter of choice or orientation in family models than the mere consequence of the passage of generations. Two criteria seem more relevant, as used by J. H. Franco: the refusal (or impossibility, which does not amount to the same thing) to found younger branches and the fact that illegitimate children are preferred to younger branches when the elder branch fails. As far as illegitimate children are concerned, the succession of Álvaro II could have been a test, but it is precisely a younger branch that succeeds in the estates of the elder branch, shifting its own majorate to a third branch. Not only did this interplay between the different branches of the lineage remained crucial, but the main line did kept on founding cadet lines, at least until the mid-17th Century, a policy often considered as a key element of the broad kinship system ("clannish" in some articles) of the late medieval period, to which the narrow, more vertical logic of the "households" would have

31 Archivo Histórico Nacional, sección Nobleza (Toledo), Casa de Osuna, leg. 380, exp. 16 and 18 (testaments, 1450 and 1453).

given way. After Pedro, it was Álvaro I who shared the family estates, giving the seigneury of Mirabel to his third son and leaving Traspinedo and Villoria to the youngest one[32]. In the following generation, these last seigneuries were reverted to the eldest line[33] and a majorate was created for a younger son, Ayamonte, and others followed, as we shall see. The reduction in the number of heirs only came later, at the end of the 16th century, on an *ad hoc* basis and in a catastrophic financial situation (Jago 1982), and it did not invalidate the interplay between the different branches. On the contrary, it stimulated their relationship, not without conflicts, as we shall see. The Zúñigas, even if the two most important households in the "lineage" were no longer linked, kept acting as a lineage, strengthening their bonds through the transition clauses of the majorates and founding new branches.

The slightly atypical majorate of Ayamonte illustrates the case, without being exceptional, since the majorates of Zúñiga and Cárdenas studied by J. R. Palencia followed comparable rules. It was thought as a new cadet branch attached to two great "households", the Dukes of Medina Sidonia – Guzmán lineage – and the Dukes of Béjar – Zúñiga. The Marquisate of Ayamonte, in the extreme south-west of the Reino de Andalucia, was geographically enclosed within the Marquisate of Gibraleón - one of the seigneuries attached to the Duchy of Béjar – which itself bordered and was almost surrounded by the County of Niebla, the most important Guzmán seigneury after the Duchy of Medina Sidonia. The clauses of the majorate support both these geographical connections and the intertwining of the two lineages. Ayamonte had belonged to the Guzmáns for several generations and was the dowry of Teresa de Guzmán, a natural daughter of the Duke of Medina Sidonia, when she married Pedro de Zúñiga, the eldest son of the Duke of Béjar, in 1454[34]. Luis Salas presents it, not without reason, as the property of "a secondary branch of the Guzmán family"[35]: as it initially belonged to the Dukes of Medina Sidonia, the

32 Archivo Histórico Nacional, sección Nobleza (Toledo), Casa de Osuna, leg. 279, exp. 16 (1479).
33 Archivo Histórico Nacional, sección Nobleza (Toledo), Casa de Osuna, leg. 373, exp. 46 (testament, 1505).
34 Archivo Histórico Nacional, sección Nobleza (Toledo), Casa de Osuna, leg. 215, exp. 26 (marriage contract).
35 Salas Almela, 2016.

majorate insisted on the bearing the name of Guzmán. For all that, it was fully and to a greater extent part of the lineage policy of the Zúñiga family, Dukes of Béjar, as if it belonged to both lineages. It is not insignificant that it was founded by a widow – just like Villamanrique to which we will return later. Teresa de Guzmán founded it with royal licence in 1498[36], fourteen years after the death of her husband, Pedro de Zúñiga, who had long been the expected and presumptive heir to the Duchy of Béjar as the eldest son of Alvaro I, but who had died before his father. By this time, her eldest son had succeeded his grand-father in the estates of Béjar and Teresa was seeking to pass on her own rights to Ayamonte, raised to the rank of county in 1475, which was the title her husband and her had carried and displayed during their lifetime. The aim was also to establish her youngest son, Francisco, who was 39 years old and unmarried, and who would not marry until the following year, once the seigneury and title of Ayamonte had been secured. Teresa founded the majorate on the condition that if it returned to the elder branch, the two majorates would be incompatible, which meant that the succession would have to be transferred to a younger branch[37]. Renouncing to this foundation would have meant leaving her younger child with no position in the world, but also running the risk of this seigneury from the Guzmán family being swallowed by the Duchy of Béjar upon her death. The founding clauses are quite eloquent from this perspective: they establish all younger children before the eldest as successors, and then the daughters; they make clear the precedence of the grandson descended from the eldest cadet over younger sons; they ensure that anyone holding the majorate bears the coat of arms and name of Guzmán, except in the event that his eldest son, the Duke of Béjar, should inherit – in the absence of other sons –, since the duchy "is a larger household"[38]. In this case, given the impossibility of amalgamating these majorates, they would have to be separated in the following generation in order to recreate a younger branch.

Over time, this choice led to alternating alliances between the elder and younger branches, enabling the two lines to be maintained in each generation.

36 Archivo Histórico Nacional, sección Nobleza (Toledo), Casa de Osuna, leg. 281, exp. 2.
37 Archivo Histórico Nacional, sección Nobleza (Toledo), Casa de Osuna, leg. 280, exp. 15.
38 Archivo Histórico Nacional, sección Nobleza (Toledo), Casa de Osuna, leg. 280, exp. 15.

Initially, Teresa's youngest son, Francisco de Zúñiga y Guzmán, succeeded her, becoming a count and then a marquis of Ayamonte after the county had been raised to this rank by Charles V. However, the Marquis only had one daughter as heir, Teresa de Zúñiga, who, as we have already mentioned, found herself at the head of the Duchy of Béjar after her marriage to Alonso Francisco de Sotomayor, thanks to the extinction of the eldest branch. Although during Teresa's lifetime, the accumulation of majorates on her head led to a series of legal proceedings against her by other pretenders, which are well documented in her will[39], she managed to retain them all and, as this accumulation was not meant to last, the two lines separated again in the following generation: Ayamonte passed to the couple's youngest son, Antonio, and then to his eldest, Francisco, married to a daughter of the Duke of Béjar, the closest cousin. In the next generation, the same pattern was repeated: the eldest son of the Marquis of Ayamonte, Francisco Silvestre de Guzmán, was married to the daughter of the Duke of Béjar, and more precisely to the one who was legally his eldest, since all the others were either dead or in a convent. The two lines ran parallel. This situation can be partly explained by the geographical solidarity of the seigneuries – at this period, the eldest branch had long been based in Gibraleón – partly by the financial "crisis of the aristocracy", which struck the Zúñiga hard[40], and partly by the need, in the absence of new resources, to maintain the family patrimony in order to endow the cadets, not without intense conflict over the payment of dowries. For two generations, each of these households acted as if marriage to a patrilateral cousin were preferable, even to the closest degree, in order to preserve the majorates and their solidarity, a reflex which is less a local variant of the "Arab marriage"[41], even if its circumstantial justifications may be comparable (cost reduction, in particular) than the effect of the majorates themselves as they shaped the family. This proximity, which gave rise to very close consanguineous alliances between the heirs of the two family, also fed a specific perception of the prohibited degrees of kinship, completely at odds with the canonical norm. If we are to believe the ease with which these families obtained (very expensive) dispensations,

39 Archivo General de Simancas, contaduría mayor de Hacienda, leg. 499, exp. 8.
40 Jago, 1982.
41 Barry, 2008.

this extra-legal situation did not pose any problem in everyday aristocratic life. On the death of the Marquis Francisco Silvestre de Guzmán, who was imprisoned and later beheaded for his participation in the conspiracy against Philip IV in the early 1640s with the Duke of Medina-Sidonia[42], the Marquisate passed to his sister Brianda. Married to a cadet of the Duke of Medina-Sidonia, and then to the Marquis of Mondéjar. As she left no heirs, the Marquisate of Ayamonte reverted again to the Zúñigas' eldest branch. The case demonstrates that the question of which lineage the majorate "belonged to" is a tricky one: Ayamonte was precisely a "household" (with its palace, pantheon, administration and patronages) dependent on a majorate whose rules – the clause on the name – placed it in the *emic* "lineage" of the Guzmáns, but which mostly depended on the politics of the Zúñigas.

This situation became even more complex with the introduction of a third line, around another cadet majorate, that of Villamanrique, which on the expiry of the cadet line that held Ayamonte disputed the majorate with the eldest branch[43]. It was founded by Teresa de Zúñiga (†1565), Duchess of Béjar, whom we have already met, for her third son, Alvaro, who was already married at the time, on condition that he bear the name of "Manrique de Zúñiga" – a way of isolating the branch onomastically and a condition that was only respected when it was necessary to assert one's rights – and on condition that the title was not combined with another more prestigious one, whose name and coat of arms would have precedence. The succession clauses were classic, and Teresa organised an order of succession between all the branches of her sons on condition that "as far as possible"[44] the Marquisate of Villamanrique was not joined to the majorates of Béjar and Ayamonte. Teresa's will is framed by lineage, with an eloquent obligation in the event of succession by daughters: those who can or must succeed to the majorate must marry "within the lineage", i.e. with someone who bears the father's name, before marriage if they are heirs ("who bears the name and arms of Zúñiga before marriage and not after"). It should be noted that at this stage, when the household of

42 Salas Almela, 2013.
43 Archivo Histórico Nacional, sección Nobleza (Toledo), Casa de Osuna, leg. 281, exp. 37.
44 Archivo General de Simancas, contaduría mayor de Hacienda, leg. 499, exp. 8. Archivo Histórico Nacional, sección Nobleza (Toledo), Baena, leg. 25, exp. 14.

Béjar was already heavily in debt, the foundation of a majorates was the only credible solution to enact a real lineage policy and establish several lines, as the majorate, by its very nature, was theoretically beyond the reach of creditors. These new branches, each with is own household, were intended to remain close to the eldest line, but they could only support it from a distance, without their properties being able to increase the majorate. The succession to the Marquisate of Villamanrique, which has been studied by Antonio Herrera García and Vicens Hualde[45], clearly demonstrates the maintenance of a form of parallel line and the persistence of economic solidarity between the lines, as the eldest branch – the most indebted – sold the family palace in Seville to the cadet line, so that it remained within the family. The more recent one was governed by a rule of male primogeniture and was passed down in a parallel line, without damage, to Josefa de Zúñiga, the third person to hold the majorate. She did not marry "into the name", but her husband, Melchor Pérez de Guzmán y Sandoval, a younger brother of the Dukes of Medina Sidonia, was not without rights, as he descended directly from the founder of the majorate, Teresa, through his eldest daughter four generations earlier. Their son Manuel Luis took the name Guzmán y Zúñiga and succeeded to the Marquisate of Villamanrique. It was during his lifetime that the House of Ayamonte failed, in 1664, as we already commented. The Marquis of Villamanrique and the eldest branch of the lineage fought over it, which the Duke of Béjar, Manuel Diego, and his younger son, Balthasar, Marquis of Valero, claimed as their "property". They were awarded it in a ruling in July 1677[46] but when Balthasar died in 1727 and there was no successor in the elder branch, Ayamonte was reverted to the younger branch of the Marquises of Villamanrique.

The last example of a cadet's majorate passing from one branch to another, the Majorate of Valero was founded on 22 September 1632 by Francisco Diego López de Zúñiga y Sotomayor, Duke of Béjar, in favour of his youngest son, when the Marquisate of Ayamonte was beyond his reach[47].

45 Vicens Hualde, 2017a, 2017b.
46 Archivo Histórico Nacional, sección Nobleza (Toledo), Casa de Osuna, leg. 292, exp. 2 and leg. 281, exp. 2 to 36.
47 Archivo Histórico Nacional, sección Nobleza (Toledo), Casa de Osuna, leg. 315, exp. 34.

When the Duke died four years later, the eldest son, Alonso Diego, inherited the Duchy of Béjar and the youngest one, Juan Manuel, the Majorate of Valero, which was established as a marquisate on 19 September 1636, a few weeks before the father's death. However, when the eldest son died on 1 August 1660, childless, the Marquis of Valero inherited the title of Béjar. By virtue of an incompatibility clause between the dukedom and the marquisate, intended to establish the cadets[48], Juan Manuel renounced his marquisate to accept the ducal inheritance[49]. One majorate supplanted the other and it was therefore Juan Manuel's youngest son, Balthasar de Zúñiga y Guzmán, who succeeded to the Marquisate of Valero. When Juan Manuel died a few weeks later, on the 14th of November, the eldest son, Manuel Diego López de Zúñiga, became Duke of Béjar, while the future of the younger branch was already assured. The Marquisate of Valero remained in the lineage – and as always, the final clause of succession to the Marquisate implied that if the lines died out, the successor had to be at least a member of the "lineage", this time in the broadest sense of the term. When Balthasar died in 1727, with no children of his own, and since the Duke of Béjar, his nephew, had only one son to whom the dukedom was promised, the marquisate passed to María Loreto Dávila Zúñiga, the only descendant of the founder of the majorate through males (and technically the eldest, but they only had one heir), from his second marriage, thus remaining in a lateral branch, not without conflict once again.

Conclusion

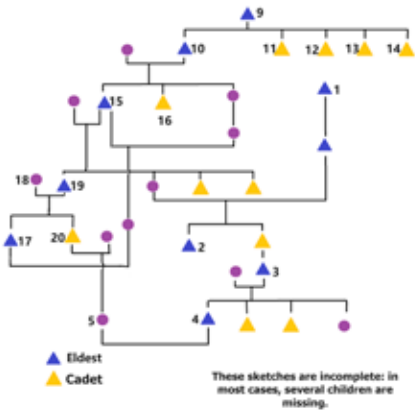
Finally, we can now return to the relationship between the lineage and the household in the structuring of family relationships, building on the majorates. Our cases argue for the persistence of lineage from the mid-16th century to the mid-17th century as an intelligible framework for the transmission of majorates and matrimonial policy. Conflicts did not weaken it but confirmed its relevance: if there were some, it was primarily because

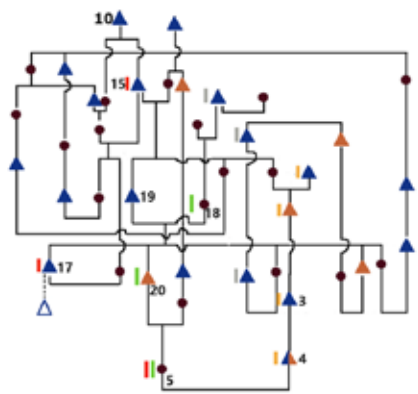
48 Archivo Histórico Nacional, sección Nobleza (Toledo), Casa de Osuna, leg. 259, exp. 170.
49 Archivo Histórico Nacional, sección Nobleza (Toledo), Casa de Osuna, leg. 315, exp. 14 and leg. 287, exp. 2.

the founding clauses of each majorate shaped a matrimonial policy which increased competition between the lines in the hope to keep them close. What these conflicts undermine is a romantic idea of the lineage as an accepted family framework, in which the *pariente mayor* exercises paternalistic discipline and in which the cult of ancestors endures beyond three generations and guarantees a form of peace in intra-family relations. It is doubtful that, even at the end of the Middle Ages, when these families were founding cadet branches with each generation and when this proliferation gave a high profile to the lineage, and to what Franco calls "collective" or "broad kinship", such a system would really have existed. This does not mean that family relationships were strategic, cynical and dictated by patrimonial calculations. There was indeed a family discipline, sometimes difficult to impose, and a patriarchal power, of parents over children and of men over women, which enabled noble households to have a coherent patrimonial and matrimonial policy and which was supported, to a large extent, by the cult of the founders and ancestors. However, this discipline was difficult to maintain, had a limited scope and could not be extended to an entire lineage, in the broad sense given to the term by historiography for the end of the Middle Ages. It was impossible to sustain when majorates accumulated within a family, each one carrying its own memory and obligations. When majorates and seigneuries came together, they tended either to merge and cause one household to die out, becoming part of a more powerful one, or to split up again at the next generation by passing to a younger branch, thus producing other households, descended from different founding ancestors, each with its own geographical base and a tendency to become autonomous, even if this meant competing with the other households in the lineage. In such conditions, the *pariente mayor* of a great lineage had little or no authority over other noble households born of the same lineage. However, the "household" did not mechanically succeed the "lineage", as the key element explaining family structure within the nobility, as the patrimonial relationships between the majorates imposed obligations of alliances or an interplay of succession between elders and cadets, which ensured that a form of lineage solidarity endured. In each generation, by founding for the cadets, the great households maintained a form of "lineage projection" by continuing to found new branches of their linage likely to become autonomous, but which

remained linked to the eldest branch and could return to it in the event of failure. The lineage remained structuring over time through conflicts, but also as a mean of projection, as soon as the family's finances allowed it, through the creation of new majorates when the previous majorates founded for the cadets drifted away: this was the case of the Marquisate of Villamanrique, then that of Valero, late in the 17th century, as it had been with the Marquisate of Ayamonte earlier. In the 15th century, thanks to the patrimony accumulated through royal favour, the first generations were able to found for several sons, and organized the solidarity between each line, if one was failing. A large number of well-known factors made such situation increasingly rare in the 17th century, but the system kept on, on a more reduced and discreet scale, thanks to the resort to majorates and in spite of increasing conflicts. In times of economic weakness and with a reduced number of heirs (at the end of the 16th century), marriages between the younger and elder branches were mutually beneficial and ensured the preservation of the patrimony in a lineage that had nothing to do with collective and distant kinship, but was built on the fragile association between different households, one belonging to a different line. However, the atmosphere undoubtedly changed around the middle of the 17th century. Until the beginning of the 17th century, these alliances were common, with the successive marriages between the Dukes of Béjar and the Marquises of Ayamonte, but they subsequently disappeared and the lineage was no longer anything more than a framework for conflict, which nurtured a more complete autonomy of the lines. At this stage, the logic of the households, as shown by J. H. Franco, finally prevailed. Moreover, the minor households of the lineage, which until then had been autonomous, were slowly absorbed into conglomerates of larger majorates, blurring the hierarchies between the lines. The accumulation of majorates was therefore both a means of extinguishing minor households by diluting them into larger ones and a means of definitively emancipating the strongest households from the constraints of their original lineage.

Genealogy and circulation of the majorates within the Zuñiga lineage (figures 1,2, 3 and 4)





1 – Gutierre de Sotomayor (†1453)
2 – Juan de Sotomayor, al. de la Puebla, O.F.M. (†1495)
3 – Alfonso de Sotomayor, al. de la cruz O.F.M. (†1524)
4 – Alonso Francisco de Sotomayor (†1544)
5 – Teresa de Zuñíga (†1565)
6 – Alonso Francisco de Zúñiga y Sotomayor (†1601)
7 – Francisco de Zúñiga y Sotomayor, al de la Cruz, O.P.
8 – Alonso Diego de Zúñiga y Sotomayor (†1619)
9 – Diego López de Zúñiga (†1417)
10 – Pedro de Zúñiga (†1453)
11 – Sancho de Zúñiga (†1450)
12 – Iñigo de Zúñiga (†1420)
13 – Diego de Zúñiga
14 – Gonzalo de Zúñiga (†1447)
15 – Alvaro I de Zúñiga (†1488)
16 – Diego López de Zúñiga (†1479)
17 – Alvaro II de Zúñiga (†1532)
18 – Teresa de Guzmán (†1502)
19 – Pedro de Zúñiga y Manrique (†1484)
20 – Francisco de Zúñiga y Guzmán (†1525)
21 – Antonio de Zúñiga y Sotomayor (†1583)
22 – Francisco de Zúñiga y Guzmán (†1607)
23 – Francisco Silvestre de Guzmán (†1648)
24 – Brianda de Zúñiga Sarmiento (†1664)
25 – Álvaro Manrique de Zúñiga (†1604)
26 – Josefa de Zúñiga (†1680)
27 – Melchor de Guzmán y Sandoval
28 – Manuel Luis de Guzmán y Zúñiga (†1692)
29 – Manuel Diego López de Zúñiga (†1686)
30 – Francisco Diego López de Zúñiga y Sotomayor (†1636)
31 – Juan Manuel de Zúñiga y Sotomayor (†1660)
32 – Balthasar de Zúñiga y Guzmán (†1727)
33 – María Loreto Dávila Zúñiga (†1749)

Archive material:

Archivo General de Simancas:

Archivo General de Simancas, contaduría mayor de Hacienda, leg. 499, exp. 8.

Archivo Histórico Nacional, sección Nobleza (Toledo):

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Casa de Osuna, ecaja. 214, exp. 60.
Casa de Osuna, leg. 124, exp. 21.
Casa de Osuna, leg. 213, exp. 65.
Casa de Osuna, leg. 214, exp 26.
Casa de Osuna, leg. 214, exp. 130.
Casa de Osuna, leg. 215, exp. 26.
Casa de Osuna, leg. 228, exp. 58.
Casa de Osuna, leg. 233 exp. 133.
Casa de Osuna, leg. 259, exp. 170.
Casa de Osuna, leg. 279, exp. 16.
Casa de Osuna, leg. 280, exp. 15.
Casa de Osuna, leg. 281, exp. 2–37.
Casa de Osuna, leg. 292, exp. 2.
Casa de Osuna, leg. 315, exp. 34.
Casa de Osuna, leg. 325, exp. 15.
Casa de Osuna, leg. 326, exp. 39.
Casa de Osuna, leg. 326, exp. 45.
Casa de Osuna, leg. 326, exp. 60.
Casa de Osuna, leg. 329, exp. 3.
Casa de Osuna, leg. 373, exp. 46.
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The lords of the Alhambra and the accumulation of entails in the city of Granada (16th and 17th centuries)

José María García Ríos
(CIDEHUS–U. Évora; University of Córdoba)[1]

Abstract: In this paper we will try to present a first approach to the entails founded (and accumulated) by the Marquises of Mondéjar. In addition to offering some colourful notes on the different holders of the House, we will try to establish a possible interpretative model that will help us to understand to what extent the use of the entailed property, and the accumulation of entails, ended up being a differential factor for the political, military, economic and social consolidation of the Marquises of Mondéjar in Granada in the 16th and 17th centuries.

Keywords: Mondéjar; Tendilla; Entailments; Kingdom of Granada; *Lords of the Alhambra*.

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Introduction

Through this work we will attempt to present a first approach to the entails founded (and accumulated) by the Marquises of Mondéjar. A proposal of the greatest scientific interest for modernist historiography, since it analyses one of the most powerful and recognised families of the Monarchy; a branch detached from the illustrious House of Mendoza[2]. By far the most influential lineage established in the City of Darro after its incorporation into the Castilian Crown, they quickly rose to the social Olympus of Granada, as captains general and commanders of the fortress of the Alhambra. These honours and pre-eminences were to be enjoyed for much of the 16th century.

In addition to offering some colourful notes on the different holders of the House, we will try to establish a possible interpretative model that will help us to understand to what extent the use of entailed property and the accumulation of entails ended up being a differential factor in the political, military, economic and social consolidation of the Marquises of Mondéjar in Granada in the 16th and 17th centuries. We will provide a comprehensive review of the different entails managed or instituted by these aristocrats, which will help us to understand the typology of these entails, the taxonomy of the assets that could be the object of entailment, the appeals of the founders, the clauses and conditions established to succeed to those estates, etc. Finally, the decline and decadence of the *lords of the Alhambra* will be dealt with through the intra-family conflicts that were shown and verified in the courts of justice.

It goes without saying that in order to carry out an investigation of this nature, it is absolutely necessary to consult many and varied documentary sources. Among others, we will make use of the wealth of manuscripts and epistolary records in the Archivo Histórico de la Nobleza (AHNOB), as well as the references extracted from the Archivo de la Real Chancillería de Granada (ARChG), the Archivo General de Simancas (AGS), the

2 For the sake of clarity, it should be pointed out that the Counts of Tendilla were one of the many branches of the House of Mendoza, exalted at the beginning of the 16th century with the Marquisate of Mondéjar. Therefore, throughout the text, we will use one title or the other indistinctly when referring to this lineage.

Biblioteca Nacional de España (BNE) and the Real Academia de la Historia (RAH). In addition to the tastings carried out in the Archivo del Ilustre Colegio Notarial de Granada (APG), the Archivo del Patronato de la Alhambra y el Generalife (APAG) and the Archivo Histórico Provincial de Zaragoza (AHPZ). All of this, together with the consultation and emptying of the correspondence of Don Íñigo López de Mendoza and the great genealogical and nobility treatises, together with the critical review of the existing production on this aristocratic lineage.

As we can see, there are tremendously numerous and disparate documentary resources, which would have no reason to exist without an adequate methodological approach. Based on the *cross-referencing of sources*, as could not be otherwise, which will allow us to authenticate or refute our own hypotheses. At the same time, we have drawn up an extensive and detailed *prosopographical study,* which will allow us to carry out a detailed and individualised analysis of the characters we are examining. Only in this way will we be able to establish a quality interpretative model, which will help us to immerse ourselves in the entail microcosm of the *lords of the Alhambra*.

1. The Marquises of Mondéjar and their historiographical reflection

At this point, we must point out that the historiographical production of recent years has substantially modified our knowledge of early Christian Granada. Although there is still a great deal we still need to know, a great deal in certain cases. The work of some specialists, however, has transformed the panorama in questions such as the formation of the great agrarian estates, the consolidation of the seigniorial regime or the processes derived from the first repopulation[3]. Despite this, there are still enormous gaps in some aspects and, strange as it may seem, the nobility

3 To this end, we refer to the classic works of Ladero Quesada, Malpica Cuello, Barrios Aguilera, López de Coca Castañer, Domínguez Ortiz, Soria Mesa, Casey, etc.

of Granada is one of the least known areas, despite the importance of this group in the early stages of the old Nasrid emirate[4].

The Marquises of Mondéjar are no exception to this rule. It goes without saying that they were the most powerful lineage in the whole Kingdom and that they polarised its history during a good part of Modernity. However, the Mendoza family from Granada have not had much luck in terms of historiography[5]. Although there are works related to some of their members, the truth is that even today there is still a lack of a comprehensive study, a specific monograph, that deals with the evolution and fall from grace of this progeny.

Naturally, over the years, the Mendoza family of Granada has been the focus of attention of different researchers. However, José Szmolka Clares shone the most in this field, who devoted his Doctoral Thesis to the study of the second Count of Tendilla, the central figure of the House[6]. Of course, the scientific contributions of this specialist did not stop there. Using the miraculously preserved epistolary of the first Marquis, he presented some very interesting insights into the Andalusia of the early 1500s; and years later, a monograph on the figure of the *Great Tendilla,* which even today continues to be an obligatory reference point[7].

The *correspondence* of Don Íñigo López de Mendoza is a source of extraordinary historical value, yet to be fully exploited, in which most of the events that afflicted Granada in early modern times are portrayed in first person. The first approaches to this suggestive documentary typology were made by Antonio Paz y Meliá[8] and José Cepeda Adán[9]. However, the first edition, *sensu stricta,* of these missives was carried out by Emilio Meneses García and his group of collaborators[10]. This work was

4 On the nobiliary group of Granada, the chapter by Castillo Fernández, 2000, pp. 179–230 and the critical reviews provided by Soria Mesa, 1999, pp. 61–75 and 2004, pp. 369–388 are of interest.
5 This is quite the opposite of their *caracenses* relatives, which are extensively examined in Nader, 1979.
6 Szmolka Clares, 1976.
7 In particular: Szmolka Clares, 1978, pp. 413–420; Szmolka Clares, 1998, pp. 57–72; Szmolka Clares, 2011.
8 Paz y Meliá, 1907, pp. 411–416.
9 Cepeda Adán, 1962, pp. 38–80.
10 Meneses García, 1973–1974; Meneses García, 1972, pp. 547–585.

continued, years later, by Moreno Trujillo, de la Obra Sierra and Osorio Pérez, who edited and transcribed a good part of the Marquis' epistolary records[11]. These efforts have recently been complemented and extended by the work of María Cristina Hernández Castelló on Tendilla's early correspondence[12]. For the rest of the holders of the House, the panorama is not very flattering at all, depriving us of being able to make any kind of well-founded consideration in this respect[13].

However, as we have already anticipated, our aim in this study is to analyse the entails managed and instituted by the Marquises of Mondéjar. To this end, we have some references, always circumstantial and marginal, in the works of Soria Mesa[14], Peinado Santaella[15], Galán Sánchez[16] or Jiménez Estrella[17]. But what is certain is that this is practically virgin territory at the historiographical level, where everything remains to be done. The works of the great apologists of the House are a little more appreciated. For example, and in order of appearance, Rodríguez de Ardila (through Foulché-Delbosc)[18], Ibáñez de Segovia[19] or Gutiérrez Coronel[20], who, writing at the dictation of their promoters, left us three voluminous works, full of deeds and military exploits, often with personal and genealogical references. Unfortunately, however, none of them provides us with much information about the entails and economic bases of the Mendoza family in Granada. Consequently, we believe that there is still much to be known in this respect, certainly a great deal.

11 Among other works Szmolka Clares et al., 1996; Moreno Trujillo et al., 2007.
12 Hernández Castelló, 2014; Hernández Castelló, 2019.
13 Perhaps the works of Nader, 1977, pp. 411-428; Moreno Trujillo et al., 2015; Moreno Trujillo, 2016a, pp. 29-43 or the recent study of Galera Mendoza, 2022, pp. 41-66 may be useful.
14 Soria Mesa, 1991, pp. 383-404.
15 Peinado Santaella, 2013, pp. 213-237.
16 Galán Sánchez & Peinado Santaella, 2018, pp. 73-110.
17 On the Captaincy General of the Kingdom of Granada, Jiménez Estrella, 2000, pp. 23-51; Jiménez Estrella, 2004.
18 Rodríguez De Ardila (Transcr. Foulché-Delbosc), 1914, pp. 63-131.
19 Ibáñez de Segovia (BNE, ms 10670 and RAH, 9/185), n.d. Rep. by García López, 2015.
20 Gutiérrez Coronel, 177? (Published 1946).

2. Entailed property, the basis of family fortune

As we know, at the time of death, Castilian law obliged the estate generated by the deceased to be distributed equally between the surviving spouse and their descendants. Through this system, the main beneficiary of the inheritance was usually the widow who, in addition to recovering her dowry, generally had access to the "ganancial" assets. That is to say, that set of assets that had been accumulated since the celebration of the betrothal. After that, and after deducting the usual debts, the rest of the estate —that is, half of the deceased's assets— was distributed equally among the legitimate children born during the marriage. A priori, this was a procedure with certain "democratic overtones", which legally equated all the heirs; the eldest to the youngest, the male to the female or the educated to the unintelligent.

In the event that a parent wanted to favour one of his or her children over the others, he or she had to resort to the so-called "mejoras" (improvements). A legal mechanism that was absolutely standard throughout Castile, which allowed to bequeath the third and/or the remainder of the fifth of the estate to one of the offspring. The remaining estate (*legitimate*) was then divided among the rest of the heirs, including the one who had already benefited[21].

In fact, these inheritance systems inexorably fragmented the patrimonial assets generation after generation, preventing the socio-economic strengthening of the kinship. For this reason, and in order to avoid the feared dispersion of assets, thousands of Castilian families were forced to resort to the entailment of part or all of their properties, through the entails, chaplaincies, patronages and, to a lesser extent, pious works[22].

21 Gacto Fernández, 1984, pp. 37-66; Gacto Fernández, 1987, pp. 36-64. As well as the approaches set out in García Ríos, 2022, p. 317.
22 We leave for another time and another place the analysis of the foundation of chaplaincies, patronages and pious works of the family we are studying.

Of all these variants, entailment was undoubtedly the most effective and profitable resource for maintaining the levels of fortune, while at the same time contributing to the consolidation of all the members of the family group[23]. A legal formula, defined some years ago by Soria Mesa, capable of preserving intact and inalienable a body of assets generation after generation by means of a prefixed order of succession[24]. In Casey's words, it stands as: «a monument to past glories and an incentive for future generations to emulate the achievements of their ancestors»[25].

Obviously, the most prominent and relevant progenies of the Castilian scene were perfectly aware of the idea that free property, sooner or later, would end up leaving the family nucleus; either by sale, marriage, inheritance, negligence or misfortune. Nothing could be more graphic in this respect than the words of the will of a powerful oligarch from Granada in the middle of the 16th century: «I say and declare that, having respect and experience, those goods that are divided are lost and consumed in a short time, and that by remaining aggregate and unstoppable they remain and increase, and from small endowments they become States...»[26].

The Mendozas, and in particular the Granada branch, also made use of the use of the entailed property to keep intact the bulk of the properties they enjoyed. Thus, and by virtue of the documentary sweep carried out on the Marquises of Mondéjar, we have come to count the foundation of 14 entails in a period of time between 1455 and the end of the 17th century. These are truly considerable figures, which could even be of greater proportions if we take into account the seventeenth century. However, in order not to distort the sample, we will focus only on the entails instituted from the segregation of this family branch of the House of Mendoza until the loss of its varony. The following table provides a quick and visual overview of the entails managed or founded by the *lords of the Alhambra*.

23 For further information on this institution, we refer to the classic works of Clavero Salvador, 1974; Bermejo Cabrero, 1985, pp. 253–306; Devís Márquez, 1999 or Cartaya Baños, 2018.
24 Soria Mesa, 2007, p. 226.
25 Casey, 2008, p. 136.
26 APG, B–654, Luis de Ortega, 29 May 1630, fol. 131v.

Table 1. Succession and founding of the entails of the Mendoza family of Granada (15th–17th centuries).

DATE	FOUNDER(s)	TYPOLOGY
8 May 1455	Don Íñigo López de Mendoza y de la Vega, I Marquis of Santillana	Seven *regulars* entailments*
20 July 1478	Don Íñigo López de Mendoza and Doña Elvira de Quiñones, I Counts of Tendilla	*Regular* entailment
5 May 1489	Don Íñigo López de Mendoza and Doña Francisca Pacheco, I Marquises of Mondéjar	*Aggregation*
20 February 1503	Don Íñigo López de Mendoza and Doña Francisca Pacheco, I Marquises of Mondéjar	Entailment and *aggregations*
18 July 1515	Don Íñigo López de Mendoza I Marquis of Mondéjar	*Aggregation* and ratification
10 June 1554	Don Luis Hurtado de Mendoza and Doña Catalina de Mendoza, II Marquises of Mondéjar	Entailment and *aggregations*
Late 1566	Don Luis Hurtado de Mendoza, II Marquis of Mondéjar	Frustrated second-generation entailment
2 November 1579	Don Íñigo López de Mendoza and Doña María de Aragón y Mendoza, III Marquises of Mondéjar	Four *regulars* entailments

Source: various documents (AHNOB, BNE, RAH, AGS, AHPZ, etc.). Own elaboration.

It is worth noting that in this paper we interpret the *aggregation* of certain assets to a pre-existing entail as the foundation of a new entail. A consideration which, of course, is not casual or spontaneous, since, at a legal level, it was a new set of assets subject to entailment, even if they contributed — as they did in fact — to the enlargement and aggrandisement of the original entail. It should also be noted that we will only refer to the entails related to the possessors who, with more or less noise, ended up succeeding in the main entails of the Mendoza family in Granada. We will leave the foundations of the rest of the members of the family for another occasion.

Having clarified these questions, let us see to what extent the entailed property, and more specifically the accumulation of entails, ended up being a decisive factor in the political, military, economic and social consolidation of the Marquises of Mondéjar in Granada in the 16th and 17th centuries.

3. With A Will To «Enlarge Her House And Make It Bigger»

Respecting the temporal and spatial limits established for this work, we begin our analysis in the mid-1400s, specifically from the division of the estate of the Marquis of Santillana[27]. Thanks to the last will and testament of the Mendoza *family factotum*, we know that he ordered the foundation and establishment of «seven entails for his seven sons»[28]. For lack of space, we cannot examine the goods and properties that each of these heirs received. We will focus, therefore, on analysing the figure of Don Íñigo López de Mendoza, the second-born son of the Marquis, who was rewarded with a valuable set of goods scattered, for the most part, throughout the territory of Alcarria[29], which would end up laying the foundations of what would later be known as the House and Estate of Tendilla.

In accordance with his father's interests, Don Íñigo married Doña Elvira de Quiñones, daughter of Diego Hernández de Quiñones, IV lord of the state of Luna and senior merino of Asturias, and Doña María Álvarez de Toledo. A lady belonging to the old Castilian nobility, since if we look at her immediate ancestors we see that, through the male line, she descended from the Lords of Lillo and Luna; while on her mother's side she came from both the Lords of Valdecorneja and the House of Torrejón de Velasco[30].

Far from happening in the main estates of their Houses, both Don Íñigo López de Mendoza and his wife were fully aware that a large part of the success of this new family branch depended on keeping the inheritance received from their elders and the inheritance they themselves had managed to accumulate united and cohesive. For this reason, on 20 July 1478,

27 On the death of the Marquis of Santillana, several branches emerged within the House of Mendoza (Infantado, Mondéjar, Priego, Coruña, Cenete, Francavila, Monteagudo, Castro, Orgaz, Rivadavia, Mendívil and Cañete). Cfr.: AHNOB, Osuna, c. 2224, doc. 3.
28 Gutiérrez Coronel, 177?, p. 442.
29 These included the villages of Tendilla, Fuentelviejo, Balconete, Retuerta, Yélamos, Armuña, Aranzueque, Meco, El Campillo and the estate of Monedero.
30 AHNOB, Osuna, c. 2224, doc. 3; AHNOB, Sástago, c. 337, doc. 19 and Ibáñez de Segovia (BNE, ms 10670), book II, fol. 207.

with royal authority[31], they ordered the foundation and establishment of an entail of their assets, before the notary Diego González de Guadalajara:

> «Por ende, nos, los dichos conde e condesa, ambos dos juntamente, e cada uno de nos por sí, e por las partes que a cada uno de nos pertenesçe, e pertenesçer puede, e como e en la mejor vía, forma e manera que podemos e debemos, e acatando e considerando los provechosos e bienes que vienen a los duques, condes, marqueses, ricos omes e caballeros, porque las casas, estados e memorias de los tales señores siempre queden enteras e en su estado e sean siempre conservadas e su generación e progenie acresçentada e aquella no se pierda [...] otorgamos y conoçemos que façemos e ordenamos e constituimos mayorazgo sobre todos los bienes, villas, castillos, lugares, heredamientos, juros de heredad, rentas de pan, ganado, esquilmos, escusados y otras cosas que de yuso se hará mención...»[32].

A *regular* entail was founded. This was by far the most widespread and generalised formula throughout Castile; one that prioritised the first-born male over the female, although it did not exclude her, as Tendilla himself expressed:

> «...es mi voluntad que en los dichos bienes declarados susçedan mis hijos, nietos, bisnietos y demás descendientes varones legítimos y naturales, prefiriendo el mayor al menor, y el varón a la hembra [...] Y así haya de venir el dicho mayorazgo susçediendo, según dicho es, por línea derecha masculina, y en defecto de masculina, en femenina...».

This type of entail could well have accounted for 80%, or even more, of all the foundations instituted in the peninsular territory. And it was precisely this massive extension that allowed the so-called *accumulation of entails,* since many of these entails, as fate would have it, ended up in the hands of women. As time went by, they were passed on to the sons who

31 This licence was granted in Seville, Cfr: AGS, RGS, 3 June 1478.
32 AHPZ, Impresos del Condado de Argillo, leg. 2304, p. 12, fols. 1-2 and Moreno Olmedo, 1968, p. 89.

already owned and enjoyed others through their fathers. This specificity is one of the great divergences, one of the exceptionalities, with respect to the dominant European models.

Having made this brief and necessary excursus, we must point out that Don Íñigo and Doña Elvira instituted a entail on: the villages of Tendilla and Loranca [de Tajuña]; the places of Fuentelviejo, Armuña [de Tajuña] and Aranzueque; the village of Monesterio, together with the places of El Campillo and Las Pozas[33], and the village of Meco, with all its vassals, fortresses, castles and orchards, civil and criminal jurisdiction, rents, taxes and rights. In addition to the main houses that they enjoyed in Guadalajara and Madrid, and numerous mortgage bonds and censuses that they had on the rents of different towns[34].

Next, the founders detailed in detail that the estate was to be succeeded by Íñigo López de Mendoza, their first-born son; and after him, his sons, grandsons and other descendants in the right male line, legitimate and natural. And only in the absence of those, they ordered that the entail should go to his eldest legitimate and natural daughters. With the express requirement that «dicho mayorazgo haya de venir, e venga, e estar, e esté, para siempre jamás enteramente e en una sola persona».

However, in the event that the first-born died without leaving legitimate heirs, they ruled that the most reverend lord Don Diego Hurtado de Mendoza, his second son, who at the time was acting as bishop of Palencia, should succeed him[35]. They did point out, however, that was not permitted to succeed in the entail «son, nor grandson, nor other descendants of the

33 At present, these enclaves are confined to the municipality of San Lorenzo del Escorial (Madrid).
34 Amongst the *juros*, we can highlight: the 80,000 maravedíes that they had on the tercias and alcabalas of Cuenca and its bishopric; the 50,000 maravedíes on the alcabalas of Segovia and the places of Espinar and Villacastín; the 250,000 maravedíes on the oil tithes of Seville and its aljarafe; those that they had on the rents of Guadalajara, its mountains and the village of Peñalver, etc. For further details see: AHNOB, Osuna, c. 291, doc. 8.
35 Later, Don Diego Hurtado de Mendoza was appointed archbishop of Seville, even wearing the cardinal's purple in the basilica of Santa Sabina in Rome.

aforementioned, unless by his end his line is extinguished»[36]. After him, they called to the succession Don Pedro de Mendoza, as well as his sons, grandsons and other male descendants. And in his absence, the females of this personage.

Once the lines of the previous ones had been extinguished, the founders called upon the heirs of Doña Catalina de Mendoza, their deceased daughter, to succeed them[37]. And in the absence of these, Doña Mencía de Mendoza, wife of Pedro Carrillo de Albornoz, lord of the villages of Torralba and Beteta, together with her children, grandchildren and descendants. Now, in the event that none of the aforementioned succeeded in leaving sons, daughters or other descendants, they ordered that the non-legitimate descendants or, failing that, the transversal descendants, that is to say, the most *propincuo* legitimate male relative of the one who died and descended from us, or from any of us, should succeed in that set of goods. Finally, and having finished all the lines, they agonisingly provided that «the person who was principal in the House of Mendoza» should succeed to the entail[38].

Not content with this plethora of appeals, the founders imposed that any person who succeeded to the entail had to be compelled to adopt the surname of Mendoza and to bear the arms of the Tendilla family. They urged that anyone who did not wish to incorporate such distinguished elements «would be deprived of all possession, inexorably passing to the next in rank».

36 In this respect, it is interesting to note that on 18 February 1479, just one day after the death of the Count, Don Diego Hurtado de Mendoza granted a deed in which he ratified and approved the foundation of his parents' entail, and undertook to cede and renounce any right or action he had over this entailment, by reason of his legitimate rights, to Don Íñigo López de Mendoza, his brother. He obliged himself not to proceed against the aforementioned, «for the many good deeds he had received from him» (AHNOB, Osuna, c. 294, doc. 67). However, it seems that this was not an altruistic and disinterested gesture, since, according to Jerónimo de Zurita, López de Haro and Pellicer de Tovar, when Don Diego was studying in Salamanca, before receiving any sacred order, he had carnal relations with Doña María de Quiñones, called la Blanca or la Blanquilla, and by another name the "Espulga Manteos", having as children: Don Francisco Hurtado de Mendoza, from whom there were descendants; and Doña Juana de Mendoza, who died without taking state. Therefore, we must interpret that the exclusion of the children of this personage was not accidental or fortuitous, but rather, interested and forced. The founders must have been aware of the birth of these offspring, who were clearly illegitimate when it came to succession, unless the main line of the House was extinguished.

37 Wife of the Marquis of Denia, Don Diego Gómez de Sandoval Rojas y Castilla. Cfr.: AHNOB, Osuna, c. 2224, doc. 3.

38 AHPZ, Impresos del Condado de Argillo, leg. 2304, p. 12, fols. 8-9.

Likewise, they excluded from succession clerics of the sacred order, professed members of a regular order, monks and hermits, as well as anyone who was «deaf and dumb together, or blind, or crippled in both arms or both legs», who were excluded from succession, and anyone who «fuere en muerte del que tuviere el dicho mayorazgo, o de aquel en quien deviere venir, nin el que los acusa recriminalmente de fecho ageno, o diere consejo o ayuda para los matar»[39].

Finally, the Counts of Tendilla imposed the commitment that none of the possessors could give, donate, sell, exchange, obligate, agree, alienate or encumber, in whole or in part, the goods of that entail. Their will was that the entail they instituted should remain forever and ever united and indivisible, and in a single person, «according to and by the form and manner that is said».

3.1. Don Íñigo López de Mendoza, the Great Tendilla

Thus, according to the clauses and conditions laid down by the founders, this entail went to his first-born son, Don Íñigo López de Mendoza y Quiñones, commonly known as the *Great Tendilla,* to differentiate him from his namesakes. Without exaggeration, he was one of the fundamental representatives of the archetypes of the period, who managed to excel both in war campaigns and in the diplomatic operations of the Monarchy. He was also one of the great advocates of letters and the arts, due to his convinced (and recognised) humanist spirit[40].

On a family level, and without going too deeply into military feats and exploits, we should point out that the second Count of Tendilla married in first marriage to Doña Marina Lasso de la Vega y Mendoza, his first cousin. She was the daughter of Don Pedro Lasso de Mendoza, Lord of Valhermoso, and Doña Juana Carrillo, Lady of Mondéjar, who carried half of the latter's estate in her dowry. A suggestive link that closed ranks around the House of Mendoza. However, this union was not to last long, as the lady died prematurely at the end of 1477 without having been able to

39 AHPZ, Impresos del Condado de Argillo, leg. 2304, p. 12, fol. 10.
40 Szmolka Clares, 2011, p. 13.

produce any offspring[41]. And by virtue of her testamentary dispositions, Don Íñigo was to succeed to half the estate of Mondéjar. A few years later, he acquired the rest of the village from Doña Catalina de Mendoza, sister of his ill-fated wife, for the price of fourteen million maravedíes. He thus became full lord of the *caracense* village[42].

Like all great aristocrats, far from being cornered, in 1480 he remarried to Doña Francisca Pacheco y Portocarrero, daughter of the Marquis of Villena and Doña Juana Portocarrero, Lady of Moguer and Villanueva de Barcarrota. Contrary to what had happened in the first marriage, this one would provide him with an extensive progeny of heirs.

At this point, and almost as a matter of obligation, we should mention that, a few years later, Don Íñigo was appointed by the Catholic Monarchs —as a result of the trust they placed in him— to carry out various diplomatic services in Rome, leading an extraordinary embassy to negotiate urgent matters with Innocent VIII[43]. An assignment that was certainly profitable for the future of Castile and for himself, and which ended with the award, at the end of 1486, of the *golden rose* and the *blessed rapier,* for his tenacious application and diligence as "defensor fidei"[44].

On his return to Castile, and before setting course for the border with Granada, on 5 May 1489 Don Íñigo López de Mendoza granted his first will in the Madrid village of Estremera, incorporating the sword he had just received into his parents' entail[45]. This recognition represented the pinnacle of his military and diplomatic successes, as it was a papal gift reserved for the most eminent and distinguished defenders of Christianity.

41 From her will, granted in Mondéjar on 30 October 1477, we know that she was pregnant, so we must presume that she did not manage to survive the birth. She left her husband, in the event that she did not give birth to the child she was carrying in her womb, as heir to all her property. A situation which, unfortunately, also ended up happening. Cf.: Ibáñez de Segovia (BNE, ms 10670), book I, fol. 176v.
42 AGS, RGS, 23 December 1494 and López de Haro, 1622, p. 369.
43 Among these, we can highlight: the renewal of the bull of crusade against the infidels, the consecration of the Patronato Regio for the archdiocese of Granada and the recognition of the natural children of Cardinal Mendoza (Szmolka Clares, 2011, pp. 123-128).
44 In addition to the validation of the elements that the count incorporated into his arms: a star and the motto "Buena guía" (Good guide). Cfr.: Moreno Trujillo et al., 2016a, p. 32.
45 After a long period of unknown whereabouts, the Rapier of the Mendoza family from Granada is now preserved in the collection of the Museum Lázaro Galdiano in Madrid.

Thus, aware of the symbolic value of this element for the honour and greatness of his lineage, the Count expressed himself:

> «... digo que por quanto Nuestro muy Santo Padre Inocencio octavo me hubo dado un estoque siendo yo embajador de los Reyes Cathólicos en Roma, el qual no acostumbran a dar sino a rey o príncipe soberano, se me hizo a mí grazia y merced del por mis grandes serviçios. Por tanto, quede perpetuamente en mi Casa y mayorazgo e de ninguna manera se enagene, so pena de 100.000 maravedises de renta aplicados al dho mayorazgo»[46].

Rejoining the Granada front, Don Íñigo took an active part in the sieges of Loja, Íllora, Montefrío and Baza[47], leading and directing the strategy of the Castilian armies until the surrender of Granada. For this reason, and in recognition of his brilliant record of service, the Catholic Monarchs granted him the position of commander of the Alhambra and the Captaincy General of the Kingdom. These were posts of the utmost importance, which contributed to Tendilla's rise to prominence at all levels. The military, jurisdictional and revenue-raising powers of the old Nasrid emirate fell to him, «almost like the powers of a viceroy», and he owed obedience only to the Castilian monarchs[48].

In this comfortable and consolidated situation, we arrive at 20 February 1503. On this date, Don Íñigo López de Mendoza and Doña Francisca Pacheco, with a will to «enlarge their House and make it bigger»[49], expressed their wish to incorporate and add to their entail the village of Mondéjar, with its vassals, civil and criminal jurisdiction and pure and mixed empire[50]. In addition to the rest of the inheritances they had in

46 As far as we know, Ibáñez de Segovia must have found this clause in Ardila's work. However, such a provision does not appear in the authorised copy of the Count's will of 1515. Therefore, it is possible that Ardila may have taken it from Tendilla's first will, granted on 5 May 1489, which has disappeared, or at least has not been found. For context, see Meneses García, 1973–1974, pp. 287–288 and Hernández Castelló, 2014, p. 482.

47 Among other documents: Archivo de la Corona de Aragón [hereafter, ACA], leg. 3566, fol. 159; AGS, Diversos, leg. 8, fol. 124 or AGS, RGS, 30 September 1489. For the surrender of the eastern sector of Granada, García Ríos, 2022, pp. 52–54.

48 Jiménez Estrella, n.d. https://dbe.rah.es/biografias/33511/inigo-lopez-de-mendoza-y-quinones

49 AHNOB, Osuna, c. 294, doc. 67 and Meneses García, 1973, p. 251.

50 In order to incorporate these goods, they had a licence from the Catholic Monarchs, granted in

that region. An aggregation that took place in satisfaction and amendment of the village of Monesterio, the places of El Campillo and Las Pozas and certain maravedíes of *juro de heredad*, which the Count had to sell in order to be able to buy the aforementioned village of Mondéjar[51].

Likewise, they took advantage of the presence of the notary Alonso Gómez de Baena to found a new entail headed by his first-born son, Don Luis Hurtado de Mendoza, and his descendants, «with the male line always preceding the female». He endowed this entail with the villages and fortresses of Azañón and Viana, located in the diocese of Cuenca, and the place of Anguix, within the jurisdictional district of the archbishopric of Toledo, together with any other property in the aforementioned areas.

As if that were not enough, they incorporated most of the property they enjoyed in the Kingdom of Granada into this new entail: the villages of Líjar and Cóbdar, located in the foothills of the Sierra de los Filabres (Almería), granted in the form of a lordship by the Catholic Monarchs[52]; the estates, lands and houses of the town of Alhama and the places of Cacín, Algar and Fornes; the farmsteads of Agrón, Ochíchar, Pera and Tajarjal[53]; the place of Almayate, with all its estates, houses and boundaries[54]; the plot of land in the square of Bibrrambla; all the shops, houses, inns and censuses that they had in the Zacatín, the Alcaicería, the Realejo and Elvira Street[55]; a mill on the river Genil, which they call of the Moflí; another on the river Darro; another on the fertile plain of Granada, which they call of Terramonta, and another mill at the gate of Guadix, which they called of Mela[56]. In addition, of course, to the dwelling houses they

Segovia on 7 September 1494. Cfr.: AGS, RGS, 7 September 1494.

51 For further details, suffice it to say that on 22nd December 1486, Don Íñigo sold the aforementioned estates to Don Gutierre de Cárdenas for four million maravedíes. They remained in the possession of the heirs of the Commander of León until the end of the 16th century. *Vid:* Sánchez Meco, 1995, p. 106.

52 However, on 8 January 1508, due to lack of liquidity and debts contracted with the Captaincy General, Tendilla was forced to sell the aforementioned villages to Diego Ramírez de Villaescusa, Bishop of Málaga. RAH, Salazar y Castro, A-I, fol. 34.

53 For the correct location of these toponyms, we refer to the "apeo and repartimiento" of these farmsteads, which in 1574 were still in the hands of the Mendoza family of Granada. Archivo Histórico Provincial de Granada, Apeo de Agrón, Pera, Ochíchar and Fatimbullar, book 6686, fols. 66v-67r. Also useful is the work of Villar Mañas, 2011, pp. 207-227.

54 More details in Szmolka Clares, 1989, pp. 335-346.

55 APAG, leg. 310, fols. 5-16.

56 Ibáñez de Segovia (RAH, 9/185), book VII, fols. 118v-121v.

owned within the palatine citadel of the Alhambra: «bordering the public street and the house of the Partal, the orchard of San Francisco, the Royal Street and the inn that used to belong to the commander Melchor de León»[57]. Logically, both entails would end up merging with the old entail of Tendilla, following the succession of Don Luis Hurtado de Mendoza to this group of properties. Catapulting his heir to a select and exclusive social sphere.

In the twilight of his days, in recognition of so many years of loyalty «and for his singular services in the Captaincy General», Ferdinand the Catholic, by royal decree granted in Logroño on 25 September 1512, conferred on Don Íñigo López de Mendoza the marquisate of Mondéjar[58]. This title was to be held by all his descendants and would end up giving its name to this branch of the Mendoza family. Three years later, in the privacy of the Nasrid palaces, the *Gran Tendilla* died at the age of 71, after a life dedicated to serving the Crown. He was buried in the convent of San Francisco "Casa Grande" in the City of Darro[59].

3.2. Don Luis Hurtado de Mendoza, II Marquis of Mondéjar

> «De la manera que castiga Dios muchas veces en los hijos las culpas de sus padres, premia también otras sus virtudes en ellos, dándoles frecuentes auxilios para que imitándoles conserven y aumenten la estimación y lustre que por su medio consiguieron en beneficio a que debe estar siempre reconocida la Casa de Mondéjar...»[60].

57 AHNOB, Osuna, c. 291, doc. 8.
58 Galán Sánchez & Peinado Santaella, 2018, p. 75.
59 «...when the bodies of the Catholic Monarchs were transferred to the Royal Chapel, those of Don Íñigo and his wife were taken to the Alhambra where they remained until the family disassociated itself from Granada, at which point they were taken to Guadalajara» (Szmolka Clares, 2011, p. 345).
60 Ibáñez de Segovia (RAH, 9/185), book VII, fol. 1v.

In these meritorious terms Ibáñez de Segovia referred to Don Luis Hurtado de Mendoza, the first-born son of the *Gran Tendilla*[61]. He was one of the most illustrious servants of the Emperor and the Hispanic Monarchy during the first half of the 16th century. Although it is true that he never came to overshadow his father's figure, as it was too long, it is also true that he aspired to emulate him. He tried to contribute to the aggrandisement and prominence of his House.

Very early on, the Counts of Tendilla agreed and arranged the marriage of Don Luis and Doña María de Mendoza, their children, with those of the Count of Monteagudo, Doña Catalina and Don Antonio de Mendoza. They ensured that Pope Alexander VI issued a dispensation, dated 21 November 1502, so that these young men and women could marry, as they were within the degrees forbidden by the Church (third cousins)[62]. An inbred marriage policy that, with the passage of time, would end up becoming a recurring practice for the heirs of the Marquises of Mondéjar.

Although we do not intend to turn this account into a praise of the qualities and merits of this personage, it is only fair to point out that Don Luis managed to build up a «long [and brilliant] record of service to the Emperor»[63]. In addition to succeeding to the estates and entails of his House[64], the Marquis of Mondéjar managed to shine in the conquests of North Africa and the viceroyalty of Navarre, as well as the presidency of the Council of the Indies and of Castile[65]. Honours and pre-eminences, undoubtedly within the reach of very few servants.

61 As far as we know, and as far as the sources allow, Don Luis must have been born in Guadalajara in mid-1489, as his mother was pregnant when Tendilla made his first will in Estremera.

62 Suffice it to say that Doña Catalina de Mendoza brought a dowry of three million maravedíes, of which Don Luis only received 340,000. For this reason, he had to resort to the courts to collect the rest of the assets. Ibáñez de Segovia (RAH, 9/185), book VII, fols. 108r-110v. As a "wedding gift", Don Luis received from the Count of Tendilla the office of knight XXIV that the latter had used. Cf.: Pizarro Llorente, n.d. https://dbe.rah.es/biografias/16954/luis-hurtado-de-mendoza-pacheco For the granting of this office, see: AGS, RGS, 11 October 1501.

63 Jiménez Estrella, 2000, p. 29.

64 In addition to taking possession of the Captaincy General and the command of the Alhambra, Mondéjar was also the commander of the fortresses of Bibautaubín, Mauror, Daralvid and Puerta Elvira. He was recognised by Queen Juana, on 26 July 1506, with the tenancy of the castle of La Peza, in place of Francisco Pérez de Barradas. Cf.: Suárez, 1696, p. 166.

65 All this, in greater detail in Ibáñez de Segovia (RAH, 9/185), book VII, fols. 44r-105v and López de Haro, 1622, p. 370.

It should come as no surprise, then, that Don Luis, in a clear attempt to emulate his father, did his utmost to increase the Mendoza family domains in the Alcarria area. This is how we should understand the purchase of the Province of Almoguera, made up of six villages (Almoguera, Brea [de Tajo], Albares, Driebes, Mazuecos and El Pozo de Almoguera) and nine uninhabited places (Cochirela, Araduéñiga, Valdehormeña, Fuentespino, Hanos, Fuentevellida, Vililla, Villanueva and El Maquilón). Or the acquisition of the village of Fuentenovilla, to whose jurisdiction belonged the uninhabited places of Catrueña and Torrejón, traditionally part of the Encomienda de Zorita[66]. Both sites belonged to the commanders of Calatrava, who owned them until 1529, when the Emperor obtained a safe-conduct from the Holy See for them to be separated from the military order, under the pretext of their subsequent alienation.

Once in the hands of the Crown, the commander Antonio de Valderrábano, in the name of His Majesty, agreed with the Marquis of Mondéjar the possible sale of the Province of Almoguera and the village of Fuentenovilla, with all its vassals and districts, high and low jurisdiction, mere and mixed empire, with the mountains, forests, pastures, districts, places and uninhabited areas. In addition to the rents, penalties, arbitrary and ordinary calumnies, tithes, *terrazgos*, *portazgos*, notaries, taxes and rights. The transaction was concluded on 20 June 1538 for the astronomical sum of 17,778,156 maravedíes (some 47,000 ducados)[67], according to the letter of sale granted between the parties in the port of Villafranca de Niza[68].

At this point of the argumentation, we must focus our attention on the entailed property. To recall that on 10 June 1554, taking advantage of his stay at the Court, Don Luis Hurtado de Mendoza and his wife granted a

66 AHNOB, Osuna, c. 294, doc. 67.
67 To meet the debt arising from the acquisition of these new estates, the village of Mondéjar advanced Don Luis 50,000 maravedíes in interest on a census paid annually by Don Bernardino de Mendoza, Lord of Cubas and Griñón. And for greater security, the Marquis of Mondéjar granted a letter on 20 February 1537, in which he approved and ratified the aforementioned loan, before the notary Francisco de Ribera. AHNOB, Osuna, c. 2272, doc. 8; AHN, Diversos-Mesta, leg. 332, no.1 and BNE, Porcones, leg. 446 (3).
68 This location is currently Villefranche-sur-Mer (France). A town located in the department of Alpes-Maritimes, in the region of Provence-Alpes-Côte d'Azur.

deed of partition, in which they regulated the correct succession of their heirs in the assets generated throughout their lives.

By means of this instrument, the Marquises of Mondéjar named Don Íñigo López de Mendoza, their first-born son, as their universal heir. They then added to Tendilla's old entails, to which he was to succeed, different goods and properties: the villas and places in the Province of Almoguera and Fuentenovilla; the farmhouse of Alboayar[69]; certain estates that they bought in Almayate; the inheritances of Chilches and Benajarafe, which they acquired from Doña Leonor Manrique; 150.000 maravedíes of rent that the Count of Tendilla gave in dowry to Doña María Pacheco, his daughter, taxes on the dehesas of Sierra Nevada, which ended up falling to Don Luis by mercy of His Majesty; 100.000 maravedíes of census that Don Íñigo López de Mendoza imposed on the inheritances of the place of Almayate (redeemed by Don Luis for a tale of maravedíes); 60,000 maravedíes of census against Doña Beatriz de Bobadilla (also redeemed for 600,000 maravedíes); 92,000 maravedíes of census against Doña María de Mendoza (redeemed for 920,000 maravedíes), and 6,225 maravedíes of census on the mill of Darro, which belonged to Master Luis de Gormaz. In addition to the satin doublet and breastplates that Don Luis wore in the conquest of Tunisia, so that these elements would serve as an example to his descendants[70]. All of which, «we include and incorporate in the said entail, with the entails, calls, conditions, submissions and prohibition of alienations contained, so that after our days the said Count of Tendilla, his children, descendants and other successors may have and inherit them»[71].

Doña Catalina de Mendoza, through this deed, reserved the right and power to keep up to 300 bushels of bread from the Alboayar farmhouse, to reward and/or benefit any of her children during their lifetime. However, it was stipulated that, upon the death of the beneficiary, they would have to return to the main entail.

Finally, the grantors established the foundation of another entail, endowed with a census of 21,000 ducats of principal: 14,000 for Don

69 Located in the vicinity of the place of Chimeneas (Granada).
70 It should be remembered that during that day, Don Luis was wounded by an Ottoman spear.
71 Ibáñez de Segovia (RAH, 9/185), book VII, fols. 107v–122r.

Francisco de Mendoza and 7,000 for Doña María de Mendoza, his children. Specifying that they were to inherit «one from the other, and the other from the one», in the event of leaving no descendants. And in the absence of succession, they prescribed that the capital was to be incorporated into the entail of the first-born.

In accordance with this arrangement, the figure of Don Íñigo López de Mendoza was to be the centre of a considerably wealthy and profitable entail — or rather, entails — endowed with all kinds of assets, both tangible and intangible. The status and liquidity that these tied entails would almost instantly propel the future marquis to the highest positions in the political and social organigram of the Empire.

During his last days, and in a somewhat curious way, we know that Don Luis Hurtado de Mendoza had the express and notorious will to found another entail of the third and remaining fifth of his estate to be enjoyed by the second-born sons of the House of Mendoza. However, the Marquis died in his town of Mondéjar, on 19 December 1566[72], before granting a deed to that effect.

Aware of the above and hoping for the discharge of his soul, Don Íñigo wanted to fulfil his father's last wishes, but he was opposed by his sisters Doña Francisca and Doña María. So conflicting were the positions of the heirs that they were forced to leave the verification of this matter to the Royal Council. On 3 May 1568, they pronounced a sentence declaring the foundation of the aforementioned entail null and void[73].

3.3. Don Íñigo López de Mendoza, III Marquis of Mondéjar

Like his predecessors, Don Íñigo was also obliged to assume the offices and responsibilities of his House relatively early on. At the age of just 23

72 Doña Catalina de Mendoza died in Valladolid on 6 September 1557.
73 On this frustrated foundation, see: Ibáñez de Segovia (RAH, 9/185), book VII, fols. 122v-123r.

he was left in charge of the Captaincy General of Granada and the command of the Alhambra during his father's absence. Nothing could be more graphic in this respect than the words that Charles I dedicated to him from the port of Barcelona in 1535:

> «...don Íñigo López de Mendoza, yo he acordado de llevar en mí servicio en esta jornada [de Túnez] al marqués, vuestro padre, y por la mucha confianza que tengo de vuestra persona, es mi voluntad que durante la ausencia de dicho marqués, vos quedéis en su lugar, y uséis y ejerzáis los cargos que él de nos tiene en este Reino de Granada»[74].

A test that he must have passed with facility, as shortly afterwards Don Luis Hurtado de Mendoza begged the Emperor to grant his son the county of Tendilla, using the pretext that only through this concession could he aspire to a marriage in accordance with his qualities. Nothing could be further from the truth. Mondéjar took advantage of the opportunity to benefit from the initiative that the Crown was timidly beginning to implement, based on honouring and rewarding the first-born sons of the great noble houses for services rendered to the Monarchy. And, as was to be expected, the Emperor was pleased to grant him this grace, issuing him a royal decree with the appointment in the city of Genoa on 9 September 1541.

In the meantime, Don Bernardino de Mendoza, in the name and with the power of the Marquis of Mondéjar, his brother, was already arranging the marriage of Don Íñigo to Doña María de Aragón y Mendoza, the eldest daughter of the Duke of Infantado[75]. Obviously, in order to contract the betrothal it was necessary to obtain a pontifical dispensation from Paul III, since both parties were related in the third and fourth degree of consanguinity. However, despite this small obstacle, it was a truly interesting marriage for the Mondéjar family, who once again strengthened ties with the main branch of the Mendoza family and injected no less than 16,500,000 maravedies with Doña María's dowry (four and a half *cuentos* in cash and the remaining twelve in the villa of Prado)[76].

74 Ibáñez de Segovia (RAH, 9/185), book VIII, fols. 147r–147v.
75 On this lady, see: López de Haro, 1622, p. 370 and Baños Gil, 2014, pp. 243–262.
76 For his part, Don Íñigo contributed 60,000 gold ducats as a deposit, according to the marriage contracts agreed to that effect, granted in the city of Guadalajara on 13 April 1541. Cf.: ARChG, 1537–1

On the death of Don Luis in 1566, his first-born son, Íñigo López de Mendoza, succeeded him in the entails of his House. Due to lack of space, we cannot spend as much time as we would like analysing the political and military career of the 3rd Marquis of Mondéjar. Suffice it to say that he always held important posts within the Monarchy. Among other posts, he served as ambassador to Rome (1560), as captain during the War of the Alpujarras (1568–1571), as well as viceroy of Valencia (1572–1575) and Naples (1575–1579)[77].

For the purposes of this study, perhaps it makes more sense to focus on his time as Viceroy and Captain General of Naples, since it was in Naples that he granted his last will and testament, together with Doña María de Aragón y Mendoza. On 2 November 1579, he ordered the foundation and establishment of four *regular* entails of the assets that the couple had accumulated in those latitudes, in favour of their four youngest sons: Don Francisco and Don Enrique de Mendoza, Don Juan Hurtado and Don Pedro González de Mendoza, «substituting each other in the event of death without legitimate succession»[78].

Thanks to the second will of the Marquis, granted in his villa of Mondéjar, on 11 April 1580, we know that Don Íñigo ordered that all the Neapolitan goods be sold and that the resulting proceeds be used to buy others in these kingdoms [of Castile], remaining entailed by the same conditions and appeals.

On 21 April 1580, in the serenity of his estate, away from the political scene, Don Íñigo López de Mendoza, the devalued and worn-out 3rd Marquis of Mondéjar, died. And practically without a break, Doña María and her children began the legal proceedings to get their hands on a piece of the estate left by the deceased. A formidable inheritance, judging by

and Ibáñez de Segovia (RAH, 9/185), book VIII, fols. 323r–325v.

77 However, the 3rd Marquis of Mondéjar did not manage to excel in any of these posts. He was even stripped of the Captaincy General in the early 1570s, due to his mismanagement of the Moorish uprising. For more details, see: Jiménez Estrella, 2004.

78 For the foundation and endowment of these entails, AHNOB, Osuna, c. 291, doc. 12 and 13.

what followed, which was valued and appraised at the end of 1584 at 81,854,400 maravedíes[79].

It is not surprising, then, that the Duke of Infantado had to go to the village of Mondéjar, as arbitrator, together with three accountants, to settle certain doubts about the inheritance and avoid discord between the brothers themselves. Finally, after several months of tension, the heirs of Don Íñigo reached an understanding, signing the agreement in Guadalajara on 4 January 1581. A family arrangement that clearly benefited the younger sons of the Marquises — Don Francisco, Don Enrique, Don Juan and Don Pedro — who had up to 20,463,000 maravedíes each to institute the entails ordered in their parents' wills[80].

3.4. Don Luis Hurtado de Mendoza, IV Marquis of Mondéjar

At this point, we must devote some space to the first-born of the above. Thanks to the works of Rodríguez de Ardila and Ibáñez de Segovia, we know that Don Luis Hurtado de Mendoza was born in the Alhambra in 1543 and that as soon as he was old enough he was sent to the Court to serve Prince Charles. However, around 1560, he had to return to Granada to take charge of the Captaincy General, as the Count of Tendilla, his father, had been appointed ambassador to Rome, and the Marquis of Mondéjar, his grandfather, was at that time president of the Council of Castile[81].

It seems that the administration of this young man must have been quite efficient, because, shortly afterwards, Don Íñigo López de Mendoza asked the King to grant his son the fortresses of the Alhambra, Bibatuabín and

79 Ibáñez De Segovia (RAH, 9/185), book VIII, fols. 319r–323r.
80 For the first-born son, the traditional ties of his House remained; Don Íñigo López de Mendoza, the second son, had previously renounced, in the town of Alcalá de Henares, any right or action he might have had over that body of goods, and the rest of the heirs had already died, embraced the religious state or were illegitimate. In this sense, it is useful to refer to: AHNOB, Osuna, c. 291, doc. 43.
81 Ibáñez De Segovia (RAH, 9/185), book IX, fols. 333r–334v.

Mauror, in payment and remuneration for the services rendered during his stay at the Holy See. This request was heard by the monarch, who granted him a title on 2 March 1562[82].

As was customary, Don Luis was betrothed, previous dispensation, to Doña Catalina de Mendoza, his aunt, daughter of Don Bernardino de Mendoza and Doña Elvira Carrillo de Córdoba[83]. A lady who by then had already been widowed from her first marriage to Don Francisco de Mendoza, commander of Socuéllamos and lord of the villages of Estremera and Valdearacete[84]. And the fruit of this union, in 1568, was the birth of Don Íñigo López de Mendoza, the future heir to the House.

Up to this point, everything was more or less normal. The Mendoza family in Granada enjoyed good royal esteem and administered the incomes from the numerous and healthy wealth from their numerous entails. However, the Moorish rebellion of 1568 changed everything. Of course, this is not the place to analyse the role and vicissitudes faced by the Marquis of Mondéjar and the Count of Tendilla during the Alpujarras War[85]. We will limit ourselves to mentioning that the main consequence of this conflict was the removal of Don Luis Hurtado de Mendoza from the government of the Alhambra.

As we have already noted, after the family concord of 1581, Don Luis Hurtado de Mendoza, in addition to succeeding to the estates and entails of the House of Mondéjar, acquired most of his father's free estates. However, he was obliged to compensate the rest of the heirs (in the form of *alimony* and legitimate inheritance)[86].

82 For further details, Ibáñez De Segovia (RAH, 9/185), book IX, fols. 336r–341v.
83 ARChG, 5157–25 and 5162–314.
84 Thanks to genealogical reconstruction, we know that they were unable to marry because of three impediments: consanguinity, affinity and spiritual kinship. For this reason, they had to obtain a pontifical brief from Pius V, granted on 28 March 1566, and later a spiritual indult from Cardinal Charles Borromeo, issued on 15 October of the same year.
85 For this, we have the classic works of Mármol y Carvajal, 1600; Caro Baroja, 2000 or Domínguez Ortiz & Vincent, 1993, as well as the recent study by Jiménez Estrella & Castillo Fernández, 2020.
86 All this, in greater detail in: Ibáñez de Segovia (RAH, 9/185), book IX, fols. 367r–368r.

Judging by the documentation analysed, everything seems to indicate that Don Luis did not have the same capacities as his predecessors to manage the offices, political responsibilities and the Mendoza family's extensive patrimony. With the aggravating circumstance that the Moorish uprising, the bitter enmity with Don Pedro de Deza[87] and the arrival of new provisions on the defence of the coast only precipitated the Marquis's fall from grace. He was even imprisoned in the fortress of Chinchilla, after Miguel Ponce de León, one of his former servants, accused him of plotting an attempt on Philip II's life.

With the loss of royal favour, a period of instability began for the Mendoza family of Granada, which would result in the mismanagement and poor administration of their properties entailed to[88] and a notable reduction in the prerogatives associated with the palatine citadel. To make matters worse, in 1593 his only son, Don Íñigo López de Mendoza, died after falling from a horse. This shattered his oath as 6th Count of Tendilla and any expectation that he would marry Doña Ana de Silva, the second daughter of the Prince of Éboli[89].

Don Luis had to wait until the death of the *Prudent King* to be released from his imprisonment. On 25 May 1599, he was once again confirmed as warden of the Alhambra by Philip III[90]. However, he would never set foot in Granada again, taking up residence in his villages in Alcarria and delegating the administration of his estates to a handful of members of his House.

Nearing the end of his days, the Marquis was once again betrothed. The chosen one, on this occasion, was Doña Beatriz de Cardona, daughter of the Baron of Dietrichstein, steward of Emperor Ferdinand II[91], and Doña Margarita de Cardona, who enjoyed interesting connections in the courtly spheres, as she had entered the service of Queen Margarita[92]. However,

87 New president of the Royal Chancery of Granada.
88 During his stay in prison, there were considerable financial losses in his entails by the mismanagement of Doña Catalina de Mendoza. Cf.: Jiménez Estrella, 2000, p. 38.
89 Salazar y Castro, 1685, p. 529; López de Haro, 1622, p. 372 and Muro, 1877, pp. 205–207.
90 Moreno Olmedo, 1968, p. 93.
91 Edelmayer, 1993, pp. 89–116.
92 Hidalgo Ogáyar, 2023.

the marked biological imbalance between the two couples made it difficult to conceive new heirs[93].

Finally, on 4 November 1604, after a turbulent and unhappy life, Don Luis Hurtado de Mendoza died in Valladolid. He was buried, in accordance with his last wishes, in the main chapel of the convent of San Antonio in the village of Mondéjar, where some of his ancestors were buried[94].

4. A resounding and damaging succession dispute (1604–1606)

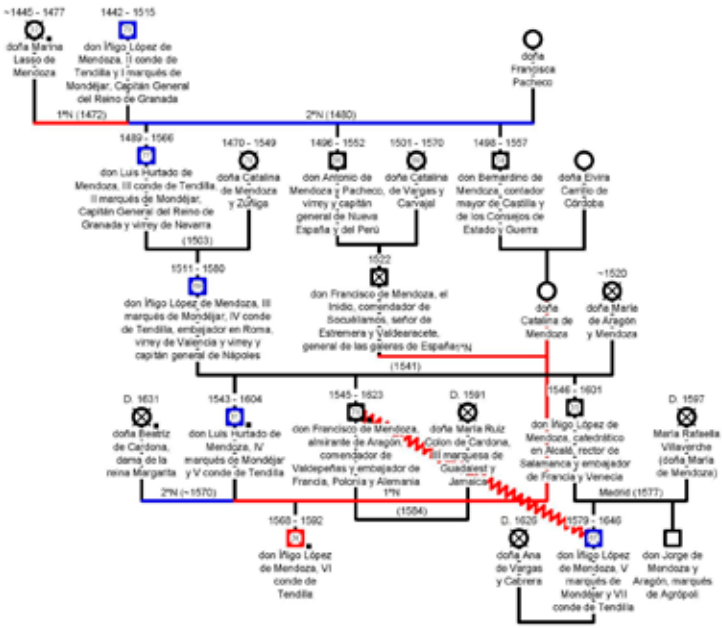
As we can see, this set of entails circulated, without too many problems, through the various holders of the House until the death of the 4th Marquis. The death of Don Luis Hurtado de Mendoza put an end to «the first-born line of the House of Mondéjar». A tangled legal dispute began between Don Francisco de Mendoza, Admiral of Aragon and steward of Archduke Albert, brother of the deceased, and Don Íñigo López de Mendoza, his nephew, son of Don Íñigo López de Mendoza and Doña María de Mendoza (María Rafaella de Villaverche), for the succession and possession of the family entailments.

Given the scale of the lawsuit, it is hardly surprising that both the Duke of Infantado and the Crown intervened to support it, acting as mediators in order to obtain a more or less decorous solution for the House of Mondéjar[95]. Consequently, Philip III, «to avoid scandals between people of such quality», ordered that none of the litigants should take possession of those estates and entails until the judgement of the Chancery of Valladolid[96].

93 After becoming a widow, Doña Beatriz entered the convent of Corpus Christi in Alcalá de Henares, taking the habit of the Discalced Carmelite nuns on 29 October 1614. Cfr.: Ibáñez de Segovia (RAH, 9/185), book IX, fol. 379v.
94 Ibáñez de Segovia (RAH, 9/185), book IX, fol. 375r.
95 It was plunged into debt due to the imprisonment of Don Luis Hurtado de Mendoza.
96 Galera Mendoza, 2022, p. 60.

However, behind this apparent impartiality, it seems that the Crown had already taken the side of one of the candidates. Consciously or not, during the previous years, the Castilian monarchs had already entrusted Don Íñigo López de Mendoza with various diplomatic services in France, Flanders and Venice[97], leaving his heirs in a very privileged position to succeed in the House of Mondéjar. They were of the same opinion as the main line of the Mendoza family. For greater clarity on the kinship links that united the plaintiffs, the following genealogical tree is worth looking at.

Genealogical tree 1. Succession of the entailed estates of the Marquises of Mondéjar (15th–17th century).



Source: various documents (AHNOB, BNE, RAH, AGS, AHPZ, etc.). Own elaboration.

97 The *cursus honorum* of this personage is of great interest: knight of Santiago, professor of canons at the University of Alcalá de Henares and rector at the University of Salamanca, ambassador to France and Venice, member of the Council of War, etc. For further information on this subject, see: Ibáñez de Segovia (RAH, 9/185), book X, fols. 387r and ff.

In addition to the confrontation between relatives, during the course of the trial, the family's *dirty laundry* came to light, especially the controversial and clandestine marriage between Don Íñigo, brother of the late Marquis, and María Rafaella de Villaverche[98]. A young woman abandoned by her parents at birth and of whom little else was known. Not even Don Íñigo knew of his wife's origin, as he bitterly pointed out at the end of his days:

> «Ítem, declaro y juro por Dios Nuestro Señor, y por la verdad y fidelidad que deben de tratar a las personas que hacen sus testamentos, siendo aquello la última disposición para partir de esta vida, y las que le ponen en punto y capítulo de salvarse y de condenarse para siempre, que yo he hecho mis diligencias para saber y averiguar quién fue la dicha doña María de Mendoza [María Rafaella de Villaverche], mi mujer, que está en el cielo, y quiénes fueron sus padres, y jamás lo pude averiguar ni descubrir...»[99].

Thus, the Admiral of Aragon focused all his efforts on trying to prove that the heirs of this marriage were illegitimate and, therefore, had to be excluded from the succession to the aforementioned entails. It was inconceivable that «such an unworthy woman, of such low and obscure birth, ignorant lineage and untamed customs», could stain and denigrate the House of Mondéjar with her children and descendants, «porque con la ignominia que proviene de matrimonios tan desiguales, se envilece la sangre de los nobles y obscurece y mengua el lustre de su linaje»[100]. Consequently, they requested the nullity of this marriage, as it had been celebrated in a concealed manner, without following the order and guidelines established by Trent for marriage banns[101].

After analysing the documentation generated by this lawsuit, we observed that most of it focused on the social origin of María Rafaella de Villaverche.

98 They married on 25 December 1569 in the church of Santa Cruz in the village of Madrid (AHNOB, Osuna, c. 294, doc. 81).
99 The will of Don Íñigo López de Mendoza was granted in Alcalá de Henares, on 1 September 1601, before the notary Juan de Quintana. A copy of the will is in AHNOB, Osuna, c. 292, doc. 29.
100 AHNOB, Osuna, c. 294, doc. 37–39.
101 Galera Mendoza, 2022, p. 61.

Most of the witnesses examined claimed that they did not know where she came from, but they knew that she had grown up in Madrid, in the house of Alonso de Villaverche, from whom she had taken her name[102]. Other witnesses said that she was the daughter of a poor man who lived by pouring water into houses and his wife by washing clothes in the river. Some claimed that Don Íñigo's wife earned her living as a musician, entertaining the homes of the better-off families of Madrid. There were even some witnesses who stated that the aforementioned María Rafaella was a whore of Venetian origin, lacking in any virtue, who was said to have had carnal relations with several members of the Castilian nobility[103].

Be that as it may, and given the impossibility of knowing the origin of this young woman, the fact is that this marriage represented a marked social decline for such a reputed lineage[104]. Professor Galera Mendoza points out that the Marquises of Mondéjar tried by all means to undo the marriage, trying to have it recognised as illegitimate. So much so that they even managed to obtain a papal bull for both to take the religious habit: Don Íñigo, as a cleric of the Society of Jesus in the city of Cuenca; and María Rafaella, as a nun in the convent of Franciscan Conceptionists in Alcalá de Henares[105]. However, all efforts were in vain.

Forced by this refusal, the Marquises of Mondéjar had no other option but to disinherit and remove the aforementioned Don Íñigo from the line of succession, preventing him from accessing «todos e qualesquier nuestros bienes, presentes y futuros...»[106]. Hence, the exclusion in the entails that they ordered to be founded: «[and when the succession should come to touch Don Íñigo López de Mendoza] en tal caso, mandamos que éstos bienes no se entiendan incorporados en los dichos mayorazgos antiguos,

102 This personage, of French origin, served as a squire in the house of Benito de Cisneros and Doña Petronila de Mendoza Zúñiga y Toledo, lady of Cubas and Griñón.
103 Among others, it was speculated that Villaverche had had some love affairs with Diego de Fonseca, in the city of Toro, and with Rodrigo de Mendoza, son of the Duke of Infantado and first cousin of the man who would later become her husband. Cf.: AHNOB, Osuna, c. 294, doc. 81.
104 With the passage of time, and to avoid dishonour, this *messalina* was forced to adopt the name of Doña María de Mendoza.
105 Galera Mendoza, 2022, p. 42, 56.
106 AHNOB, Osuna, c. 291, doc. 11.

y desde ahora para entonces, sucediendo tal caso, revocamos la dicha incorporación, y queremos que no se entienda hecha»[107].

To make matters worse, in the interim of the resolution of the lawsuit, a provision of Philip III, given in Valladolid on 19 November 1604, granted the governorship of the Alhambra, the fortresses of Bibataubín, Mauror and La Peza, and the company of the Cien Lanzas Jinetas to Don Cristóbal Gómez de Sandoval y Rojas, son of the Duke of Lerma[108]. Thus depriving the Mendozas of one of their most cherished symbols of power.

Finally, on 4 June 1606, the long-awaited court ruling arrived. It ruled that the social difference between Don Íñigo and María Rafaella de Villaverche was not sufficient reason to consider the marriage illegitimate. It therefore ruled that Don Íñigo López de Mendoza, the eldest son of the contested and disputed marriage, was to succeed to the head of the House of Mondéjar, becoming the heir to all the entails. Here is an extract from the ruling of the Royal Council:

> «Fallamos, que el remedio de la Ley de Toro intentado por parte de don Yñigo López de Mendoza ubo y a lugar, e mandamos le sea dada la tenuta e posesión de las villas de Mondéjar y Tendilla e provincia de Almoguera y demás villas e lugares e bienes sobre que a sido este pleito, comprehendiéndose los mayorazgos que vacaron por fin e muerte de don Luis Hurtado de Mendoza, marqués que fue de Mondéjar, último poseedor, con más los frutos e rentas que an rentado desde la muerte del dicho marqués don Luis e rentasen hasta la real entrega e posesión...».

There is no doubt that this was an important victory, but it was not total; the return of the Nasrid fortress was still pending. For this, it was not until the death of the Duke of Uceda that Philip IV, by a title issued on 26 May 1624, reinstated Don Íñigo López de Mendoza, 5th Marquis of Mondéjar

107 AHNOB, Osuna, c. 294, doc. 37-39.
108 Evidently, behind this subtle manoeuvre was the shadow of Philip III's favourite, who was taking advantage of the Mendoza lawsuit to incorporate the honours and pre-eminences that came with the government of the palatine citadel into his House.

and 7th Count of Tendilla[109], as head of the command of the fortress of the Alhambra[110]. Although this restitution mattered little or nothing in reality, the family, economic and political health of the Mendoza family was beginning to show signs of exhaustion, with unflattering short and medium-term prospects.

5. The decline of the *Lords of the Alhambra*

On this side of the family tree, the Mondéjar entails — increasingly dwindling — went to the children of Don Íñigo and Doña Ana de Cabrera y Vargas. First, to Don Íñigo López de Mendoza (6th Marquis), the husband of Doña Brianda de Zúñiga y Guzmán, daughter of the Marquis of Ayamonte. And after his untimely death in 1656, to Doña María López de Mendoza (VII Marquise)[111], wife of Don Diego Antonio Felicio de Croy y Peralta, Commander of Mohernando, Trece of the Order of Santiago, Marquis of Falces and Count of Santisteban[112]. However, none of these marriages succeeded in leaving heirs, definitively cutting off the varony of Mendoza in Granada.

This enormous set of assets would end up falling to Doña Francisca Juana de Mendoza Córdoba y Aragón in 1676; daughter of Don Nuño de Córdoba y Bocanegra and Doña María de Mendoza, 2nd Marquise of Agrópoli[113]. Granddaughter, in turn, on her mother's side, of Don Jorge de Mendoza, brother of the aforementioned 5th Marquis of Mondéjar, to whom Philip III had granted the Marquisate of Agrópoli a few years earlier, as a reward for services rendered in Naples and Sicily[114].

109 For the will and inventory of the marquis' assets: Moreno Trujillo et al., 2015.
110 Numerous pleas and memorials were submitted by Don Íñigo to the Crown, requesting the return of the governorship of the Alhambra. Among other documents, see: RAH, 9/336, fols. 2r–16v and Jiménez Estrella, 2000, p. 27, 45.
111 AHN, Councils, leg. 2752, p. 41.
112 Moreno Trujillo et al., 2016b, pp. 262–325.
113 Not without controversy, as the Duchess of Béjar, on behalf of her son, Don Manuel Diego López de Zúñiga, also tried to assert his rights to succeed to that group of entails. AHNOB, Osuna, c. 294, doc. 67–69.
114 For the services to the Crown of this personage, we refer to Ibáñez de Segovia (RAH, 9/185), book X, fols. 401r–409r.

In this somewhat haphazard way, a vast list of entails came to coincide and concentrate in a single heiress, incorporating the marquisate of Agrópoli[115] into the properties of the Mendoza family. However, these entails were only a memory of what they once were. Once flourishing and prosperous estates that served for the ornamentation of their holders, they now seemed more like their holders were the ones who gave lustre to such rickety and deflated assets. The calamitous administration of the last Marquises, together with the economic waste in legal lawsuits[116] and the very high standard of living of some of these aristocrats, had progressively eroded the good health they had enjoyed at the beginning. They became more symbolic than profitable.

As far as we know, the VIII Marquise of Mondéjar did not manage to leave any descendants from either of her two marriages[117], reactivating once again the family's rapacity and virulence in the face of the expectations of succeeding to the estates and entails that she enjoyed. However, this lady was not to live long to see the greed of her kith and kin, as she died prematurely on 18 January 1679, aged only 39.

Thus, all the properties, titles and entails of the Mondéjar family went to Doña María Gregoria de Mendoza y Córdoba, the sister of the deceased. Married, a few years earlier, to the famous genealogist and bibliophile Don Gaspar Ibáñez de Segovia[118], «cuya singular erudición en todo linaje de buenas letras, es bien conocida, y venerada por los doctos de nuestra edad»[119], to whom we have alluded so much throughout these pages. This marriage puts an end to the direct descendants of the Mendoza family of Granada and serves as a conclusion to this work. Not without mentioning that a lawsuit was also brought against this family unit before the Royal Council, to settle the correct succession in the entails of the *Lords of the Alhambra*[120]. But that is another story, and will have to be told at another time and in another place.

115 ARChG, 10433–5.
116 As an example, see BNE, Porcones, leg. 156 (4).
117 Married in first marriage to Don Francisco Colón de Córdoba y Bocanegra, Marquis of Villamayor de las Ibernias; and in second marriage to Don Diego de Silva y Guzmán, Count of Galve and Marquis of Viso (Salazar y Castro, 1685, p. 582).
118 On this personage, see: García López, 1999, pp. 97–120 and Soria Mesa, 2016, pp. 171–175.
119 Salazar y Castro, 1685, pp. 589–591.
120 AHN, Councils, leg. 28273.

Conclusion

In short, the foundation and accumulation of entailments was a fundamental pillar in the socio-economic structure of the Castilian nobility, allowing important families such as the Marquises of Mondéjar to preserve their vast fortune over several generations. A legal mechanism that aimed to maintain and avoid the fragmentation of family properties, thus guaranteeing not only the cohesion of the patrimony, but also the reinforcement of the symbols of status and power. This was, of course, an important factor in the economic, social and political consolidation of the *lords of the Alhambra* in Granada during 16th and 17th century.

Through the entailed property, the Mendoza family not only protected their patrimony, but also promoted the continuity of their lineage and influence in the area. The institution of up to fourteen entailments evidence of strategy clearly aimed at safeguarding their assets, which was to contribute gradually to the growth of the family fortune and enable them to compete with other great noble houses.

It should also be noted that the history of the entailments is also marked by hereditary tensions and conflicts, which highlights the duality of their function: as instruments of stability and, on certain occasions, as potential sources of discord. Therefore, the consultation of multiple and diverse documentary sources is essential to fully understand and unravel the phenomenon of entailed property in Early Modern Castile.

In conclusion, this paper aims to construct an interpretive model that fills some of the existing historiographical gaps on the Marquises of Mondéjar. Offering new approaches to the dynamics of power and the management of their properties through the foundation and accumulation of entailments.

Archival material

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ACA, leg. 3566, fol. 159.

Archivo de la Real Chancillería de Granada (ARChG):
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APG, B–654, Luis de Ortega, 29 May 1630, fol. 131v.

Archivo del Patronato de la Alhambra y el Generalife (APAG):
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NOTES ON AUTHORS

Antoine Roullet
(Centre de Recherches Historiques, CNRS, Paris)
ORCID ID: https://orcid.org/0000-0003-0839-8888
Email: antoine.roullet@ehess.fr

Antoine Roullet is a CNRS researcher at the Centre de Recherches Historiques (UMR 8558 CNRS/EHESS, Paris). His research focuses on the social and religious history of early modern Castile. His forts work dealt with the social history of forms of piety in the feminine convents, he is now interested in patronage and the pious uses of wealth, as well as the forms of the noble family. His research is based on cases in Extremadura and Andalusia, and in particular on one of the great lineages of Castilian nobility, the Zuñigas. He is the author of a monograph on the penitential practices of nuns (Corps et pénitence, 2016) and has recently co-written a dossier on the management of religious institutions by lay people (Archives des sciences sociales des religions, 2021, with Laurence Croq).

Cristina Jular Pérez-Alfaro
(Institute of History – Center for Human and Social Sciences; Spanish National Research Council (CSIC))
ORCID ID: https://orcid.org/0000-0003-4215-9506
Email: cristina.jular@cchs.csic.es

PhD in History; Postdoctoral researcher in Paris (EHSS); Científica Titular at the Spanish National Research Council (CSIC), Center For Human and

Social Sciences (CCHS), Institute of History (IH). Main areas of research: Castilian history from 1200 to 1500; Social history of power, especially the relationship between kingship, nobility and community; Kinship, patronage and vassalage; Written culture and archives of the nobility. Publications: ORCID: 0000-0003-4215-9506. A fundamental component of my work is the web-based publication of my results and those of the research projects that I lead, with the aim not only of making them readily available, but also of facilitating their self-guided use for historical criticism, cfr: www.scriptamanent.info; www.docasv.es; https://creloc.net

Élie Haddad
(CNRS, Centre de Recherches Historiques, EHESS, Paris)
ORCID ID: https://orcid.org/0000-0002-7384-1631
Email: haddad@ehess.fr

Élie Haddad's work focuses on the social history of the French nobility in the early modern period. Taking into account the contributions of anthropology, sociology and law to the study of social groups, he examines the relationships between kinship, seigneurial control and the socio-political power of the nobility. His last book (*D'une noblesse l'autre. France, xvi^{e}-xviii^{e} siècle,* Ceyzérieu, Champ Vallon, 2024) aims to unravel the mechanisms of material and symbolic transmission by which nobiliary social pre-eminence was maintained and reproduced. He is now focusing on the specific issue of the nobility's relationship with land, the seigneurial system and questions concerning fief and feudalism in the modern era.

Florian Andretsch
(University of Vienna, Department of Economic and Social History)
ORCID ID: https://orcid.org/0009-0007-7260-0223
Email: florian.andretsch@univie.ac.at

Florian Andretsch studied history at the University of Vienna, acquiring a MA degree in 2020. He worked as a university assistant ("prae-doc") at the Doctoral School of Historical and Cultural Studies of the University

of Vienna from 2020 to 2021. Since 2021, he is employed as a scientific contributor of the research project "Noble Siblings. Wealth Arrangements and Social Configurations from the Sixteenth to the Eighteenth Centuries" funded by the Austrian Science Fund (FWF).

Isabel María Melero Muñoz
(Universidad de Sevilla / Sorbonne Université)
ORCID ID: https://orcid.org/0000-0003-2679-8551
E-mail: imelero1@us.es

In 2021, she obtained a dual Ph.D. in Modern History from the University of Seville and Sorbonne University. She has focused her research on social themes, particularly delving into the history of women and discourses surrounding conflict within the institution of entail. She has published two monographs on this topic, as well as scientific articles and book chapters. Additionally, she has participated in national and international R&D excellence projects and completed international research stays. She currently works as a professor in the Department of Modern History at the University of Seville.

Jean-François Chauvard
(Université Paris-1 Panthéon-Sorbonne - IHMC)
ORCID ID: https://orcid.org/0009-0006-4209-2152
Email: jean-francois.chauvard@univ-paris1.fr

Former Director of Modern and Contemporary History at the École française de Rome, Jean-François Chauvard is Full Professor of Early Modern History at the University Paris-1 Panthéon-Sorbonne and a specialist in the social history of the Mediterrean and Italian cities, particularly Venice. More specifically, it focuses on the study of migration, social mobility and heritage conservation practices.

José María García Ríos
(CIDEHUS–U. Évora; University of Córdoba)
ORCID ID: 0000–0002–0703–4663
Email: josemgarciarios@hotmail.com

Graduate in History from the University of Granada, specialist in Genealogy, Archives, and Documents, and PhD in Modern History from the University of Córdoba. Member of numerous projects, groups, and networks of excellence with recognized national and international prestige. Principal Investigator (PI) of the project *The Principal Houses of the City of Córdoba (15th–19th centuries): From Historical–Artistic Heritage to Quality Tourism* [UCOLIDERA–2023–00814]. Currently under contract to Margarita Salas, attached to CIDEHUS–Universidade de Évora and the University of Córdoba.

Juan Ramón Núñez Pestano
(Universidade de La Laguna)
ORCID ID: https://orcid.org/0000–0001–7419–4715
Email: mailto:jrnupe@ull.edu.es

Juan Ramón Núñez Pestano is Full Professor of Early Modern History at the University of La Laguna and coordinator of the Research Group "Land, Family, and Society in the Early Modern Period." His primary research focus lies in Agrarian History and Rural History, with projects centered on communal practices and cultural landscapes in the Canary Islands. Additionally, he has conducted research on the history of ancient institutional and familial archives. He served as the principal investigator of the project "Heritage and Cultural Landscape: the ancient vineyard estates of Tenerife as a resource for local development."

Judit Gutiérrez de Armas
(Universidade de La Laguna)
ORCID ID: 0000-0002-1598-2911
Email: jgutiear@ull.edu.es

Judit Gutiérrez de Armas is Assistant Professor of Early Modern History at the University of La Laguna. Her primary research focuses on the genesis and evolution of family archives in the Atlantic world and their impact on the creation of historical and historiographical discourses. Additionally, she investigates the formation of social and gender identities in the Canary Islands, particularly those emerging within elite environments during the Early Modern Period.

Margareth Lanzinger
(University of Vienna, Department of Economic and Social History)
ORCID ID: https://orcid.org/0000-0001-5092-4234
Email: margareth.lanzinger@univie.ac.at

Margareth Lanzinger is professor of Social and Economic History at the Department of Economic and Social History at the University of Vienna. Her work focuses on kinship, family and marriage, property and wealth, inheritance law and practices as well as marital property regimes, cultural history of administration, the construction of heroines and historiographic topics. She is a member of the editorial boards of various journals, among others *Historische Anthropologie* / *Historical Anthropology* and *Quaderni storici*. Among her most recent publications is *Administrating Kinship: Marriage Impediments and Dispensation Policies in the 18th and 19th Centuries* (2023). In 2024, she was awarded an ERC AdvG for *Agents of Logistics and Infrastructure in Eighteenth Century Alpine Transit Traffic*.

Maria de Lurdes Rosa
(NOVA.FCSH, History Department; IHC; IN2PAST)
ORCID ID: 0000-0002-2027-4485
Email: mlrosa@fcsh.unl.pt

Maria de Lurdes Rosa is an historian, professor at the History Department of NOVA School of Social Sciences and Humanities (NOVA FCSH), Lisbon, and member of the Institute for Contemporary History of the same institution. She graduated in FL-UL, holds a M.A. in Medieval History from UNL, a PhD in Medieval History from the École des Hautes Études en Sciences Sociales (Paris) / NOVA FCSH, an Habilitation (agregação) in Medieval History from UNL (2016) and a second habilitation in Information Science from U. Coimbra (2021). In 2015, Maria de Lurdes Rosa was a fellow at the Institute for Adavancd Study, princeton (School of Historial Studies). In 2018, she received a Consolidator Grant from the European Research Council to carry out the project "Entailing Perpetuity: Family, Power, Identity. The Social Agency of a Corporate Body (Southern Europe, 14th-17th Centuries)".

Raúl Villagrasa-Elías
(University of La Laguna [ULL])
ORCID ID: https://orcid.org/0000-0002-9564-9392
Email: rvillagr@ull.edu.es

Raúl Villagrasa-Elías is Assistant Professor of Medieval History at the University of La Laguna. He holds a PhD from the University of Zaragoza and has been a PhD researcher at the Spanish National Research Council (CSIC, Madrid) and Professor at the University of Las Palmas de Gran Canaria. He has carried out research stays at the universities of Siena, Lisbon and Pennsylvania. His latest articles on nobility and the patronage of institutions have been published in journals such as *Cuadernos de Historia Moderna*, *Studia Histórica: Historia Medieval* and *Journal of Medieval Iberian Studies*. In his research he relates the work of historical documentation with a Digital Humanities perspective thanks to its association with the *Scripta manent* project. See the development of the website Rethos (*Retia hospitalium*).

Zsuzsanna Peres
(Associate Professor, Ludovika University of Public Service, Faculty of Public Governance and International Studies, Department of History of State and Law, Budapest).
ORCID ID: 0000-0001-6694-7385
Email: peres.zsuzsanna@uni-nke.hu

Zsuzsanna Peres is associate professor at the Department of History of State and Law at the Faculty of Public Governance and International Studies, Ludovika University of Public Service in Budapest, Hungary. Between 2015–2018 she served as Vice Dean for Scientific and International Relations. Previously, Dr. Peres was assistant professor at the Department of Legal History at the Faculty of Law, University of Pécs, where she had earned her J. D. and Ph.D. Her current research fields are comparative and Hungarian private law in the 16th to 18th centuries, marriage property law of nobles, and family fideicommissa. She earned several scholarships for research in the Austrian State Archives in Vienna. She is fluent in five languages and the author of more than eighty academic publications.

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