

Across the Religious Divide

Women, Property, and Law
in the Wider Mediterranean (ca. 1300–1800)

Edited by
**Jutta Gisela Sperling
and Shona Kelly Wray**



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Introduction

Jutta Gisela Sperling and Shona Kelly Wray

RECENT TRENDS IN HISTORIOGRAPHY

This book seeks to make a contribution to the growing field of Mediterranean studies by investigating the history of women, gender, and the law from a transreligious perspective. This is a difficult and perhaps counterintuitive undertaking, for questions of women and gender have, since the Enlightenment, served to identify “fundamental” differences among Islamic, Jewish, and Christian communities, and to measure how much more “advanced” Western European societies were than their Middle Eastern counterparts.¹ As anybody even remotely familiar with the head-scarf debates in Turkey, France, England, and Germany knows, tensions surrounding issues of women’s rights continue to be cultivated in political discourse. Recent historical scholarship on Muslim women has, to some extent, intervened in these wider political debates, correcting previously held assumptions. In debunking the orientalist view of Islamic women as silent, passive, and repressed, studies of divorce records, notarial acts, pious bequests, marriage contracts, and juridical literature have shown that Muslim women had ample access to property rights, courts, and legal services in the early modern period.² Many feminist historians claim, in fact, that Ottoman, Andalusian, and Egyptian women’s legal rights were much more extensive than those of their Christian counterparts—both Greek and Latin. Muslim women’s unencumbered ownership of their *mahr*, or bridewealth,³ and their right to initiate divorce proceedings have been contrasted favorably with Italian women’s conditioned ownership of dotal properties, English wives’ virtually nonexistent legal persona under *coverture*, and the many obstacles to divorce in Catholic countries.⁴

The editors of the present volume propose a less competitive approach to the question of difference, one that emphasizes the many local variations, mutual influences, and common trends in the development of women’s property rights and negotiating powers across the Mediterranean. The contributions assembled in this collection show that differences in women’s property rights between Portugal and Italy, or between urban and rural areas in the Ottoman Empire, could be much more pronounced than those between

upper-class ladies in Venice, Siena, Istanbul, Cairo, or Avignon (see chapters by Bellavitis, Brizio, Sperling, Zarinebaf, Imber, Fay, and Rollo-Koster). Such recognition of diversity and permeable boundaries is grounded in our view that Islamic, Greek Orthodox, Catholic, and Jewish women's potential for developing agency in important institutions such as marriage, inheritance, and family organization was commensurate, albeit difficult to quantify. Such commensurability can be viewed structurally as the result of comparable tensions between cognatic and patrilineal kinship patterns, and historically as the outcome of parallel developments in Byzantine, Germanic, and Islamic legal practices in the second half of the first millennium. As JoAnn McNamara has argued, a more explicit recognition of kinship as bilateral in the *Codex Justinianus* (529), the Qur'an (c. 650), and various Germanic compilations, including the *Lex Visigothorum* (642–654), meant a departure from Roman rules of patrilinearity, and secured daughters, wives, and widows greater protection in terms of their property rights.⁵

Our aim is to disentangle legal and religious practices for the purpose of recasting the question of difference. Emphasizing the unique status of women under Islam obfuscates the fact that in the medieval and early modern Mediterranean, all religious authorities intervened, to varying degrees, in the shaping of marriage laws and family relations. In the Byzantine Empire, the church gained complete control over marriage procedures after the eleventh century, when its anti-aristocratic campaign for far-reaching incest prohibitions and its negative view of remarriage found government approval.⁶ In Catholic countries, secular and ecclesiastic definitions of marriage coexisted in uneasy tension until the Council of Trent (1545–1563) required couples to celebrate their marriages in church, abolishing the formerly private nature of the marital sacrament. France and Spain, eager to enhance parental and public control over marriage, criticized the reform for not being far-reaching enough, but most Italian governments ratified the Tridentine legislation. Eventually, the abolition of domestic partnerships served to narrow the gap between secular and ecclesiastic approaches. The voluntary consent of both spouses remained—at least theoretically—a central component of Catholic marriages, similar to Islamic, Byzantine, and ancient Roman practices, but in stark contrast to most Western secular definitions, which privileged parental control.⁷

In a volume devoted to exploring the congruity of gendered legal practices in the Mediterranean, the legacy of Roman law needs to be addressed. While the Germanic vulgarization of Roman law in late antiquity has been a steady topic of historical investigation since the nineteenth century, historians of Islamic law have only hesitatingly posed the question of possible points of contact among Byzantine law, the Qur'an, and early medieval *hadith* literature (legal scholarship). Discussing the emergence of generous legal provisions for Muslim widows, David Powers has argued that Justinian's legalization in 537 of widows' claims to one-quarter of their deceased husbands' properties in nondotal marriages (Novella 53.6) may have

influenced Muhammad's decision a century later to award childless wives up to one-quarter of their husbands' estate (Qur'an 4:12a).⁸ In a recent article, Yossef Rapoport documents how the practice to defer payment on parts of a wife's *sadaq* (bridewealth) in early medieval Egyptian notarial culture emerged as an adaptation of the Greek custom to pay the *hednon* (groom's gift) during the course of the marriage or after its dissolution, despite heavy criticism of this practice from Maliki jurists in the Maghreb and al-Andalus, who accused Egyptian notaries of eroding wives' property rights.⁹ Rapoport argues that the shift from bride's dowry to groom's *sadaq* as the legally binding marriage gift may have been accomplished by accommodating husbands' wishes for deferred payment. He also shows how Jewish and Coptic couples participated in this trend.

Other areas of gradual assimilation into Islamic law were Bulgaria, the Greek Islands, and Portugal—peripheral areas in which prior legal practices were allowed to continue. In Naxos and other former Venetian colonies, the conquering Ottomans restored the Orthodox Church and, with it, Byzantine legal traditions. The *Hexabiblos* (1345), Konstandin Armenopoulos's compilation of late Byzantine law, circulated in an updated version by Manuel Malaxos (1561) in hundreds of manuscripts during the *Tourkokratia* until the eighteenth century.¹⁰ Despite the fact that Byzantine and customary law continued to be practiced, Greek Christians—even Jesuits—took recourse in the Ottoman court of Naxos whenever convenient.¹¹ In fourteenth-century Venetian Crete, Latin and Greek testators exhibited similar preferences for sons; lower-class Greek husbands provided better for their widows than did upper-class Venetians; and Jewish testators held on to the counterdower of early medieval provenance.¹² In seventeenth-century Bulgaria, many Christians had Ottoman judges (*kadi*) officiate their marriages and register their divorces because their fees were lower, the procedure was simpler, and the rules were more generous. In divorce cases, *kadis* did not investigate spouses' motives, impose terms for reconciliation, or prohibit remarriage, as did Orthodox bishops; neither did Ottoman judges enforce the wide-ranging Byzantine incest prohibitions.¹³ Because of intense competition from the more accessible, woman-friendly Ottoman courts, the Orthodox Church was forced to make compromises.¹⁴ The frequency with which Greek and Armenian women brought divorce cases to *shari'a* courts resulted in Christian women's demand for a *mahr* (bridewealth) upon marriage.¹⁵

For Portugal, studies of Islamic influences on later medieval Portuguese law are missing, but a few striking similarities emerge from an attempt to integrate the two separate bodies of scholarship. First, a decidedly un-Roman lack of freedom to testate prevailed in Portuguese inheritance law. In analogy to Islamic rules, only one-third of a person's assets could be willed away.¹⁶ While the Qur'an imposed a male-inflected system of division that allowed women half of the value of a bequest to a male sibling in the same kinship order,¹⁷ Portuguese law required that of the remaining two-thirds of a person's assets, half went to the surviving spouse, and the

other half to all children in equal proportions, regardless of sex. The rigidity of both systems led to the demand for more flexible arrangements, able to accommodate testators' wishes for preferred heirs and, in the Portuguese case, political pressure toward the consolidation of aristocratic patrimonies. Starting in the fifteenth century, Portuguese kings granted protection to *morgadios*—entailments of aristocratic family estates and crown goods—which often followed the rules of primogeniture.¹⁸ As instruments of entailment and partial disinheritance, *morgadios* bear a striking resemblance to *Maliki* family endowments (also called *awqaf*), which removed substantial parts of a testator's patrimony from the Qur'anic obligation of forced division.¹⁹ The fact that *muftis* (jurisconsults) in Muslim Spain and the Maghreb issued hundreds of *fatwas* (legal counsels) on the subject testified to the widespread use and contested nature of this institution. While *Maliki* family endowments did not necessarily benefit firstborn sons or serve to strengthen aristocratic lineages and identities, as did *morgadios*, they fulfilled the same function of enabling testators to express preferences and prevent the fragmentation of estates without abolishing the a priori principle of forced division.

Other parallels can be found in the domain of marriage gifts. The Portuguese *arras*—the groom's gift to his bride in upper-class marriages, governed by the separation of property—continued to accompany dowry exchange until the seventeenth century. Although its origin lies in Visigothic legislation, which required property transfer from groom to bride for the marriage to be legitimate, its structural similarity to the *sadaq* helped foster its continued use well beyond the twelfth century, when the term first appears in Portuguese statutory law.²⁰ In Portugal, the groom's gift to his wife was given legal character at a time when French and Italian husbands' gifts to their brides diminished in value and acquired largely symbolic significance.²¹ Finally, the unique provision in Portuguese law regulating fathers' obligation to pay for the breast-feeding of their children for up to three years is reminiscent of corresponding Islamic legislation and practices.²² In their focus on documenting how renescent Roman law shaped late medieval and early modern Portuguese legal culture, modern Portuguese historians have so far overlooked the many deviations from the *ius commune* (medieval version of Roman law) amply commented on by contemporary Portuguese legal scholars.²³

Jewish communities often adapted to the legal practices of their surrounding cultures (see chapters by Frank and Francesconi). Jewish marriages followed the principle of separation of goods through dowry exchange, but unlike Christian wives, Jewish wives in Perpignan and Crete continued to receive substantial counterdowers throughout the late Middle Ages.²⁴ Also, women's rights to engage in business activities while married seem to have been greater than those of their Catholic counterparts, even though their accomplishments were dwarfed by those of Jewish women in northwestern and central Europe.²⁵ In Rome, Jewish women could remarry after divorcing

their husbands but had difficulty maintaining custody and guardianship of their children.²⁶ In Muslim Spain and Egypt, Jewish grooms' gifts to their brides acquired features of the *sadaq*.²⁷

The emphasis on active assimilation is useful only insofar as important structural differences in Mediterranean women's legal situation are acknowledged, in areas such as marital property arrangements, inheritance, and divorce—currently at the center of feminist historians' debates. With respect to marital property arrangements, the main dividing line runs between wives who had claims to their husbands' property and those who did not. Among the women who owned portions of their partners' estates were above all Muslim wives, whose rights to the *mahr* or *sadaq* remained uncontested throughout the period under examination. A powerful indication of their personhood and legal independence, Islamic bridewealth not only conferred upon women the financial means to furnish their households, engage in small-scale lending activities or other business transactions during marriage, and maintain their standard of living after the husband's death or divorce, but acknowledged their essential contributions to family life as sexual partners, mothers, and caretakers.²⁸ The value Islamic societies placed on these roles stands in stark contrast to the rationale Italian jurists gave for brides' obligation to offer their husbands dowries: to ease the "burden of matrimony."²⁹ The refusal to acknowledge wives' reproductive and productive labor served to justify husbands' management of their assets during marriage as well as the refusal to pay an increment on dowries when widows sued for restitution.³⁰

What has often been overlooked, however, is the fact that in addition to dotal regimes, other, more equitable property arrangements existed in the "West." Wives in Istria, southern Italy, and Iberia, for example, could choose between joint ownership and separation of goods (see chapters by Lightfoot and Crljenko). While most upper-class families opted for lineage-conscious dowry exchange, middle- and lower-class brides chose to merge their assets with those of their husband, which entitled both spouses to cosign property transactions and inherit the deceased partner's assets. In certain areas, such as Perpignan, southern Italy, and Douai—a Flemish town studied by Martha Howell—dowry exchange gradually supplanted earlier traditions of joint ownership, but in Portugal, kings insisted until the seventeenth century and beyond that the "regime of halves" was the predominant marital property arrangement (see chapter by Sperling).³¹ In areas with strong traditions of joint property, the reintroduction of Roman-style dowry exchange in the twelfth and thirteenth centuries mitigated the patrilineal impact of the new regime. But in regions where dotal marriages had always been firmly entrenched, such as the Greek islands, the symmetrical endowment of both groom and bride softened gender inequalities. In Naxos, dowry exchange took on the character of premortem inheritance for both sons and daughters (see chapter by Doxiadis).³²

Despite the considerable qualitative differences between women's largely nominal dotal properties under the *ius commune* and Islamic women's

actual possession of their bridewealth, similarities in the composition and management of wives' assets can be observed. In Muslim Granada, the first installment of a bride's *sadaq* was used by her father to buy a trousseau, which would then be paraded to the couple's new residence on their wedding day.³³ In Ottoman Syria and Anatolia, household items, linens, clothes, and jewelry were given in addition to the *mahr* by the groom or the bride's parents, or both.³⁴ In Mamluk Egypt, the bride's father provided the trousseau, which was larger than the *sadaq* and functioned as premortem inheritance. Yossef Rapoport calls this trousseau "dowry," even though he also states that "it remained under the woman's exclusive ownership and control throughout the marriage."³⁵ Processual displays of wedding chests happened also in seventeenth-century Naxos and Renaissance Florence. A Greek trousseau, consisting mostly of linens and cooking utensils, was assembled by the bride and her mother, while a Florentine trousseau, containing household items and the wife's ceremonial dresses, was sponsored by the groom, even though it remained a loan and would not enter the wife's personal property unless the husband willed it to her in his testament.³⁶

In addition to the public display of bridal trousseaus, which were a prime marker of prestige and social status in Egyptian, Turkish, Andalusian, Greek, and Italian families, a certain preference for cash, clothes, and jewelry can be observed among most women of the Mediterranean, regardless of the provenance of such gifts. As Leslie Peirce notes, in sixteenth-century Anatolia, women never appeared in front of notaries to buy real estate—they only sold. "What women wanted to have, it seems, was money and material objects."³⁷ An even more pronounced gendering of properties has been noted for early modern Germany.³⁸

While Muslim fathers were not required to pay a dowry, many of them offered their daughters gifts *inter vivos* (among living persons) upon marriage. In fifteenth-century Granada, daughters would acquire considerable portions of real estate; here as well as in late medieval Cairo, seventeenth-century Naxos, and early modern Galicia, marriages could be, or even tended to be, uxorilocal. Nowhere but in Cairo, however, were husbands required to pay rent for the privilege of living in their wives' houses.³⁹

With respect to women's inheritance rights, Islamic law, *ius commune*, and customary law appear to be incompatible, even though a few common trends can be observed. Daughters, wives, and sisters fared well under the Qur'anic system of forced division, which awarded them fixed shares of their agnatic relatives' and husbands' patrimonies, but a certain erosion of this practice set in with the institution of *awqaf* (sing. *waqf*, forms of entailments for private, charitable, and religious purposes) and family endowments, as well as the Ottoman prohibition of female ownership of agricultural land (see chapter by Imber).⁴⁰ Roman law granted all children equal shares of their fathers' patrimonies, while Islamic law limited women's shares to half of a man's in the same kinship order. Ancient Roman dowries were supposed to correspond to a daughter's *legitima* (legitimate

inheritance share). Byzantine law granted married daughters the option to share in their fathers' inheritance if they were willing to return their dowries to the common pool (*collatio dotis*); this amounted to granting them an increment on their dowries after their fathers' death if they had received less than their *legitima*.⁴¹ The medieval abolition of this principle along with the introduction of *exclusio propter dotem* (the exclusion from inheritance after the receipt of a dowry) eroded the maxim of equal inheritance for daughters, transforming dowries from anticipated inheritance shares to objects of speculation on their fathers' and husbands' creditworthiness.⁴² The egalitarian inheritance patterns in areas of joint ownership (Iberia) gave wives and daughters ample claim to their husbands' and parents' estates, but the absence of individual ownership in a male-dominated society constrained women's actual exercise of possession. In addition, the feudalization of society since the thirteenth century eliminated women's claims to castles and jurisdictions, even though colonial land grants reserved for aristocratic brides were supposed to compensate women for these losses.⁴³ Similar trends toward a tightening of women's property rights can thus be observed in the entire Mediterranean at the turn of the millennium, even though the process of women's dispossession was most pronounced in the cities of central and northern Italy, where centuries of Lombard occupation had already weakened women's legal status.⁴⁴ In Islamic regions, women held on to their rights much longer, until the onset of modernity.

Divorce, finally, is hard to compare, since in Catholic regions it did not exist. What did exist, however, were annulments and separations from bed and board, as well as privately arranged separations of domestic partnerships. In Portugal and Spain, couples' preferences for common-law marriages and fathers' legal obligations to provide for illegitimate children made separations easy.⁴⁵ In the Byzantine Empire, divorces *comuni consensu* (with common consent) were widespread until the church took control of marriage procedures in the eleventh century. Orthodox bishops granted separations upon a wife's adultery, a husband's impotence, a threat of fatal domestic violence, and leprosy; annulments could be achieved for lack of consent, child marriages, and violation of kinship prohibitions.⁴⁶ It was the latter category that offered wives the most room for maneuver: mothers who had assisted in baptizing their children could claim "spiritual kinship" with their husbands and thus qualify for an invalidation of their union.⁴⁷ Remarriage, however, was prohibited in all cases other than annulments. In Renaissance Italy, marriage litigation cases were widespread as well. Before the Council of Trent, suits brought to ecclesiastic courts consisted largely of breach-of-promise cases, in which young women sued their lovers for recognition of their "clandestine marriages" or monetary compensation for their loss of honor.⁴⁸ But women in Venice, France, and elsewhere also sued husbands for separation in cases of domestic violence or squandering of resources; ecclesiastic courts were often favorably inclined to women's

causes.⁴⁹ Jewish women in Rome could remarry after obtaining a divorce and were free to achieve informal separations from bed and board.⁵⁰

No amount of marriage litigation cases in Christian and Jewish communities, however, could match the vibrancy of divorce culture in Islamic regions. Yossef Rapoport estimates that about 30 percent of all marriages in Mamluk Egypt ended in divorce.⁵¹ While husbands enjoyed the unilateral privilege of repudiation (*talaq*), which took effect irrevocably upon the pronouncement of a divorce formula, wives had to go to court to obtain a separation (*khul*). In *khul* divorces, wives negotiated a settlement by offering their husbands money, usually by surrendering their rights to outstanding installments of the bridewealth (*sadaq* or *mahr*), alimony payments during the three-month waiting period, and child support.⁵² In cases of *talaq* divorce, husbands had to pay these benefits to their ex-wives. Women would retain custody (*hidana*) of their young children—sons up to the age of seven or nine, and daughters until puberty. In the case of the mother's remarriage, her custody rights could be delegated to one of her female relatives.⁵³ Islamic and Christian marriage-litigation practices thus appear to be truly incompatible, making their respective effects on women's position in society hard to measure. Whether the constant danger of repudiation—or the rare instance of polygamy—was “neutralized” by Islamic women's right to divorce and remarry, or whether Christian wives' prohibition to remarry after a rare and hard-won separation suit was compensated for by their protection from unilateral divorce, is hard to gauge. Certainly no woman would experience the disadvantages and advantages of either system in the same marriage.

The discussion of divorce practices under Islam points to related questions such as women's access to court services and mothers' rights to custody and guardianship of their children. Here, it seems, we are back on commensurate grounds. Islamic women used the court system liberally not only to negotiate divorces but to settle property disputes, sue rapists, and obtain guardianship.⁵⁴ Christian women in both Catholic and (actual as well as formerly) Orthodox regions did so, too.⁵⁵ Women in Venice gave testimony (see chapter by Guzzetti), charged men with rape, and sued for restitution of their dowries.⁵⁶ Florentine widows obtained guardianship in 70 percent of all cases brought before the *magistrato dei pupilli* (judge of orphans) in the early modern period.⁵⁷ In fourteenth-century Perpignan, 80 percent of all testating fathers assigned guardianship to their widows.⁵⁸ While Muslim mothers' rights to custody of young children were commonly acknowledged—their labor of nursing even especially remunerated—guardianship was harder to obtain. Occasionally *muftis* in Ottoman Syria would favor widows' claims to guardianship of their children, but ordinarily they preferred their deceased husbands' male relatives. Divorced wives, it seems, could not expect to be awarded guardianship. Even custody rights were gradually eroded, as Leslie Peirce has remarked. In divorce settlements, mothers often surrendered outstanding credit payments in exchange

for custody, which should have fallen to them automatically according to *shari'a* law.⁵⁹ Patrilineal family structures in Italy, the Byzantine Empire, and the Islamic Mediterranean required most mothers to separate from their children upon remarriage.⁶⁰ Only in Portugal, with its fuzzy boundaries surrounding legitimacy, were remarrying widows allowed to keep their children from a prior relationship.

Finally, one area with potential for further comparative research is that of women's charitable bequests and religious activities in Muslim and Christian communities. As Mary Ann Fay and Yossef Rapoport have shown, Cairene women's investments of *awqaf* prove their active participation in the urban economy.⁶¹ In fifteenth-century Cairo, approximately 15–20 percent of all founders of *awqaf* were women.⁶² Also in Ottoman Bosnia, women from a variety of social backgrounds were active as founders of new *awqaf* or contributors to existing ones (see the chapter on *awqaf* by Zarinebaf and the chapter on their Christian counterparts by Grbavac).⁶³ Maya Shatzmiller has shown that a substantial number of women in Muslim Andalusia established and administered *awqaf* or drew revenues from such endowments; in her eyes, however, the *waqf* system as such "tended to curtail women's property acquisition" by withdrawing larger and larger shares of capital from circulation.⁶⁴ With respect to western European regions, JoAnn McNamara has suggested that the curtailing of women's property rights since the eleventh century was aimed at reducing the rise in *mainmort* (nontaxable) properties, triggered through women's ample donations to the church.⁶⁵ Informal pressure on Venetian patrician wives to will their dotal properties and *parafernalia* (independent possessions) as supplementary dowries to their daughters—in abrogation of intestate succession laws—as well as Florentine husbands' succession to their deceased wives' dowries can be viewed as similar measures to curb the leakage of real estate and cash into the hands of the church.

Women's participation in pilgrimages to either Jerusalem or Mecca is another area of commonality and point of intersection yet to be explored.⁶⁶ The disproportionately high number of single female residents and the subsequent emergence of *ribats* (Beguine-like communities of laywomen for devotional purposes) in late medieval Jerusalem, for example, might have established a woman-friendly environment conducive to attracting Catholic women travelers like Julian of Norwich.⁶⁷

Only a few scholars so far have ventured to conceive of the entire Mediterranean as a geographic area for the historical study of women and gender.⁶⁸ Our volume seeks to address these lacunae, familiarize scholars with some of the existing literature in different regions and languages, and suggest avenues for further comparative research.⁶⁹ Peripheral areas such as Portugal—Roman in origin but oriented toward the Atlantic—and the Mediterranean's many colonized islands and shorelines (Istria, Naxos, Mykonos) are especially interesting in our eyes because of the interplay of different developments in these regions, and the reciprocal processes of assimilation and resistance.

**CHRISTIAN, JEWISH, AND MUSLIM WOMEN ACROSS
THE MEDITERRANEAN: OUR RESEARCH**

The contributions in this book reveal common lives across the medieval and early modern Mediterranean. Whether Christian, Jewish, or Muslim, women controlled property and went to court to protect their property and exert their rights. Aristocratic wives and widows dealt actively and independently with massive amounts of property, as did, for example, Dona Violante de Tavora and Donna Isabel de Sousa of mid-seventeenth-century Portugal, who were granted immense patrimonies as the universal heirs of their husbands. Their situations may be compared with that of Delphine Menduelle, a wealthy widow of fourteenth-century Avignon, who inherited the family's patrimony through her son and used her testamentary bequests to memorialize herself after death. The widow Lippa of fourteenth-century Siena, who specified that her testamentary wealth should pass down along the female line, and the noblewoman Prodana de Sloradis of fourteenth-century Zadar in Dalmatia, who bequeathed land with olive trees to her female servant, were Christian counterparts to 'A'isha Qadin, an elite Mamluk wife of eighteenth-century Cairo, whose religious endowments provided extensive charitable support for the poor, and Shawikar Qadin, the concubine of two Mamluk amirs and the wife of another, who appointed a freed female slave as the administrator of her religious endowment. Although the courts were always male-dominated spaces, women from the West and East used them for their own purposes. Thus, Domenica, a widow in late medieval Istria, sued in court for property that her late husband had alienated against her consent, and Johana Nanyes of Valencia went to court seeking control of half of the marital property she owned with her husband. In eighteenth-century Istanbul, Karime Hatun went to court to register a religious trust with her husband as heir, directing him to distribute her property for specific charitable purposes. Other women went to court in the capacity of men, acting as witnesses or guarantors, such as Venetian wife Richelda, who faced her husband's former business associate, and Antonia Michiel, who pledged money for a traveling merchant. Women also took the place of men in marriage and dowry negotiations; for example, on the island of Mykonos, Maria, the daughter of Stamatini Karagiorgi, married according to the wishes of her mother, and the dowry of Theodoroula was provided by her sister and brother-in-law, while in Jewish communities in Umbria, Stella negotiated the marriage contract for her daughter, and Ventura had to deal with his daughter's mother-in-law, who had taken financial control of the dowry. Our volume offers these and similar case studies in the hope that the diversity of women's experiences within their communities as well as the commonalities across regions and cultures are not overshadowed by the traditional historical canvas so often dominated by general trends and the broad strokes of religion and law.

The following chapters demonstrate that there is rich archival evidence for investigating women and property across the Mediterranean. Whether widely or little used, this thick material will enable historians to ask meaningful questions about society and gender, with profound results. We hope this volume will serve as a guide to promote further comparative research of women's lives in all cultures of the Mediterranean. It is evident from these chapters that court records and documents of practice or daily life are excellent sources to span time, place, religion, and law. It is our aim to foreground the rich source base available to scholars of women's property. The chapters here use private notarial acts (such as Christian *instrumenta* and testaments; Muslim deeds of pious donation, or *waqf*; and estate deeds, or *tereke*) from archives that span the entire length of the Mediterranean: Portugal, Valencia, Avignon, Perugia, Siena, Bologna, Venice, Dalmatia, the Aegean Islands, Istanbul, and Cairo. Administrative records—such as a census record from fourteenth-century Avignon and a tax assessment known as the *Lira* from fifteenth-century Siena—combined with lawbooks (*kanunname*) that accompanied the land-and-tax registers of the Ottoman rulers are useful tools for current and future work. In addition, court records provide detailed insight into the contested nature of all property arrangements regarding women, as is shown in the chapters on commercial settlements and dowry restitution cases in late medieval and early modern Venice, and on women's commercial properties in eighteenth-century Istanbul. The investigations demonstrate that legal systems develop by borrowing from other cultures and religions, and that law, as a living institution, responds to the presence of disease, war, and the political and economic exigencies of the communities it serves.

Our examination of women and property begins at the eastern end of the Mediterranean, where religious divides were crossed as Christian law was developed in an Islamized Egypt. Maryann Shenoda offers a comparative study of canon law as it developed in the Coptic Church under the influence of Muslim jurisprudence. She focuses on attitudes toward sexual conduct and marriage among the clergy and laity, a significant matter for the Coptic canons that were written in Arabic from the end of the eleventh century through the thirteenth century. Shenoda argues that these fundamental precepts for Christian life in Egypt were conceived and articulated with influences from Islam, meaning that Muslim rulers, values, and the Arabic language all played a role in shaping these Christian texts. The central issue in these canons is women, and men's relations to women as their wives, daughters, sisters, mothers, and slaves. Also central are views on marriage, which, after the prearranged stage of a dowry contract, is entered into for the purpose of procreation. In its conceptual view, the Coptic Church in the eastern Mediterranean was developing doctrine at the same time as and perhaps influencing the Latin tradition in the West and, while using the theological vocabulary of Islam, was departing from the Muslim views on sex, marriage, and divorce. Thus, the stage is set for an examination of the

interrelationship between Christians across the eastern and western Mediterranean, as well as influences between Christian and Muslim theological concepts in Egypt.

The diverse experiences of women's lives begins with an example of how well-propriety ladies came to their wealth through inheritance, which some Christian and Jewish women acquired through their fathers' or husbands' testaments despite the dictates of intestate succession. Joëlle Rollo-Koster's study of women and inheritance in fourteenth-century Avignon outlines this sort of situation, arguing that the peculiar demography of this city favored female inheritance. Plague, war, and famine combined with the particularly masculine environment of the curial city produced a scarcity of men. Women stepped into the gap and, as a result, gained improved legal status and social prominence. The city's census, known as the *Liber Divisionis*, demonstrates this female prominence, as women appear as heads of households, often without a male guardian, and as guardians, or *tutrix*, themselves. Indeed, Rollo-Koster finds that a full quarter of the taxable property in Avignon was owned by women, many of whom freely sold their property. These heiresses in turn used their testaments to memorialize themselves after death through bequests for innumerable masses and pious and charitable causes, or by naming religious institutions as universal heirs.

Linda Guzzetti follows women of more common status into the Venetian court of appeals during the fourteenth century. Despite legal opinions and even statutes against it, women served as witnesses in court, largely owing to practical considerations in that they were party to the business involved. Similar to what has been found for the maritime cities of Genoa and Amalfi, Guzzetti uncovers examples of women who served as guarantors for men in their business dealings. Sometimes these men were their husbands; in other cases the relation is unclear. She discovers that women were party to approximately 15 percent of the cases at court. Venetian law permitted women to be witnesses in specific types of trials concerning last wills and dowry restitution, but Guzzetti finds that the *petizione* judges often heard female testimony for cases concerning business. Working women, such as secondhand-clothes dealers and goldsmiths, went to court to defend their own interests, as did wives and widows of stonemasons or wealthy merchants, who had economic partnerships with their husbands. Elite women often went to court over the administration of real estate and collected rents. Guzzetti finds that in the maritime economy of Venice, when husbands and sons were away, wives substituted for them in court.

Branka Grbavac examines the noblewomen of Zadar, a privileged group in medieval Dalmatia's principal city. Her study examines all of the extant testaments of noblewomen from the fourteenth century, providing a breakdown of the marital status and reasons these women gave for composing their last wishes. Although they were restricted in their possession and disposal of landed property, these noblewomen were able to dispose of large amounts of movable wealth according to their own wishes, which in the

case of these testaments was principally for pious and charitable causes. Grbavac demonstrates that a few noblewomen did in fact bequeath land for pious purposes, making grants to ecclesiastic institutions. Other noblewomen bought land to subsequently give, thus keeping it out of the reach of relatives who stood to gain through inheritance. Movable property, however, was most prominent in these testaments. These women bequeathed huge sums of money but also food, clothing, and liturgical items.

Notarial practice in medieval Dalmatia followed that of Italy, and the next chapter examines such acts in the place that established medieval notarial law: Bologna. Shona Kelly Wray examines women's testaments in the rich notarial registers known as the *Libri Memoriali* during the year of the Black Death (1348), when the presence of epidemic disease prompted unprecedented numbers of the populace to make their wills; over 1,200 wills from the town and over 900 wills from Bologna's countryside are extant. July was the cruelest month in town, when over five hundred ill testators dictated their last wishes, but in the contado (countryside), the plague was sustained at its highest levels in August and September, when nearly six hundred wills were written. Forty percent of the testators were women, who testated without the need of a male guardian. Thus, the devastation of epidemic disease produced a bounty for the historian, allowing Kelly Wray to investigate women's will-making habits in the city and the lesser-studied countryside. She finds continuities in women's participation in notarial culture across urban and rural areas. She also notes that testators during the Black Death were more likely to go against the strong patrilineal restrictions of Italian intestacy law and appoint female relatives in place of men. As demonstrated frequently in this volume, women benefited from the scarcity of men.

Karen Frank introduces Jewish women in late medieval Umbria, whose access to and use of property differed from what was allowed women by Jewish law. Women's control of property was heavily restricted under the legal dictates of the Torah, Mishnah, and Babylonian Talmud, which treated women as perpetual minors, unable to inherit from men unless they were daughters with no brothers. Frank bases her examination on the records of Christian notaries, involving transactions of Jews living in fifteenth-century Umbria, and relates her findings to recent studies on Jewish communities in medieval and early modern Italy and Europe that argued for greater autonomy for women. The notarial acts provide numerous examples of Jewish women who managed dotal property in ways contrary to legal prescriptions: they alienated their own dowries and acted without male supervision as they arranged the dowry of their daughters. Similarly, the rigid patrilinearity of laws on succession were not followed when it came to testamentary practice: men named wives and daughters as universal heirs. Frank also provides evidence of women who distributed their property as they saw fit, not simply giving it to their husbands as their heirs. She details women who engaged in business independent of male

oversight both as widows—perfectly possible under Jewish law—and as wives and single women—technically restricted under Jewish law. Putting first the practical needs of families and the economic necessities of the community, Jewish men afforded women greater rights than one would expect by studying the law alone.

In her study of marriage contracts of late medieval Valencia, Dana Wessell Lightfoot highlights the fact that alternatives to the dotal regime did exist. Artisan couples made property arrangements at marriage known as *germanía*, by which all assets of the couple were merged into a jointly managed fund. Lightfoot explores the implications of this *germanía* system, and wonders whether it was as egalitarian as some historians have argued. She mines the notarial record to detail the differences in *germanía* and dotal acts in terms of the types of property and their use. Used by one-fifth of marrying couples, often of agricultural backgrounds, the *germanía* worked best for farming families that sought to keep their property intact and avoid the partible inheritance practices dictated by the Valencian law code, or *Furs*, thus foregrounding in a new light the inseparable link between marital assigns and inheritance. But the *germanía* act also brought to the negotiating table the demand that the wife's contribution be recognized as sustaining the household. While a bride's family regarded dowry as her security after marriage, the woman who negotiated a *germanía* act with her husband gained his recognition that she was his partner in their community of goods. Yet this financial power came with a risk: the courts recognized only the dotal regime.

Marriages that followed the dotal regime did not always entail drastic restrictions in women's access to property or lack of female autonomy. According to Elena Brizio's study of Siennese notarial records, noblewomen had ample access to their husbands' wealth. Although Siena's civic statutes promoted limits on women's inheritance similar to those of Florence, Brizio argues that men often preferred to leave their wealth to their daughters and wives instead of turning to distant male kin as the law prescribed. Furthermore, at marriage, men gave their wives gifts (*donatio*) in movable and immovable properties that were not limited in size by law. Notarial evidence from rural and urban Siena demonstrates that Siennese women acted with autonomy in managing their property; they used their testaments to bypass the dictates of intestacy law and had regular recourse to notarial services to effect property transactions in their own interests. The political turmoil that disrupted daily life in sixteenth-century Siena provided loopholes of independence that some elite women were able to exploit. The families of men sent into exile depended on the womenfolk at home for economic well-being and political survival. Other elite women were able to exert their will on personal matters, such as choice of marriage partner. But while some women of prominent families were able to act independently, others had less familial support and either suffered the hardship of poverty or were vulnerable to predations of violent men.

Across the Adriatic Sea, families in late medieval Istria had various options in choosing marital assigns. Although property arrangements based on limiting women's wealth to the dowry (as practiced in Italy) did exist, the most common choice among the patrician and lower classes was marriage "as brother and sister," known to modern scholars as the Istrian marriage pattern. Marija Mogorović Crljenko provides a careful analysis of this alternative marriage model according to which spouses had communal ownership over property brought to the marriage. This system afforded ample protection for widows, because at dissolution of the marriage by death, half of the marital property went to the surviving spouse. Wives also gained significant control of the family wealth during marriage, because although property acquired during the marriage belonged to each spouse independently, the couple managed it together; thus, the consent of a wife was required for any alienation. Women did go to court to demand the annulment of sales made by their husbands without their consent and, unlike the Valencian plaintiffs married according to the *germanía* arrangement, the courts upheld the marital community property and had goods returned. Istrian husbands respected their wives' competence in running the household by naming them executors in their wills and choosing them as guardians for minor children. These benefits did not come without limitations, however, as many widows received—beyond half of the communal property—usufruct, but only under the condition of remaining a widow. Similarly, the decisions of a female guardian had to be approved by two male relatives, and although women could distribute their wealth freely in their testaments, they had to declare their last wishes in the presence of their husband or male relatives.

Communal ownership again comes into play in Jutta Sperling's comparison of marriage models of Portugal and northern and central Italy. She demonstrates that Portuguese law promoted well-balanced gender relations within marriage both by mandating joint ownership of property in marriages of commoners and by preserving the pre-Tridentine notion of marriage as based on consent alone. Italian communal statutes, on the other hand, promoted a secular view of marriage as a formal arrangement based on dowry exchange between families, and mandated agnatic and patrilineal inheritance, thereby denying daughters both equitable ownership of the patrimony as well as the religious right to freely choose their spouse. In Portuguese marriages, spouses had mutual and symmetrical rights based on joint ownership, and this equitable reciprocity, Sperling notes, was mirrored in laws concerning inheritance: parents could inherit from their children (if they died without heirs), and children could disinherit their parents. Doubtless because of the presence of many informal marriages, Portuguese law differed notably from Italian law in its generous view of illegitimate children: "natural" children had a right to a share in their parents' inheritance and, if there were no legitimate heirs, could be made universal heirs. Sperling examines fifty wills from mid-seventeenth-century Lisbon to

illustrate these principles of joint ownership among spouses, egalitarian inheritance laws, and acceptance of informal domestic partnerships.

Using statutes, court records, and testaments from sixteenth-century Venice, Anna Bellavitis provides a sophisticated analysis of the dowry. Almost paradoxically, a woman received a dowry at marriage as her form of patrimonial inheritance from her father, but as a wife, it was her husband who used it, even though she could bequeath it in a will. This was a woman's unusable wealth, which she could use only when she became widowed and—it turns out—successfully sue for in court. Venetian law safeguarded this supreme principle by requiring that the value of dowries be guaranteed on other wealth, normally landed property, belonging to the husband and his family. Thus, if widows could successfully get their dowries back—and Bellavitis shows us that many widows indeed had to sue their in-laws in court—they would often receive landed property in return, despite the fact that Venetian law prohibited the inheritance of landed property by women in most cases. Thus, Bellavitis notes an interesting twist to the patriarchal tendencies of the dotal regime: the legal system designed to channel movable wealth to daughters to preserve the landed wealth of the natal family for its sons ended up diverting the landed wealth of a husband's family to his widow, an outsider. As Bellavitis points out, Venetian mercantile families traded and governed together, locked within this reciprocal system of benefit and loss through their womenfolk. It was a delicate balancing act, but it united the patriciate and thus the Venetian Republic. Even though sumptuary laws tried to regulate dowry size and tighten the spigot on this "dangerous flow of capital," dowry inflation could not be stopped. The same patrician men who drew up those laws knew, deferred to, and benefited from the fact that high dowries meant high social status; as judges, they authorized petitioning widows to receive much higher dowries than the law allowed.

Federica Francesconi engages the historiography of Jewish women in medieval and early modern Italy to provide a nuanced picture of upper-middle-class Jewish women in eighteenth-century Modena. Using a wide array of primary sources, including wills and contracts from the archives of the charitable association *Havurat So'ed Holim* as well as correspondence with the Estense state, Francesconi uncovers the lives of three influential members: Miriam Rovigo, the association's founder and spiritual and economic leader; Devora Formigini; and Anna Levi. Here is evidence of Jewish women's social and economic activities, which contrasts with the traditional emphasis on patriarchal oppression. Organized structurally along the same lines of traditional male confraternities, the *Havurat So'ed Holim* was nevertheless autonomous in its organization and distribution of charitable funds. It gained financial strength through donations by its members but also through careful management of complicated credit arrangements, negotiated by its members—especially Miriam Rovigo. Yet this vision of independence is countered by Francesconi's description of

the two other members, who renounced rights to their large dowries in order to benefit the male-centered business activities of the larger family. Her evidence tempers recent historiographical trends stressing the financial power and legal guarantees granted to Jewish women through their dowries. Francesconi certainly finds that Jewish women acted with agency in eighteenth-century Modena, but it was always a restricted agency that had to function within the patriarchal boundaries of family and society.

Mary Ann Fay's chapter offers a comparative study of women's property rights under northern European (England and France) and Islamic law in the eighteenth century to argue that Islam provided women more security. A married European woman became a *feme covert*—a status that subsumed her legal identity under that of her husband, who then controlled her property. Although, as Fay notes, aristocratic families found ways, such as jointure, to settle property on their daughters for their separate use—not to mention the fact that recent work has highlighted various ways that such status could offer protection and legal maneuverability in the male-dominated world of commerce and the courts⁷⁰—Fay's point must be emphasized: Islamic law did not penalize women because of their marital status. Adult Muslim women could own and manage property regardless of whether they were unmarried, married, or widowed. Fay examines women's management of property in the economy of eighteenth-century Cairo in the form of the *waqf*, or religious trust—property exempt from the strict Islamic inheritance laws that disadvantaged females—although, as noted earlier, others have argued that such *awqaf* could be used to name male heirs and thus bypass the protection of female property rights guaranteed by the Qur'an. Using the records of the Ministry of Awqaf, Fay demonstrates that Egyptian women endowed all kinds of commercial and residential property as *waqf* and named themselves as temporary beneficiaries and administrators before that property passed to the pious heirs. Use of the *waqf* was widespread among Muslim women, who went to court to protect their rights and their property, which provided them revenue to support themselves.

A further investigation of women in court is offered by Fariba Zarinebaf, who studied the Islamic court registers (*sicill*) of eighteenth-century Istanbul. Like their Christian and Jewish peers in Italy, and other Muslim women in Cairo, the Ottoman women of Istanbul went to court to register loans and property transactions and to claim their inheritance shares. Inventories of estates (*tereke*) show class differentiation. By studying the registration of cash *awqaf* (pious endowments treated as loans), Zarinebaf uncovers the experience of women of modest means who had to borrow money to survive. Even well-off women who had entered periods of difficulty, often as a result of divorce, had to resort to these loans, putting up as surety their jewelry, clothing, and other belongings. Women were often vulnerable in court, sometimes losing all they owned. However, when women used the courts to defend their property interests, such as the collection of

rent on properties they had inherited, they often profited. The courts also tackled cases of inheritance, as Islamic law of succession could pit family members against each other: children against the mother, and male against female siblings. The possible advantages for women that Islamic courts offered encouraged Christian (Armenian and Greek) and Jewish women to use them to register loans, property dealings, and estates.

Evdoxios Doxiadis's chapter returns the focus to marriage, a time for the creation of alliances among kin. In this regard, marriages of the early modern Aegean Islands were similar to those throughout the medieval and early modern Mediterranean, but in Greece the marriage ceremony also marked the transfer of wealth to both bride and groom in the form of their respective inheritances. Thus, sons received their share of patrimony as "dowry" at marriage. Roman-Byzantine law continued to influence these early modern marriages in that the wife retained absolute ownership of her dowry during marriage, and any alienation had to have her consent. This was the case in early modern Istria but absent from Italian marriages, where husbands controlled the dowry. Also, unlike their western Mediterranean counterparts, Aegean families allocated property at marriage by gender, with mothers transmitting property to their daughters, and fathers to their sons. Through an analysis of dowry contracts on the islands of Naxos and Mykonos, Doxiadis demonstrates that beyond the parents, a wide selection of kin were significantly involved in providing dowries. In the more agrarian culture of Naxos, more customary practices are evident in which brothers dominate as providers of dowries, while more distant relatives—with female relatives taking prominent roles—participated in the marriages on the more commercial island of Mykonos. Thus, through dowering practices, the women of Mykonos donated property to foster wider kinship ties and even commercial alliances among families. Endowed with property rights from Roman-Byzantine law, the women of Mykonos exercised those rights by gift giving at the public ceremony of the marriage and, through their material donations, gained social capital.

In the final chapter we return to the eastern Mediterranean and a discussion of law, here secular. Colin Imber focuses on *miri*, land held by the sultan, which was usually given as fief (*timar*) in return for military service. In concept and terminology, the *timar* follows from the conquered Christian regimes. Imber outlines the history of Ottoman lawbooks, or *kanunnames*—compilations of law, or *kanun*, derived from the Byzantine term for land tax, *kanon*. He analyzes women's right to inherit land in these laws as they developed, from versions in the 1500s that dealt with districts within provinces, to general *kanunnames* with laws that applied throughout the empire, and finally to the "New *Kanunname*" of the 1670s, which lasted until the land code of 1858. The law, Imber argues, responded to demography, and as was the case in the Christian communities examined here, women benefited. In principle, women were barred from acquiring title of *miri* land. However, Imber finds that women must have sometimes

stepped into vacancies of *timar* held by their fathers, because the lawbooks of the early sixteenth century explicitly forbade such cases. Other prohibited cases show that families took advantage of loopholes in the law: while sons could actually hold title, their sisters would share in the profits. Change arrived with a new sultan in 1568, who enacted laws allowing daughters to inherit, provided they paid a tax. Then, according to Imber, the political circumstances of the early seventeenth century that caused rebellion and flight from the land promoted even more generosity toward female heirs. Thus, in the early seventeenth century, the laws forbidding female ownership of *miri* land were weakened so that sisters and mothers could inherit. When the Ottoman population and the demand for land were on the upswing, the law privileged the male and prohibited female ownership, but when the situation was reversed, and the cultivation of *miri* land and resulting revenues for the sultan were threatened, women's right to that property became necessary—and the law changed.

The contributions to this volume thus demonstrate both the diversity of women's property rights and the varying practices within regions often examined as single cultural and legal units, such as Italy or the Muslim Middle East, as well as the commonalities that existed across the religious divides of the Mediterranean. While the deep layers of parallel developments and mutual influences in law and religion—highlighted in this volume—worked to structure women's rights in commensurable ways across the Mediterranean, the local demographic, economic, and political situations played important roles in how women lived within their respective communities, sometimes enabling women to gain greater rights to manage property. Maritime areas, it appears, offered opportunities to women; Venice, Mykonos, and Istanbul all had fluid markets in which women participated. Where economic and demographic realities required it, families and communities allowed female participation otherwise restricted by law. We hope that this comparative perspective on the complexities of women's property rights and gender relations, marriage, and kinship will serve to break down religious and linguistic barriers and reorient future research to examine the Mediterranean as a whole.

NOTES

1. Charles Perrault, *Parallèle des anciens et des modernes en ce qui regarde les arts et les sciences*, ed. Hans Robert Jauss (Munich, 1964); Charles de Secondat Montesquieu, *Persian Letters* (Paris, 1721); Mary Wollstonecraft, *A Vindication of the Rights of Woman* (London, 1792); the latter two quoted from Margaret Hunt, "Women in the Ottoman and Western European Law Courts: Were Western Women Really the Luckiest Women in the World?" in *Structures and Subjectivities: Attending to Early Modern Women*, ed. Joan E. Hartman and Adele Seeff (Newark, 2007), 176–177.
2. See, among others, Amira El-Azhary Sonbol, ed., *Women, the Family, and Divorce Laws in Islamic History* (Syracuse, 1996); Mary Ann Fay, "Women and Waqf: Toward a Reconsideration of Women's Place in the

- Mamluk Household,” *International Journal of Middle East Studies* 29 (1997): 33–51; Madeline C. Zilfi, ed., *Women in the Ottoman Empire: Middle Eastern Women in the Early Modern Era* (Leiden, 1997); Judith E. Tucker, *In the House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine* (Berkeley, 1998); Gavin R. G. Hambly, ed., *Women in the Medieval Islamic World: Power, Patronage, and Piety* (New York, 1998); Leslie Peirce, *Morality Tales: Law and Gender in the Ottoman Court of Aintab* (Berkeley, 2003); Yossef Rapoport, *Marriage, Money and Divorce in Medieval Islamic Society* (Cambridge, 2005); El-Azhary Sonbol, ed., *Beyond the Exotic: Women’s Histories in Islamic Societies* (Syracuse, 2005); Maya Shatzmiller, *Her Day in Court: Women’s Property Rights in Fifteenth-Century Granada* (Cambridge, MA, 2007); Amila Buturovic and Irvin Cemil Schick, ed., *Women in the Ottoman Balkans: Gender, Culture and History* (New York, 2007).
3. We are translating *mahr* as “bridewealth” to distinguish the groom’s marriage gifts to his bride from the dowry an Italian father, for example, might bestow on his daughter.
 4. Among others, see Hunt, “Women in the Ottoman and Western European Law Courts”; Shatzmiller, *Her Day in Court*; Amy Louise Erickson, *Women and Property in Early Modern England* (London, 1993); Silvana Seidel Menchi and Diego Quagliani, ed., *Matrimoni in dubbio* (Bologna, 2001); Menchi and Quagliani, ed., *Coniugi nemici: La separazione in Italia dal XII al XVIII secolo* (Bologna, 2000).
 5. JoAnn McNamara, “Women and Power through the Family Revisited,” in *Gendering the Master Narrative: Women and Power in the Middle Ages*, ed. Mary C. Erler and Maryanne Kowaleski (Ithaca, 2003), 17–30.
 6. Angeliki E. Laiou, *Mariage, amour et parenté à Byzance aux XIe–XIIIe siècles* (Paris, 1992).
 7. Jutta Sperling, “Marriage at the Time of the Council of Trent: Clandestine Marriages, Kinship Prohibitions, and Dowry Exchange in European Comparison,” *Journal of Early Modern History* 8 (2004): 67–108.
 8. David Powers, *Studies in Qur’an and Hadith: The Formation of the Islamic Law of Inheritance* (Berkeley, 1986), 55–59, 76–77.
 9. Rapoport, “Matrimonial Gifts in Early Islamic Egypt,” *Islamic Law and Society* 7 (2000): 11, 32.
 10. Aglaia Kasdagli, *Land and Marriage Settlements in the Aegaen: A Case Study of Seventeenth-Century Naxos* (Venice, 1999), 71.
 11. *Ibid.*, 75.
 12. Sally McKee, “Households in Fourteenth-Century Venetian Crete,” *Speculum* 70 (1995): 27–67. On seventeenth-century Crete, see also Molly Greene, *A Shared World: Christians and Muslims in the Early Modern Mediterranean* (Princeton, 2000).
 13. Catholic and Orthodox marriage impediments were valid for consanguineous, collateral, and spiritual kinship up to the seventh and fourth degrees according to Roman and Germanic/Canonic calculation, respectively; this meant that a person could not marry his or her cousin’s cousin. *Laiou, Mariage, amour et parenté*, 13–14.
 14. Svetlana Ivanova, “Judicial Treatment of the Matrimonial Problems of Christian Women in Rumeli during the Seventeenth and Eighteenth Centuries,” in Buturovic and Schick, *Women in the Ottoman Balkans*, 153–200.
 15. Sophia Laiou, “Christian Women in an Ottoman World: Interpersonal and Family Cases Brought Before the Shari’a Courts during the Seventeenth and Eighteenth Centuries,” in Buturovic and Schick, *Women in the Ottoman Balkans*, 243–272.

16. In Visigothic law, only one-third of a person's estate was reserved for division among all descendants. Isabel Velázquez, "Jural Relations as an Indicator of Syncretism: From the Law of Inheritance to the *Dum Inlicita* of Chindaswinth," in *The Visigoths: From the Migration Period to the Seventh Century: An Ethnographic Perspective*, ed. Peter Heather (Woodbridge, 1999), 225–259; see also Heather, introduction to *The Visigoths*, 4; Shatzmiller, *Her Day in Court*, 88.
17. John L. Esposito with Natana J. DeLong-Bas, *Women in Muslim Family Law* (Syracuse, 2001), 109. Powers, *Studies in Qur'an and Hadith*, 59.
18. Maria de Lurdes Rosa, *O Morgadio em Portugal (sécs. XIV–XV): Modelos e práticas de comportamento linbágístico* (Lisbon, 1995).
19. Powers, "The Maliki Family Endowment: Legal Norms and Social Practices," *International Journal of Middle Eastern Studies* 25 (1993): 379–406.
20. Shatzmiller, *Her Day in Court*, 37; "Costumes e foros de Castello-Bom (1188–1230)," *Portugaliae Monumenta Historica, a saeculo octavo post Christum usque ad quantum decimum iussu Academiae Scientiarum Olisiponensis: Leges et Consuetudines*, vol. 1 (1856; repr., Liechtenstein, 1967), 745–790.
21. Diane O. Hughes, "From Brideprice to Dowry in Mediterranean Europe," *Journal of Family History* 3 (1978): 262–295.
22. Legitimate as well as illegitimate fathers had to maintain their divorced wives or domestic partners for the duration of three years for the purpose of breastfeeding; if the mother was of an elevated status, the child's father had to pay for a wet nurse. Ruy Gonçalves, *Privilegios e prerogativas que o genero feminino tem por Direito commum, e Ordenaçoens do Reino, mais que o genero masculino* (1557; repr., Lisbon, 1785), 232–235; Tucker, *In the House of the Law*, 124.
23. João Carvalho, *Novus et Methodicus Tractatus de una et altera quarta deducenda, vel non Legitima, Falcidia, et Trebellianica, ad cap. Raynaldus, de Testamentis* (Lyon, 1677), 31, par. 256; Gonçalves, *Privilegios e prerogativas*, 72.
24. Rebecca Lynn Winer, *Women, Wealth, and Community in Perpignan, c. 1250–1300: Christians, Jews, and Enslaved Muslims in a Medieval Mediterranean Town* (Burlington, VT, 2006), 94; McKee, "Households in Fourteenth-Century Venetian Crete," 37.
25. Winer, *Women, Wealth, and Community*, 79.
26. Kenneth Stow, *Theater of Acculturation: The Roman Ghetto in the Sixteenth Century* (Seattle, 2001), 78, 80.
27. Shatzmiller, *Her Day in Court*, 35; Rapoport, "Matrimonial Gifts," 32.
28. Peirce, *Morality Tales*, 152.
29. Stanley Chojnacki, "Dowries and Kinsmen in Early Renaissance Venice," *Journal of Interdisciplinary History* 5 (1975): 571–600, esp. 575.
30. On the Italian-style dowry system, see, among others, Manlio Bellomo, *Ricerche sui rapporti patrimoniali tra coniugi* (Milano, 1961); Hughes, "From Brideprice to Dowry"; Christiane Klapisch-Zuber, *Women, Family, and Ritual in Renaissance Italy* (Chicago, 1985); Isabelle Chabot, "La sposa in nero: La ritualizzazione del lutto delle vedove fiorentine (secoli XIV–XV)," *Quaderni Storici* 86 (1994): 421–462; Chabot, "La loi du lignage. Notes sur le système successoral florentin (XIVe/XVe–XVIIe siècles)," *Clio* 7 (1998): 51–72; Chabot, "Risorse e diritti patrimoniali," *Il lavoro delle donne*, ed. Angela Groppi (Roma, 1996), 56; Chabot, "Lineage Strategies and the Control of Widows in Renaissance Florence," *Widowhood in Medieval and Early Modern Europe*, ed. Sandra Cavallo and Lyndan Warner (Harlow, Essex, UK, 1999), 127–144; Eleanor Riemer,

- “Women, Dowries, and Capital Investment in Thirteenth-Century Siena,” in *The Marriage Bargain: Women and Dowries in European History*, ed. Marion A. Kaplan (New York, 1985), 59–80; Julius Kirshner, “Maritus Lucretur Dotem Uxoribus Sue Premortue in Late Medieval Florence,” *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* 108 (1991): 111–155; Kirshner, “Materials for a Gilded Cage: Non-Dotal Assets in Florence, 1300–1500,” in *The Family in Italy from Antiquity to the Present*, ed. David I. Kertzer and Richard P. Saller (New Haven, 1991), 184–207; Julius Kirshner and Anthony Molho, “The Dowry Fund and the Marriage Market in Early Quattrocento Florence,” *Journal of Modern History* 50 (1978): 403–478; Kirshner, “Li Emergenti Bisogni Matrimoniali in Renaissance Florence,” *Society and Individual in Renaissance Florence*, ed. William J. Connell (Berkeley, 2002), 79–109; Thomas Kuehn, *Law, Family, and Women: Toward a Legal Anthropology of Renaissance Italy* (Chicago, 1991); Chojnacki, *Women and Men in Renaissance Venice: Twelve Essays on Patrician Society* (Baltimore, 2000); Anna Bellavitis, *Identité, mariage, mobilité sociale: Citoyennes et citoyens à Venise au xvie siècle* (Rome, 2001); Bellavitis, “Patrimoni e matrimoni a Venezia nel Cinquecento,” in *Le ricchezze delle donne: diritti patrimoniali e poteri familiari in Italia (XIII–XIX secc.)*, ed. Giulia Calvi and Isabelle Chabot (Turin, 1998), 149–60; Linda Guzzetti, “Dowries in Fourteenth-Century Venice,” *Renaissance Studies* 16 (2002): 431–432.
31. Igor Mineo, *Nobiltà di Stato: Famiglie e identità aristocratiche nel tardo medioevo. La Sicilia* (Rome, 2001); Jutta Sperling, “Dowry or Inheritance? Kinship, Property, and Women’s Agency in Lisbon, Venice, Florence (1572),” *Journal of Early Modern History* 11 (2007): 197–238; Sperling, “Women’s Property Rights in Portugal under Dom João I (1385–1433): A Comparison with Renaissance Italy,” *Portuguese Studies Review* 13 (2005): 1–33; Martha C. Howell, *The Marriage Exchange: Property, Social Place, and Gender in Cities of the Low Countries, 1300–1550* (Chicago, 1998); Winer, *Women, Wealth, and Community*.
 32. Aglaia Kasdagli states that in Naxos, Jack Goody’s much-debated concept of dowry exchange as diverging devolution is applicable. Kasdagli, *Land and Marriage Settlements*, 261. For further comparative studies on dowry exchange, see Caroline Brettell, “Kinship and Contract: Property Transmission and Family Relations in Northwestern Portugal,” *Comparative Studies in Society and History* 33 (1991): 443–465; Caroline Brettell and David Kertzer, “Advances in Italian and Iberian Family History,” *Journal of Family History* 12 (1987): 87–120.
 33. Shatzmiller, 24. Yossef Rapoport goes as far as terming the *mahr* “dowry,” but also “trousseau.”
 34. Peirce, *Morality Tales*, 224–225. Tucker, *In the House of the Law*, 55.
 35. Rapoport, “Matrimonial Gifts,” 13.
 36. Klapisch-Zuber, “The Griselda Complex: Dowry and Marriage Gifts in the Quattrocento,” in *Women, Family, and Ritual*, 213–246; Chabot, “La sposa in nero.”
 37. Peirce, *Morality Tales*, 222.
 38. Karin Gottschalk, *Eigentum, Geschlecht, Gerechtigkeit: Haushalten und Erben im frühneuzeitlichen Leipzig* (Frankfurt am Main, 2003).
 39. Rapoport, *Marriage, Money, and Divorce*, 62–63.
 40. Peirce, *Morality Tales*, 238; Powers, “The Maliki Family Endowment,” 385, 394; Shatzmiller, *Her Day in Court*, 73. For a positive assessment of *awqaf* and women’s property rights, see Fay, “Women and Waqf: Toward a Reconsideration of Women’s Place in the Mamluk Household.”

41. Kalliopi Papakonstantinou, *Die collatio dotis: Mitgift und Miterben-Auseinandersetzung im römischen Recht* (Cologne, 1998).
42. Laurent Mayali, *Droit savant et coutumes: L'exclusion des filles dotées XIIème–XVème siècles* (Frankfurt am Main, 1987).
43. Timothy J. Coates, *Convicts and Orphans: Forced and State-Sponsored Colonizers in the Portuguese Empire (1550–1755)* (Stanford, 2001), 153–158; Allen F. Isaacman, *Mozambique: The Africanization of a European Institution; the Zambesi Prazos, 1750–1902* (Madison, 1972).
44. Bellomo, *Ricerche sui rapporti patrimoniali*, 64; Maria Teresa Guerra Medici, *L'aria di città: Donne e diritti nel comune medievale* (Naples, 1996), 121–122.
45. During the Council of Trent, Charles de Guise—Cardinal of Lorraine, superdelegate from France—demanded the abolition of clandestine marriages because they facilitated informal separations. Clandestine marriages were particularly widespread in early modern Portugal. Stephan Ehse, ed., *Concilium Tridentinum: Diariorum, Actorum, Epistularum, Tractatum Nova Collectio: Concilii Tridentini Actorum*, vol. 9 (Sept. 17, 1562–Dec. 4, 1563) (Freiburg, 1924), 642–643; Sperling, “Marriage at the Time of the Council of Trent.” For Italy, see Seidel Menchi, “I processi matrimoniali come fonte storica,” in Menchi and Quagliani, *Coniugi nemici*, 29. In eighteenth-century Malta, couples showed a clear preference for domestic unions as well, in order to avoid the indissolubility of a wedding celebrated in the church. Frans Ciappara, “Perceptions of Marriage in Late-Eighteenth-Century Malta,” *Continuity and Change* 16 (2001): 379–398.
46. Angeliki Laiou, *Marriage, amour et parenté*, 11.
47. Kasdagli, *Land and Marriage Settlements*, 253. Men also used this clause to divorce unwanted wives: Angeliki Laiou, *Marriage, amour et parenté*, 56, 57; on the dissolution of marriages by the church for violation of marriage prohibitions, see *ibid.*, 119.
48. Daniela Lombardi, *Matrimoni di antico regime* (Bologna, 2001).
49. Daniela Hacke, *Women, Sex, and Marriage in Early Modern Venice* (Burlington, VT, 2004); Joanne M. Ferraro, *Marriage Wars in Late Renaissance Venice* (Oxford, 2001); Emlyn Eisenach, *Husbands, Wives, and Concubines: Marriage, Family, and Social Order in Sixteenth-Century Verona* (Kirksville, MO, 2004); Julie Hardwick, “Seeking Separations: Gender, Marriages, and Household Economies in Early Modern France,” *French Historical Studies* 21 (1998): 157–180.
50. Stow, *Theater of Acculturation*, 78.
51. Rapoport, *Marriage, Money, and Divorce*, 5, 83.
52. *Ibid.*, 69–73; Peirce, *Morality Tales*, 231; Tucker, *In the House of the Law*, 95; Shatzmiller, *Her Day in Court*, 30.
53. Tucker, *In the House of the Law*, 125.
54. See, among others, the books quoted earlier by Tucker, Peirce, Rapoport, and Shatzmiller.
55. Angeliki Laiou, “The Role of Women in Byzantine Society,” in *Gender, the Family and Social Structures* (Paris, 1992), 233–260; Zoë Schneider, “Women before the Bench: Female Litigants in Early Modern Normandy,” *French Historical Studies* 23 (2000): 1–32.
56. Guido Ruggiero, *The Boundaries of Eros: Sex Crimes and Sexuality in Renaissance Venice* (Oxford, 1985); Stanley Chojnacki, “Getting Back the Dowry,” *Women and Men in Renaissance Venice*, 95–111.
57. Giulia Calvi, *Il contratto morale: Madri e figli nella Toscana moderna* (Roma, 1994).
58. Winer, *Women, Wealth, and Community in Perpignan*, 52.

59. Peirce, *Morality Tales*, 232.
60. Klapisch-Zuber, "The Cruel Mother," in *Women, Family, and Ritual*, 117–131; Ivanova, "Judicial Treatment," 252; Peirce, *Morality Tales*, 232; Rapoport, *Marriage, Money, and Divorce*, 73; Tucker, *In the House of the Law*, 125, 134.
61. Fay, "Women and Waqf Toward a Reconsideration of Women's Place in the Mamluk Household"; Fay, "Women and Waqf: Property, Power, and the Domain of Gender in Eighteenth-Century Egypt," in *Women in the Ottoman Empire*, 28–47.
62. Rapoport, *Marriage, Money, and Divorce*, 29.
63. Kerima Filan, "Women Founders of Pious Endowments in Ottoman Bosnia," in *Women in the Ottoman Balkans*, 99–126.
64. Shatzmiller, *Her Day in Court*, 75.
65. McNamara, "Women and Power through the Family Revisited."
66. Marina Tolmacheva, "Female Piety and Patronage in the Medieval 'Hajj,'" in *Women in the Medieval Islamic World*, 161–180.
67. Rapoport, *Marriage, Money, and Divorce*, 44–45; Julian of Norwich, *Revelations of Divine Love*, ed. Elisabeth Dutton (Lanham, MD, 2008).
68. Hunt, "Women in Ottoman and Western European Law Courts"; Caroline Brettell and David Kertzer, "Advances in Italian and Iberian Family History," *Journal of Family History* 12 (1987): 87–120. Caroline Brettell's comparative study on dowry exchange, "Kinship and Contract," is limited to the Christian areas of the Mediterranean.
69. In her recent study of Leo Africanus, alias al-Hasan al-Wazzan, alias Yuhanna al-Assad, Natalie Zemon Davis shows how this most consummate of early modern travelers was affected by his intimate experiences of gender relations and family life in Italy, which "were both similar to and different from what he knew from North Africa and the world of Islam." Male homosexuality, dowry practices, prostitute culture—Zemon shows how he was able to "compare the two social worlds, assess their similarities, and hold on to their differences." Natalie Zemon Davis, *Trickster Travels: A Sixteenth-Century Muslim between Worlds* (New York, 2006), 204, 222.
70. Marjorie MacIntosh's work on women's pleas for *feme sole* status in the London courts suggests "that being a *femme couverte* under the common law was not uniformly perceived as a handicap." See MacIntosh, "The Benefits and Drawbacks of *Femme Sole* Status in England, 1300–1630," *Journal of British Studies* 44 (2005): 410–438.

1 Regulating Sex

A Brief Survey of Medieval Copto-Arabic Canons

Maryann Shenoda

In the eleventh century, the Lower Egyptian bishops confronted Pope Cyril II (1078–1092) about his ill repute and exhorted him to dismiss his companions from their office of service to the pope. The disgruntled bishops had decided that the ecclesiastic servants and companions of the pope and patriarch of Alexandria should be more virtuous, more pious, and, in some cases, less sexually promiscuous. The pope promised, in writing, to send these companions away but, upon further ruminating, decided that no group of bishops would dictate the affairs of the papacy and dismissed only one of his ungodly companions: Abu al-Karam, a monk who had lived an unbecoming monastic existence. Upon hearing of the pope's ruse and his dismissal of their written contract rather than his ungodly companions, the bishops made recourse to civil authority, where they brought complaints of their leader before the Fatimid wazir, Amir al-Juyush Badr al-Jamali. The wazir, originally a freed Armenian slave who had come to Cairo at the request of the caliph al-Mustansir in 1073, was dismayed by the fissure and disturbed by the bishops' recourse to civil authority regarding an ecclesiastical matter. In turn, Amir al-Juyush summoned the pope and his dissatisfied bishops and reprimanded the bishops for demeaning their leader's authority by making recourse to the wazir. He praised Cyril for his virtue and ordered him to write laws by which he might order the affairs of the clergy and laity, so as to avoid such an occurrence in the future; thus were written the canons of Pope Cyril II in 1086. This account of Cyril and his dissatisfied bishops is given as a preface to the pope's canons; however, the author of the account is very careful to point out that Cyril was, in fact, a pious man and innocent of the charges set against him. Nonetheless, in compliance with the wazir's request, the pope compiled a total of thirty-four canons, which are part of a larger body of medieval Copto-Arabic canons. These canons would come to play an important foundational role in the establishment of personal status laws for Coptic Christians in the medieval and modern periods in Egypt.

Unlike the Christian canons of medieval Europe, the medieval Copto-Arabic canons—that is, the Arabic-language canons of the Coptic Orthodox Church—were not necessarily developed or studied in conjunction with

a secular law, since Egypt was governed by Islamic jurisprudence and relics of Byzantine codes after the Arab conquest (642). Consequently, medieval Coptic canons cannot be considered foundational building blocks for later civil laws or the beginnings of a legal tradition in Egypt because Islamic law was the primary legal code for both Muslims and non-Muslims.¹ However, while these canons are not as significant for the establishment of secular law, they do present salient vignettes into the social history of the Coptic Church in Egypt. Addressing a variety of topics dealing with the religious, social, spiritual, and even sexual conduct of clergy and laity, these canons offer an important insight into how the medieval Coptic Church attempted to codify the daily life of believers.

To what extent did the Islamization of Egypt affect the Coptic canonical tradition of the medieval period? To what extent did the Western Christian tradition affect the Coptic canons? What are the definitions of propriety for men and women? And, more specifically, how did Coptic Christians articulate sex and sexuality in medieval Egypt? These are significant questions for the historian, and although it may be quite challenging to answer them with regard to the everyday practices of Coptic Christians, we may begin to understand how the Coptic hierarchy attempted to govern concepts of sex through the writing of canons. Since this topic is understudied in the medieval Coptic context, there are many avenues by which it may be approached. For example, much more research is needed to elucidate the links between the medieval Copto-Arabic canonical tradition and the Western canonical tradition as articulated in Lateran Councils I–IV (1123–1215), in Gratian's *Decretum* (c. 1140), in Gregory IX's decretals (1234), and in the writings of Latin fathers such as Thomas Aquinas (1225–1274). Some stipulations governing sexual conduct in the Western tradition are similar, if not identical, to those found in the Coptic tradition. Such a comparative approach will help historians understand the complex relationship between the Eastern and Western churches before and after the great schism of 1054. Moreover, this approach will complexify a history of the interrelationship between Christians in the East and West, which does not necessarily come to a complete stop because of doctrinal differences or the spread of Islam. Additionally, more attention needs to be paid to the Islamization of Egypt and the ways that Islamic schools of jurisprudence may have affected the conception and articulation of Copto-Arabic canon law. Specifically, we need to think about how the vocabulary of Islamic jurisprudence may have been adopted by Copts to effectively communicate the hierarchy's position on a particular issue in the Arabic language.²

In view of the amount of research still needed, I would like to begin by considering one aspect of Copto-Arabic canons: the hierarchical articulation and regulation of sex and sexual conduct among clergy and laity. Given the limited space of this chapter, I will only be able to offer a very brief survey of the canons of Popes Cyril II (1078–1092); Gabriel, known as Ibn Turayk (1131–1145); and Cyril III, known as Ibn Laklak (1235–1243), which pertain

to this topic.³ In many cases the Copto-Arabic canons I survey have Latin parallels, which I will discuss and compare; however, this does not mean that the Western canonical tradition is the only one that has influenced the Copto-Arabic canons, nor does it mean that the Copto-Arabic canons have not made their own impact on Western or Islamic traditions. My point is a very simple one: considering Egypt's position amid an important medieval trade route that connected East and West, the historical prominence of the See of Alexandria in all of Christendom, and the presence of a burgeoning Islamic establishment in Cairo, we cannot neglect the possibility of exchange—material goods, ideas, religious practices, and customs being only some of the things that were exchanged among a whole host of peoples in the medieval period. Were the canons of the church exchanged as well? Perhaps the ideas articulated in them were, or perhaps some of them represent a shared concern among medieval Christians. Nevertheless, it is important to recognize that these canons were not produced or implemented in a vacuum, which is why future research on this topic must examine their complex historical backdrop.

Traditionally written by popes or bishops, canons were formulated for a variety of reasons: to comply with the demands of the Islamic ruling body, as indicated by the preceding anecdote; for the purposes of conveying the position of the Church regarding religious, doctrinal, liturgical, and social matters; or even to confirm pastoral power. Just as with the Latin Christian canons, the Copto-Arabic canons of this time period are concerned not only with ordering the affairs of the Coptic Church as well as those of its laity but also with maintaining the clergy's authority.

Typically, these canons begin with a statement affirming the pope's divinely appointed position as archbishop, and in many cases he is likened to Old Testament prophets (such as Moses and Jeremiah), who communicated grand messages to the people of God. The canons then delineate what is proper and edifying behavior for clergy (beginning with bishops, then moving on to priests, deacons, and monks). In some cases this is followed by an explanation of the liturgical rites of the church, after which come the personal status laws that govern the social relations and private behaviors of the laity, focusing on such matters as marriage, marital relations, extramarital relations, and divorce. One of the most central matters to be regulated by the canons is sex and sexual conduct. Whether it be with respect to the laity or to the clergy, the medieval Copto-Arabic canons spend a great deal of time articulating proper Christian behavior, which is always concerned with preserving chastity and preventing sexual promiscuity as well as promoting proper sexual conduct in situations of sanctioned sex (marriage). I should clarify that this regulation of sex was not considered unusual, since it was in the Church hierarchy's authority to involve itself in every aspect of human life, especially that of sex. Furthermore, we find that the Coptic canons of this period are no different from their Latin counterparts, which are equally concerned with sex and sexual conduct of the laity and clergy, if a bit more elaborate than the Copto-Arabic ones.⁴

CLERICAL SEX

Of the three papal canons previously mentioned, Ibn Turayk and Cyril II place the most emphasis on the clergy's spiritual, liturgical, and sexual conduct, and this may very well be because both popes found hostile opposition from clergy during their papacies. As stated at the opening of this chapter, Cyril's opposition came mainly from the bishops of Lower Egypt, who accused the pope's companions of being morally inferior. Their concern is recounted in the introduction to Cyril's canons so as to commemorate this internal conflict; interestingly, when the bishops confront Cyril on this matter, they blame his companions for the immoral state of the Coptic people (*al-sha'b*):

“Thou, our saintly father, art spiritual, but lo those who corrupt the state of the people are thy companions, and it is not right that such as these should be thy companions, because they disparage thee.” And he said to them, “Who are these whose companionship to me you detest?” They said to him: “George (Girga), bishop of Abtna, and Abraham (Ibrahim), bishop of Dibkua, and Pistos (Bistus) who was a monk who had cast aside the askim⁵ and had married a wife, and Banub the scribe, and Abu'l-Karam [Abu al-Karam] the monk. It is not fitting that these five should be with thee as thine attendants.”⁶

The author of this manuscript makes it clear that he does not agree with the bishops' accusations, which, he argues, were nothing more than a temptation from Satan to cast judgment on their leader. He even goes so far as to say that such strife among the Christians caused the wazir to turn “away from the Christian people and [made him] inclined towards the Jewish people, owing to the widely spread report of their (the Christians) blameworthy deeds and unbearable machinations, and owing to the news that reached him of the injustices of one against another.”⁷ Not only were these disreputable companions disparaging the “the state of the people,” but there was also concern that the conflict over them would disparage the Christians in the eyes of the Muslim sovereign, thereby forfeiting their privileged status to the Jews. This anecdote speaks to several aspects of Coptic history: clerical dissent, as well as Christian-Muslim, Muslim-Jewish, and Christian-Jewish relations; moreover, it offers a context for the canons that follow—canons that heavily regulate the public and private conduct of both clergy and laity. Almost half of Cyril's thirty-four canons directly address the category of clergy (bishops, priests, deacons, and monks), stipulating their ecclesiastic limits, responsibilities, and private life. The rest of Cyril's canons specify personal status codes for the laity, which also govern how the clergy serve the laity (e.g., services such as marriage, baptism, and funerals). Cyril's canons may very well have been an attempt to morally reform the state of the clergy and laity, which, as the author of the manuscript notes, had been made immoral.

While Cyril met with opposition because of his disreputable companions, Ibn Turayk found opposition upon his consecration to the papacy because of the Christological articulations he added to the liturgy of the Eucharist. The monks of Saint Macarius monastery, in the desert of Wadi al-Natrun, opposed these changes and would not recognize his papal authority until he modified his Christological statements. The new pope eventually compromised with the monks, subsequently authoring several series of canons dealing with liturgical rites, laws of inheritance, and some personal status codes. Ibn Turayk's canons are by no means as rigid as Cyril's with regard to the regulation of the clergy's authority and responsibilities; rather, they are much more concerned with the proper administering of liturgical rites. However, like Cyril, Ibn Turayk is attentive to the clergy's private life and upholds members to a standard that forbids them from being in situations that may lead to sexual promiscuity. Ultimately, Cyril's and Ibn Turayk's canons regulate clerical sexuality and attempt to prevent promiscuity by governing the clergy's interactions with both men and women in the social sphere.

For Cyril and Ibn Turayk, clergy are strictly forbidden from cohabiting with a woman, unless she falls under the category of one who is forbidden to him (*muharrama*). In his sixth canon, Cyril writes:

It is not permitted to a bishop, or a priest, or deacon, or layman to live with a woman at all, unless it be a mother, or a sister, or a paternal aunt, or a maternal aunt who are forbidden to him. Whoever gainsay this, judgment for disobedience is necessary for him.⁸

Ibn Turayk's twenty-fifth canon reiterates much of Cyril's sixth canon:

None of the clergy shall dwell with any woman at all, unless she be his wife, or his mother, or his sister, or his maternal aunt, or his grandmother who it is forbidden to him to marry by the Law of God. Whoever is alone in a dwelling with other than them shall have no office at all in anything concerning the priesthood.⁹

In the case of Cyril's canon, it seems that no man (cleric or lay) should cohabit with a woman other than those "who are forbidden to him" (*tuharram 'alayhi*); however, unlike Ibn Turayk, he does not include the wife as a possible *muharrama*, which leads me to question whether Cyril may have been referring to a celibate priesthood. One of the major differences between the Latin tradition and the Eastern Orthodox (including the Coptic) tradition is that of a celibate priesthood.¹⁰ The great schism of 1054 was, in part, because the Latin West demanded the celibacy of parish priests while the Eastern tradition strongly supported their marriage. These differences, among others, caused a rift between the churches; however, we cannot assume that the divide between East and West happened instantly, nor can we assume that the Western tradition did not continue to influence

the Eastern one, and vice versa. The date ascribed to Cyril's canons, 1086, is squarely in the wake of the great schism, and the historical context of Christendom at large should be considered so as to shed some light on what may be happening in canon six. Lateran Council I (1123) is the first council succeeding the great schism that articulates clerical celibacy.¹¹ Canon three is almost identical to Cyril's canon six:

We absolutely forbid priests, deacons, and subdeacons to associate with concubines and women, or to live with women other than such as the Nicene Council (canon 3) for reasons of necessity permitted, namely, the mother, sister, or aunt, or any such person concerning whom no suspicion could arise.¹²

Lateran Council I only differs from the Copto-Arabic canons in that it adds concubines along with women; however, the two agree with regard to prohibitions of cohabiting with "forbidden women" or women about "whom no suspicion could arise." Ultimately, whether Cyril was in fact calling for or alluding to the presence of a celibate priesthood is difficult to determine, but by the time Ibn Turayk writes his canons (1154), the significant addition of "wife" is made, thereby pointing to clerical marriage.¹³ Furthermore, Ibn Turayk's canon twenty-five is specifically addressed to the clergy, unlike Cyril's, which includes the term "layman," indicating that clerical marriage was acceptable during the papacy of Ibn Turayk.

While there are parallels between both Cyril's and Ibn Turayk's canons and the Lateran Council canon (which is actually a reference to a Nicene Council canon), there is also an important parallel between the Copto-Arabic canons and Islamic jurisprudential vocabulary. The Arabic words that Cyril and Ibn Turayk use to describe the category of forbidden women (Cyril uses form V's *tuharram a'layhi*, and Ibn Turayk uses the plural passive participle *muharramat*) are borrowed from Islamic jurisprudence; the definition of this category may be understood from the Qur'anic verse found in Surat al-Nisa:

Forbidden unto you are your mothers, and your daughters, and your sisters, and your father's sisters, and your mother's sisters, and your brother's daughters and your sister's daughters, and your foster-mothers, and your foster-sisters, and your mothers-in-law, and your step-daughters who are under your protection (born) of your women unto whom ye have gone in—but if ye have not gone in unto them, then it is no sin for you (to marry their daughters)—and the wives of your sons who (spring) from your own loins. And (it is forbidden unto you) that ye should have two sisters together, except what hath already happened (of that nature) in the past. Lo! Allah is ever Forgiving, Merciful.¹⁴

Here the Arabic word is form II in the passive voice, *hurrimat*, which has the same root (*h-r-m*), meaning "to forbid or prohibit." Surat al-Nisa, as do the

Copto-Arabic canons of Cyril and Ibn Turayk, uses this word to delineate incest taboos, the category of woman that is forbidden for marriage. For the canons, the word is used to indicate that celibates may cohabit only with this category of woman to avoid compromising vows of celibacy, while in the Qur'anic verse, it is used to establish incest taboos and has nothing to do with celibacy. Nonetheless, the parallel is in the word itself, clearly borrowed from Islamic jurisprudence by the Coptic author, who may not have had access to an Arabic Christian canonical vocabulary. What is interesting is that the content of these particular canons are nearly identical to their Latin counterparts; however, because they are written in Arabic, they seem to borrow from the vocabulary of Islamic jurisprudence. Future research should explore these unexpected connections—where Christian precepts are being articulated in the vocabulary of Islamic jurisprudence—to add to our existing understanding of Christian-Muslim coexistence in medieval Egypt.

Two of Ibn Turayk's canons specifically regulate how bishops and monks should negotiate their social terrain outside of their monasteries. Canon thirty admonishes them not to visit public bathhouses unless it is necessary due to illness. This canon illustrates the type of measures bishop and monks were encouraged to take to avoid situations that might compromise their vows of celibacy.

A bishop shall not enter the public bath in the day time, and he shall not uncover himself. If need or necessity oblige this, then he shall enter at night-time, and shall remain alone in a retired spot with members of his order. And likewise, the monks shall not enter the public bath except from necessity, or that there be need of this on account of sickness; and it shall be (done) according to the above mentioned decree.¹⁵

Canon thirty, then, is what could be thought of as a precautionary measure for celibates; furthermore, it seems to be the only canon of this collection that cautions against homoerotic behavior. While it was not prudent for a bishop or monk to frequent the men's public bathhouses because it was considered unfitting of a certain monastic asceticism to indulge the body, underlying the canon is a warning that such a situation could lead to homoerotic behavior. If it is absolutely necessary to go to the bathhouse, the necessary precautions should be taken: going in the nighttime, not exposing his nudity, and not mingling with men other than those of his rank—meaning other celibates. It should be noted that parish priests are not included in this canon because they were not required to take a vow of celibacy and were therefore allowed to marry.

Ibn Turayk's thirty-first canon forbids monks and bishops from owning female slaves for the same reasons that they are forbidden to frequent the public bathhouses: for fear of sexual promiscuity.

A bishop or a monk shall not at all possess a servant girl, and he who possessed a female slave before he became a monk or bishop, or to

whom one has come through inheritance, shall sell her immediately and shall not keep her; and if he chooses to set her free, that is the best, since she may not serve him or dwell with him. And he who transgresses in this matter is under sentence and interdiction.¹⁶

Rather than prohibiting monks and bishops from owning slaves, the canon is concerned with the possibility of a monk living with a woman who is not forbidden to him. This canon reiterates the concerns of Cyril's sixth canon and Ibn Turayk's twenty-fifth canon, which interdict monks and bishops who cohabit with women other than *muharramat*.¹⁷ Again, the concern is to prevent sexual promiscuity and the dissolving of monastic vows of celibacy. It is also important to note that this canon implicitly reveals slavery to be an acceptable practice in medieval Egypt, as it was throughout medieval Europe and the Islamicate at the time,¹⁸ and in fact an important part of economic sustenance for many of these societies.¹⁹ Having discussed the canons intended for celibate clergy, I will now turn to the canons revolving around marriage, the definition of an objectionable marriage, and what may be considered proper sexual conduct in a marital relationship.

THE OBJECT OF MARRIAGE

Of the three papal canons of this period, those attributed to Cyril III, known as Ibn Laklak, are the most concerned with social relations. Ibn Laklak covers everything from the laws dealing with the baptism of male and female children to marriage, marital relations, divorce, and inheritance. There is no doubt that Ibn Laklak's collection, compiled in 1238, is the most thorough examination of social life and relations for Coptic Christians living in medieval Egypt. In fact, these canons are so thorough and so integral to social relations that they became a foundational source for later canonical compilations used to this day in the Coptic Church. Like the other papal canons, Ibn Laklak's are a gathering of canonical traditions that span from the apostolic tradition to Byzantine law in concert with canons specific to medieval Egyptian life and its nuances.

There is a clear discussion of marriage and its objectives in the canons, and this is a good starting point for understanding how the Coptic Church chose to instruct believers on this matter. To begin, marriage, as Ibn Laklak writes, may only take place after a betrothal contract has been formulated between a consenting man and a consenting woman. Once the two parties (which may include guardians, family members, and priests) have agreed on the dowry and the earnest money, have revealed any physical or mental deficiencies, and have come to an agreement that they will still marry regardless of any physical or mental deficiencies, the crowning ceremony may take place. Ibn Laklak has a very long section on the betrothal

contract in his discussion of marriage, after which he turns to what he considers proper sexual relations in a marriage. For Ibn Laklak, sex is the primary object of marriage, conducted solely for the purpose of begetting children; therefore, he writes that impediments to copulation can be reason for annulment:

As to the impediments to copulation which is the object of marriage, (these are), for example, castration, complete insanity, elephantiasis, leprosy, the bone which hinders in women,²⁰ the impotent, the hermaphrodite and such like things.²¹

Ibn Laklak clearly states that the “object of marriage” (*al-maqsud bi al-zija*) is sanctioned sex (*al-ijtima'*) and that neither partner in a marriage should refuse sex to the other, with but a few exceptions:

It is not permitted to either of the two to refuse copulation with the other, without absolute necessity, at other than at the prohibited times, namely the days of obligatory fasting, especially Holy Week, and during the days of her (the wife's) menstruation and of her lochia. Onanism is not permitted, nor the drawing forth of the sperm and the casting away of it in such a manner that offspring is not produced, nor the taking of medicines in order to prevent conception.²²

While the object of marriage is copulation, the object of copulation is reproduction rather than pleasure for the two partners. Practices that may hinder the reproductive process, such as refusing to have sex, *coitus interruptus*, onanism, or birth-control medicines, are all forbidden in Ibn Laklak's canons. We may infer from this that the Copto-Arabic articulation of sex at this time was that of an act that would only be sanctioned if carried out for the purposes of begetting children. This posture is not unique to the Coptic Church, and its parallels may be found in the Latin Church at approximately the same time period. Such parallels may be observed when Pope Gregory IX's *Decretals* (1234) are compared with Ibn Laklak's canons.²³ While there is indeed a parallel between the Eastern and Western Christian traditions' articulations regarding sexual relations in marriage, the shared notions regarding sexual conduct may be traced in many cases to a biblical Judeo-Christian tradition, accepted by both Eastern and Western churches.²⁴ It is interesting, however, that the Latin and Coptic churches chose to articulate these laws in canon form at approximately the same time. More research needs to be carried out to determine how these canons came to be shared by both churches.

Marriage, for Ibn Laklak and many other medieval Christians, is a divine sacrament, and therefore divorce is forbidden; however, annulment is granted for a few specific instances—especially situations in which the object of marriage (procreation) is not being fulfilled.

Sixth (Section) concerning that which annuls marriage. Marriage shall be annulled after proof of adultery against the woman, or by both of the married couple embracing the religious life with their mutual consent, or if a man arrange for the corruption of the chastity of his wife, or if either of the two arrange for the corruption of the life of the other, or that the marriage is one of those previously mentioned among prohibited marriages²⁵ or repugnant ones (mentioned)²⁶ in their section, or through the occurrence of that which prevents copulation which is the object of marriage, as has already been shewn. If a man continue for three years after the union without being able to do that which is proper for him (to do), then the wife or her parents have the right to annul the association, unless the woman prefers to live with him, and her paraphernalia shall be returned to her.²⁷

Ibn Laklak goes on to add that reasons such as illness (e.g., elephantiasis, epilepsy, or leprosy) if discovered after the marriage, adultery if proven, and absenteeism due to captivity or abandonment are also valid justifications for the annulment of a marriage. Essentially, then, if the object of marriage is not being fulfilled for any of the aforementioned reasons, the marriage may be annulled, and remarriage is sanctioned. Interestingly enough, parallels may be found between the Coptic and Latin traditions even with respect to the valid causes of annulling a marriage; however, the varying opinions and debates regarding this topic are too extensive to discuss here.²⁸ Nonetheless, it is clear that the two traditions shared much in the way they understood and codified the marital relationship—which includes everything from contracting the betrothal to marital sex to the annulment of the marriage. Lest this statement be taken out of context, I cannot emphasize enough that while there is certainly overlap between the two canonical traditions—conceivably because of an exchange of sorts between the two churches—each canonical tradition was very particular to its region and historical context. There are several aspects of the Coptic canons that are peculiar to Egypt and to the process of Islamization that was taking place at the time of their composition. In addition, the Old Testament laws and codes, as well as the patristic tradition that both churches have in common, should not be neglected, since these are, undeniably, a cornerstone of Christian thought and understanding.

CONCLUSIONS

Throughout the history of Christianity, canon laws have been composed for a variety of reasons and in sundry contexts: in response to doctrinal/theological teachings deemed heretical by Church hierarchy, to maintain or delineate pastoral power, or to outline the precepts of a Christian identity so that it may be socially and religiously distinguished from other

coexisting groups. These are but a few of the reasons for the historical composition of canons; however, what these and other reasons point to is the fact that a religious institution, such as the Coptic Church, thrives in a social sphere—made up of different faiths or different interpretations of the same faith—which may sometimes challenge that institution’s authority or give it cause to defend its theological and social precepts. The preface to the canons of Cyril II describes one instance wherein internal and external tensions incited regulations on the liturgical, social, and sexual conduct of clergy and laity. One of the most central aspects of the medieval canons is their explicit regulation of sex and the codification of sexual practices. This codification not only regulated clerical and lay sex but also delineated an official posture on prohibitions and allowances, thus establishing, for Coptic Christians, a set of guidelines by which they could be physically disciplined and spiritually accountable.

I have offered a very brief survey of the different types of Copto-Arabic canons intended to regulate clerical and lay sexual conduct; however, it is my hope that this survey has illustrated just how important and informative a study of canon law can be for a wider historical understanding of medieval Egypt. The Copto-Arabic canons of Cyril II, Ibn Turayk, and Ibn Laklak not only help to illuminate some of the critical matters of social life that the Coptic Church hierarchy attempted to codify but, with a thorough study, can also help historians to understand the complex parallels between the Eastern and Western Christian traditions, which continued to exist after the great schism and in the wake of the Islamization and Arabization of Egypt. Perhaps because the history of medieval Coptic Egypt is so understudied, it may be surprising that the codification of sexual conduct was more in sync with Latin Christianity than with the burgeoning Islamic religion, which was taking root in Egypt at this time. It may simply be a matter of coincidence that Coptic and Latin traditions articulated similar canons around the same time; nonetheless, such a parallel is indicative of just how much more research needs to be forged in this field so that we may begin to understand the intricacies of medieval Mediterranean history.

NOTES

1. See, for example, Harold Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge, MA, 1983). Non-Muslims, or ahl al-Dhimma (Jews and Christians in the Egyptian context), were subject to Islamic laws and governance with the exception of personal status laws, which were particular to each religious group. However, in some cases *dhimmis* could choose to make recourse to an Islamic court and judge regardless of their faith. For more on Islamic law and *dhimmi* status, see Antoine Fattal, *Le statut legal des non-musulmans en pays d’Islam* (Beirut, 1958); “How Dhimmi Were Judged in the Islamic World,” trans. Susan Pickford, in *Muslims and Others in Early Islamic Society*, ed. Robert Hoyland (Burlington, VT, 2004), 83–102.

2. The reader should note that the Coptic Church underwent a translation movement beginning in the tenth century. Arabic began to be used more regularly in secular administration, and the Coptic language was relegated to liturgical services and the private sphere. The decline and eventual death of the Coptic language did not happen immediately after the Arab conquest of Egypt; rather, it was a gradual process. The extent to which Arabic should be incorporated into the liturgical life of the Church and learned by Christians was actively debated among Copts. In order to translate theological ideas into Arabic, Coptic Christians began looking to Islamic theological articulations and in some instances borrowed from Islamic theological vocabulary. It is my contention that the same borrowing has occurred with regard to Coptic canon laws.
3. According to Samuel Rubenson, Christodoulos (1047–1077), the sixty-sixth pope of Alexandria, was the first Coptic pope to compose canons in the Arabic language (rather than translate Coptic canons into Arabic). Rubenson, “The Transition from Coptic to Arabic,” *Egypte/Monde arabe*, Première série 27–28 (1996): 77–92. The canons surveyed here follow Christodoulos’s lead with their concern for personal status laws; however, they are longer and more detailed.
4. The Latin canonical tradition eventually led to the appointment of canonists, lawyers, judges, ecclesiastical courts, and teachers of canon law; the establishment of universities; and an intellectual and philosophical tradition that was not the case with the Coptic canonical tradition. The Coptic canonical tradition was not as complex, and in many cases the pope or bishop was the judge, regardless of his education or experience. For more on the Western canonical tradition, see James A. Brundage, *Medieval Canon Law* (New York, 1995).
5. *Askim*, the Arabized version of the Greek word *schema*, is the strictest monastic rule that can be given to a monk or nun in the Orthodox Christian tradition.
6. O. H. E. Burmester, “The Canons of Cyril II, LXVII Patriarch of Alexandria,” *Le Museon* 49 (1936): 251–252.
7. *Ibid.*, 274.
8. *Ibid.*, 281.
9. Burmester, “The Canons of Gabriel Ibn Turaik, LXX Patriarch of Alexandria (First Series),” *Orientalia Christiana Periodica* (Rom 1935), 40–41.
10. While the Coptic Church was not officially in communion with the rest of the Orthodox Church since the council of Chalcedon (451), it unofficially shared much of the same theological and doctrinal articulations.
11. Of course, just because clerical celibacy was debated in the eleventh century doesn’t mean it wasn’t being practiced before that or was wholly enforced after that.
12. Medieval Sourcebook, “Ninth Ecumenical Council: Lateran I 1123” <http://www.fordham.edu/halsall/basis/lateran1.html> (accessed October 1, 2008).
13. The date given for the compilation of Ibn Turayk’s canons is 1154, which is nine years after his repose (1145). This discrepancy has not been reconciled by scholars who have worked with this text.
14. M. Pickthall, trans., *The Glorious Koran: A Bi-lingual Edition with English Translation* (London, 1976), 4:23.
15. Burmester, “The Canons of Gabriel Ibn Turaik,” 43.
16. *Ibid.*
17. It should be noted that the Arabic here is *jariya*, which may be translated as “female slave” but, depending on interpretation, could also mean “concubine.” However, Ibn Turayk is not referring to concubinage here because he

- uses a different word for concubine (*surriyya*) in canon twenty-one, where he forbids the practice altogether. This is a noteworthy difference between Coptic Christianity and Islam during this period. Concubinage was an acceptable practice in Islam, and concubines were considered slaves; however, Copts were permitted to own female slaves (unless they were celibate) but forbidden from having concubines.
18. The owning of Christian slaves by non-Christians was forbidden in the Western Christian tradition, and the fourth Lateran Council explicitly discusses this point with regard to Jews owning Christian slaves; however, the practice of slavery, in general, was tolerated by the Church at this time. In the Islamicate, each tradition had its laws and regulations regarding the owning and selling of slaves, but the practice of slavery itself was not forbidden. For a discussion of slavery in Islam, see R. Brunschvig, "Abd," *Encyclopaedia of Islam*, ed. P. Bearman, Th. Bianquis, C. E. Bosworth, E. van Donzel, and W. P. Heinrichs (Leiden, 2008), http://www.brillonline.nl/subscriber/entry?entry=islam_COM-0003.
 19. Slavery was an important part of medieval European economics and perhaps for that reason played such an integral role in medieval society. For a good discussion of medieval European slavery and economics, see Michael McCormick, *Origins of the European Economy: Communications and Commerce A.D. 300–900* (Cambridge, 2001).
 20. This is a reference to vaginismus.
 21. Burmester, "The Canons of Cyril III Ibn Laklak, 75th Patriarch of Alexandria," *Bulletin de la Société d'Archéologie Copte* 12, no. 1 (1946–1947): 118.
 22. *Ibid.*, 120.
 23. Especially *Summa on Marriage*, composed by Raymond Penyafort, who was appointed by Gregory IX, includes much of the same discussion on the physical impediments of sex, which impediments may annul a marriage, the object of copulation, and proper seasons for abstaining from sexual intercourse.
 24. For example, see the many laws relating to sex in the book of Leviticus, specifically Chapter 18.
 25. This includes marriage of consanguines, or affines by godparents or milk kinship. Burmester, "The Canons of Cyril III Ibn Laklak," 117–118.
 26. This includes marriage of minors, those who are over sixty years of age, marriage of a widow who has not fulfilled her ten-month period of mourning, marriage of a freeborn person to a slave, marriage of those who renounce their religious vows, and marriage of a priest's wife after his repose. Burmester, "The Canons of Cyril III Ibn Laklak," 118–119.
 27. *Ibid.*, 121.
 28. For a good discussion of marriage, law, and sexuality in medieval Europe, see James A. Brundage's important works on the topic: *Law, Sex, and Christian Society in Medieval Europe* (Chicago, 1987); and *Sex, Law, and Marriage in the Middle Ages* (Aldershot, VT, 1993). Brundage surveys the various topics regarding sex, marriage, and canon law and discusses the varying opinions and debates.

2 The Boundaries of Affection

Women and Property in Late Medieval Avignon*

Joëlle Rollo-Koster

Papal Avignon was an unusual medieval city. By contemporary standards, it had many of the characteristics of a modern city, including anonymity and social fluidity. The population grew throughout the thirteenth and early fourteenth centuries to some five to six thousand inhabitants on the eve of the papacy's move to the city in 1376.¹ Most historians agree that with the papacy, the sedentary population of Avignon climbed to approximately thirty thousand inhabitants by the 1370s, a number swelled by thousands of visitors—laic and religious petitioners at court, students, beggars, and officials—who escaped statistics because of their transience.² The large immigration pool obliterated traditional ties of family, kin, and friendship, and the anonymity that allowed a person to die alone in a street also favored social fluidity. Newcomers rose to the level of the merchant nobility with hard work, social connections, good marriages, and sheer luck. Schematically the population consisted of native inhabitants; a Jewish community; secular and religious officers of the curia; cardinals, along with their lay and religious entourage; secular and regular clergy; and, finally, other immigrants needed to serve this rapidly growing population.³

During the fourteenth century, citizens and immigrants founded and populated new urban areas—the fifty or so *bourgs* (clusters of dwellings) in the southern and eastern parts of the city located outside the old thirteenth-century walls. These *bourgs* expanded the civic territory and relieved the demographic pressure *intra muros* (within the walls). By the mid-fourteenth century, they were made part of the Avignonese territory after the construction of the new surrounding walls. The *bourgs* contained anywhere from a few to a hundred houses on parcels of land that their owners leased for rent, mostly to immigrants. The wealthy, more established population lived within the old walls.⁴

During the late Middle Ages, high mortality rates due to the plague combined with the rise in immigration improved to some extent the lot of Avignonese women. The demographic situation of the city allowed women who lacked extended ascendant and descendant kin relations to amass considerable patrimonies. The curial city suffered from a scarcity of “family” men, which freed women of the many constraints traditionally attached

to medieval society. Avignon abounded with single clerics, whose population was constantly being replenished with newcomers. By contrast, the families of Avignonese citizens and of laic “followers of the Roman court” were fragmented by recurrent demographic crises. When wars, plagues, or famine weakened the city, renewed immigration hid the effects of the crisis among the papal administration; among the general population, however, women gained in legal status and social prominence due to the scarcity of patrilineal heirs.⁵

Immigration influenced Avignon’s society and culture. According to Jacques Chiffolleau, urbanization, migrations, and epidemics broke lineage solidarities; in his eyes, most Avignonese were “orphans”—that is, immigrants who never returned to the land of their ancestors.⁶ As will be shown throughout this chapter, various textual evidence supports Chiffolleau’s assertion. In Avignon’s urban setting, the frequent absence of male children or relatives due to frequent epidemics, immigration, and the androcentric character of the capital of Christianity altered the roles of women. The exclusion of dowered daughters to any rights of succession, paternal or maternal, was mitigated in many cases by the scarcity of men. In contrast to Italian cities such as Florence, where daughters would inherit from their fathers only in the absence of male relatives up to the eighth degree, Avignonese wives and children, including daughters, tended to become legally designated heirs.⁷ In fact, women obtained rights of succession in more than 24 percent of the wills studied.⁸

Accordingly, women’s legal status was somewhat fluid.⁹ Provençal law was a blend of Roman law and customary legal traditions. Roman practices started to affect the drawing of testaments by the twelfth century with the appearance of the essential Roman legal clauses: *nuncupatio* (declaration of being free of guardianship), codicils, the naming of witnesses, and—most importantly—appointment of the universal heir. With the crises of the fourteenth century, widows and older daughters bypassed their traditional incapacity to act legally without male guardianship because they often lacked male ascendants and descendants. As for married women, an authorization from their guardian—often just their simple presence at the notary alongside them—waived the burden.¹⁰

The collection of legal consultations left by Etienne Bertrand (1434–1516), a renowned fifteenth-century jurist, allows us to explore the details of legal practice.¹¹ His decisions on various cases suggest that when dealing with women, legal theory often did not match reality. For example, Bertrand directed fathers to give their daughters a dowry, and allowed daughters to marry without their father’s consent if the father’s actions somehow justified the act. A daughter could then sue her father for the dowry. Dowered daughters lost their rights of succession, even though they needed to formally renounce their *legitima*—that is, the portion of the succession to which they were legally entitled under Roman law. The detailed renunciation formula implies that if the daughter did not clearly spell out which

possessions she was renouncing, she could still be in contention for her *legitima*.¹² Bertrand stressed the difference in value between a wife's dowry and her husband's marital gift (*donatio propter nuptias*). The dowry was given to the husband to "sustain" the union; it was restituted at the end of marriage and entailed separation of goods. Still, there was discussion as to the inalienability of dotal goods; the wife may have owned them, but the husband possessed them, hence he could—in Bertrand's eyes—alienate them. Bertrand went as far as stating that the ownership of dotal immovable properties went to the husband—a far cry from the Roman rule of inalienability. In his eyes, a wife did not have ownership of her dowry, even though she might attempt to distribute it freely in her testament.

However, Bertrand was of the opinion that bridal gifts beyond the dowry (*bona paraphernalia*) and similar extradotal properties were unequivocally in the property of the wife. He advised to spell out the specifics of the management of these goods in the marriage contract. If none were inscribed, the wife had total freedom to dispose of them.¹³ Bertrand also advised that a clear separation of goods be recorded in inventories, "so that they [each] mark and sign [their properties] with their mark or signature."¹⁴ Roman law dictated that a dowry return to the father when the wife died, but in customary practice, the dowry went to the children of the union.¹⁵ In the case of the couple's separation from bed and board, however, Bertrand advised that the dowry return to the wife's father.¹⁶

The *Liber Divisionis*, a census of the population of Avignon in 1371, offers some of the richest evidence regarding women and the larger composition of the population during the late fourteenth century. Of the 3,820 registered heads of household, 563 were women. This large sample of census data allows us to determine women's citizenship status, analyze their occupations and marital status, and trace their geographical origins and patterns of immigration.¹⁷

As already mentioned, recurrent epidemics and immigration quite often promoted women as heads of households. Women inherited patrimonies including lands, shops, and monies, and assumed the title of head of household when no man was left to claim it.¹⁸ In the *Liber*, female heads of household declared their status, including their rights of guardianship over their children, in the following way: "Lady Moneta widow of Ciuto Guidi, furrier from Florence, for herself and as guardian (*tutrix et tutor*) of the said Guido and Karllo, minors under her wardship (*pupillorum*), brothers and son of the deceased Ciuto Guidi" or "Lady Simeranda widow of master Poncius, guardian (*tutrix et tutor*) of Guiderius."¹⁹

In Provence, the ancient Roman concept of *mundium* (male guardianship) usually prevailed, even if a wife had been made guardian of her children by testament.²⁰ The *Liber* shows that women could free themselves from male tutelage whenever men of their lineage were wanting. The law recognized their gain by allowing the feminine *tutrix* to be recorded, which shows that widows who did not remarry could claim the *mundium* for themselves.

This practice might not have been limited to Avignon. In her study on businesswomen in medieval Montpellier, Kathryn Reyerson asserts that “while Roman law did not readily allow a mother to be the guardian of her children, in Montpellier such was often the practice.”²¹ We still have to assume that these examples were not the norm, however, and that in Avignon, male guardianship prevailed whenever it could. For example, the *Liber* listed “Andreas de Janfiglazzi from Florence for himself and as guardian (*tutor et tutorio*) of the said Guidonus and Filippo, minors under his ward (*pupillorum*), sons of his nephew, the deceased Filippo Maccuoli; Lady Bilia widow of the said Filippo, their mother.”²² In this case, Bilia is simply a “mother,” without any guardianship over her children, even though the word *pupillorum* indicates that they were still minors.

Avignonese citizenship could follow the mother’s status or result from satisfaction of the requirements of residence and possession of real estate.²³ A small fee of one obol was paid to formalize the acquirement of citizenship.²⁴ No evidence indicates social or professional favoritism for either citizens or papal courtiers. The latter participated in all professional activities without any restrictions due to their status. They possessed real estate, bought, traded, lived, and died like the citizens.²⁵ The Hundred Years War occasionally forced the Avignonese papacy to fend off attacks from companies of mercenaries. Citizens and courtiers alike paid the new war taxes (*gabelles*).²⁶ Whenever the papacy levied extraordinary taxes to clean the *comtat* (territory) from the “free companies” of mercenary armies, it required funds from both communities.²⁷

Only occasionally may the courtiers have regretted their decision to refuse citizenship. When Gregory XI levied extra funds to ransom back a number of castles held by mercenaries in his native province of Limoges, he asked the citizens of Limoges (*limousins*) residing in Avignon for contributions. Florentine courtiers were expelled from the city in 1376.²⁸

Of the 563 women listed in the *Liber Divisionis*—presumably as heads of household—five did not declare their status, 331 registered as *cortisiani* (papal courtiers), and 227 registered as *cives* (citizens).²⁹ The fact that the majority of the women listed were courtiers indicates their transience, mobility, and lower financial position, since presumably they did not fulfill the prerequisite of real estate ownership required for the qualification of citizenship.

Twenty percent of all women declared an occupation. Of the 331 female courtiers, 24 percent listed an occupation, and of the 227 female citizens, 14 percent listed an occupation. The five women who did not list their status did not list an occupation.³⁰ Among the women declaring an occupation, most worked as innkeepers; sold foodstuffs and other goods; manufactured textiles, shoes, and clothing; or engaged in unskilled labor (*affanatrix*); only a small group belonged to the class of skilled artisans.

According to the *Liber’s* data, single women courtiers seem to have been more active and entrepreneurial than female citizens; more importantly,

they were active in a wider range of activities, requiring better skills and offering greater rewards.³¹ In the absence of large kin networks, immigrant women had to work to survive. The entries for female courtiers in the *Liber Divisionis* suggest that single women did not necessarily hold the worst jobs or the lowest social status. Furthermore, marriage did not increase women's activities nor did it introduce women to higher labor status. Quite the contrary, it appears that spinsterhood and widowhood favored women's social and occupational gains and enhanced women's chances to control their patrimonies.

Despite the common assumption that poverty favored prostitution, Leah Otis has found little evidence in the Languedoc cities to suggest such a link.³² It seems that in the fourteenth century, prostitution was seen as a lucrative profession for women.³³ In Avignon, the stigma attached to the profession was minimal and did not prevent forms of property ownership. A description of leases held by the bishop of Avignon in 1366–1368 mentions several “public women” who owned properties in his diocese. Mingette of Narbonne; Jeanette of Mers, alias of Lorraine; and Marguerite La Porcelude, alias de La Casserra, owned “houses” in the *bourg* of Guimet Abbert, close to the gate of the bishop and toward the convent for repentant prostitutes.³⁴ They paid a *cens* to the diocese in recognition of its overlordship over their property. Mingette of Narbonne “*mulier communis*” (common woman) declared paying nine sous every Easter to the prefect Guimet Abbert for a “*hospicium*” (house) neighboring, among others, the house of Simonette, wife of William the Taylor. Her neighbor was Jeanette of Mers “*mulier communis et publica*.” At Easter she paid ten sous to the said Guimet Abbert. In the same neighborhood, Marguerite La Porcelude paid six sous and nine deniers for her house.³⁵

Administrative documents labeled *terrier* or *censier* offer an abundance of information on women's properties and the complexities of medieval ownership of real estate. Upon buying vacant and arable lands, houses, courtyards, vineyards, and gardens from a lord, the new owners could dispose of these possessions at their will but still needed to recognize their lord's right of direct ownership (*directe*). This right of ownership was materialized through the payment of a yearly tax—a *cens* to that legal person or its representative. Usually such a legal “persona” was an institution, a diocese, a cathedral chapter, an abbey, a convent, or a monastery. Well-organized lordships compiled registers that listed and counted the parcels, as well as listed payments in monies and kind with their due dates.

The *terrier* of Anglic Grimoard—compiled by a certain Sicard du Fraisse between 1366 and 1368, and recently edited by Anne-Marie Hayez—lists some 540 parcels that recognized a right of or direct ownership to the bishop of Avignon.³⁶ The owners of these 540 parcels paid a yearly *cens* to the episcopal administration, usually due on the feast day of St. Michael in September. If for whatever reason someone failed to pay the *cens* and no legal heirs could be traced, the parcel was bound to return to the episcopal

mensa—that is, the portion of episcopal property that was destined to “feed” the bishop.

In Avignon in 1366–1368, women owned 128 out of those 540 parcels; thus, 24 percent of the “propertied” taxpaying population was female. In addition, women were listed as owners of neighboring properties. Such lists were used to identify every parcel of episcopal real estate.

Women came into property mostly through inheritance. Guillermeta Boerie was the daughter and heiress of the deceased John Boerie, alias Testa Aguda, and the wife of James of Castellone, cloth merchant of Avignon. She recognized her *cens* for a house situated across from the house of Helis, daughter and heiress of the late Jacob Guigonis, butcher; west of her house, a garden was listed as belonging to the same Guillermeta. Guillermeta’s neighbor Helis also owed a *cens* to the same bishop. Helis’s deposition tells us that Guillermeta’s husband was from Asti—evidence again of ties between the old Avignonese landed citizenry and the Italian mercantile world.³⁷

Guillermeta may be regarded as typical in her role as a propertied woman. She was already widowed from a notary, John, alias Surdi, and had claimed the rights to her house in 1363. In addition to her house and garden, she owned an orchard, a large garden, and clusters in several *bourgs* in the area of Notre Dame des Miracles. More importantly, her substantial property neighbored a *bourg* that she also owned, in conjunction with her mother, Ermenchardis Clemense. Ermenchardis was listed as the widow of John Boerie and the wife of Master Pons Barbe, lawyer and procurator.³⁸ Another one of Guillermeta’s neighbors was a woman named Joan—daughter and heiress of Richard Guigonis, deceased citizen of Avignon, and wife of Bernard of Vignale, lawyer and advocate residing in Avignon.³⁹

The entry for Galburge Renaud, alias Raymbaude, illustrates quite well the specifics of the Avignonese situation, with all its limitations. Galburge was the widow of Pons Didier, alias de Petra, who had made her responsible for his land and vineyards in the name of their son. Lacking male relatives, Pons had appointed his wife as the guardian of his son. When the child died, she received the lifelong usufruct of the property under the condition that it revert to the bishop after her death.⁴⁰ The vineyards had been bought in 1354 for seventy-two florins, again from a woman, Barthelemie, wife of the Lucchese notary Rusticus Dardavini.⁴¹ This example shows, once again, that women gained property when men were scarce.

A similar pattern emerges from the next few examples. Two sisters, Stephania and Bertranda, daughters and heiresses of Pons of Brancols, had married a father and his son—both dead by the time the *terrier* was compiled. The two widows recognized their *cens* for a turreted residence (*domus sive turris*) listed as “of the bishop” and a vineyard.⁴² Stephania was the widow of Pons Bocayrani Sr. of Balneols, in the diocese of Uzes, and Bertranda was the widow of Pons Bocayrani Jr. Stephania appears in the Avignonese records as the owner of other properties, but it is clear that she inherited the vineyard and the tower after her only son died in 1359.⁴³ In another case,

the heirs of Gilete, daughter and heiress of John Durand, recognized a *cens* for a house and garden that Gilete had received from her maternal uncle, William of Cabrieris. Both cases demonstrate that women inherited directly from ascending and descending male relatives such as uncles and sons. When Gilete died in 1361 without legitimate heirs (*sine hereditibus ex suo corpore legitime procreatis*), the property fell back to the episcopal *mensa*.⁴⁴ Gilete, daughter of a spice merchant from Avignon, was the wife of a squire from Bédarrides—that is, she had married into the nobility of the *Comtat Venais-sin*. She inherited a couple of houses from her father, next to the convent of Saint Catherine. She bequeathed her patrimony to the hospital Sainte Marthe, an indication that she had remained childless.⁴⁵

Another example from the *terrier* shows how women could amass properties despite the lingering requirement of Roman guardianship. Giraudette Raynaud, daughter and heiress of Bertrand Raynaud, and wife of the squire John Motonerii, recognized in 1364 a *cens* for her property, a beautiful residence large enough to have a central courtyard with a well and a garden.⁴⁶ In 1351, Giraudette was under the guardianship of the cloth merchant James Rasaud, who oversaw her and her brother Louis, which shows that Giraudette's father did not choose his wife as guardian for his young children.⁴⁷ Once married, Giraudette recognized her property and paid her *cens* in her name. She declared herself daughter and legal heiress of her father's patrimony first, and wife second. The absence of her husband in the description of her property indicates that she maintained separate ownership of her father's inheritance during her marriage. The *terrier* continues the description of the foregoing property by indicating that her residence was apportioned between two owners—both women—and that, moreover, the dwelling served as kitchen, dining room, and office space for the cardinal of Morienne and his staff.⁴⁸ Giraudette shared this valuable property with Timburge—also called Burgueta Vayrane, alias Gardelle—wife of Perrochin Urtime, squire.⁴⁹ This residence was surrounded by several other dwellings, including the house of Sclarmonde Peleprate, daughter and heiress of the deceased Bertrand Pelapрати, butcher, and wife of Matthew of Vicia, merchant of Asti and resident of Avignon. To add further to the multilayered involvement of women owners, Giraudette's residence was under the shared direct ownership of the bishop of Avignon and the nuns of Saint Clare.⁵⁰

The scores of declarations of ownership issued by women should not belie the fact that male guardianship of women was still widely practiced—especially among the aristocracy.⁵¹ Rostagnet of Mories, knight, was the guardian of Jeanette, daughter and heiress of John of Sade, an extremely wealthy merchant of Avignon.⁵² He recognized the *cens* for a house Jeanette owned in the parish of Saint Agricole.⁵³ The neighborhood was prime real estate, close to the palace where bourgeois and followers of the Roman court had lived for several generations, and rents were high.⁵⁴ The next entry in the *terrier* lists Rostagnet again, this time as guardian of Girardete, daughter and heiress of John La Cleda, alias of Toulouse, past tailor and sergeant of the pope.

We may wonder about the financial advantages that Rostagnet might have gained as guardian of such well-endowed heiresses. In any case, Rostagnet also owned other property in the same area, free of all constraints.⁵⁵ Not all aristocratic women were limited in their ownership, however. The *terrier* lists, for example, the noblewoman Marguerite of Saint Saturnin, daughter and heiress of Peter of Saint Saturnin, deceased squire of Avignon, and wife of nobleman William of Azilhano, who recognized in 1368 her *cens* for two houses, free of any type of guardianship.⁵⁶ Thus, the evidence presented suggests that Avignon's specific demographic situation improved chances for women to inherit property. In addition, testamentary evidence gained through the analysis of census data supports this assumption.

Women testators also left considerable properties to ecclesiastic institutions in the absence of children or other descendants. For example, Barthélemy Tortose, widow of Bertrand Tortose and daughter of Pierre Robert and his wife Saure, instituted the Dominican monks and the nuns of Saint Veran and Notre Dame des Fours as her universal heirs.⁵⁷ Catherine Avenièr, daughter of a banker and merchant from Avignon, and widow of the *domicellus* (squire) Jean Cabesse, instituted the almshouse of the Petite Fusterie as her universal heir.⁵⁸ And lastly, Delphine Menduelle, daughter of Jacques Menduelle, a squire from Nîmes, and widow of wealthy fishmonger Pierre Pons (Peyret) Raubat II, named her parochial church of Saint-Agricol and the preachers of Avignon as her universal heirs.⁵⁹

Delphine Menduelle, in particular, may be regarded as epitomizing the propertied women of medieval Avignon. As already mentioned, Delphine was the widow of Pierre Pons (Peyret) Raubat II of Avignon.⁶⁰ The first Raubat, Guillaume, died around 1330.⁶¹ The third Raubat, Delphine's husband, died sometime between 1375 and 1380. He had continued the family's real estate investments and bought a residence (*hospicius*) in Rue de Retrans, along with a vineyard and a garden next to the fish farms of the pope, but his best investment by far was to enter the local nobility by marrying Delphine, the daughter of a squire from Nîmes, who brought to the marriage a dowry of some eight hundred florins. Widowed in 1380, Delphine married Tizio Salamoncelli, an Italian banker, and wrote her will in 1399. She died around 1411.

Delphine's downward marriage into the "common" ranks exemplifies the social mobility characteristic of the large cities of Italy and the Mediterranean.⁶² In the documents Menduelle, her father, is qualified as squire, but Raubat is simply labeled a citizen of Avignon. Delphine had several children who predeceased her, including Elzéar, who died in his twenties. At the death of her last surviving child, Delphine had to deal with a complex heritage having to do with the succession of her son Elzéar to the estate of his father and grandfather, her father-in-law (Pierre Pons Raubat I). Since she inherited from her son Elzéar, his bequest to her consolidated—with a certain sense of irony—all the patrimony of the Raubat into her hand. The will of her father-in-law had not been fully respected, and it is with the

aim of clarification that she ordered a detailed inventory of the goods and paperwork of her son Elzéar. Here was a woman who was organized and clear minded. The document lists all goods and documentation that had remained in her homestead.

According to this inventory, Delphine possessed a substantial amount of real estate. She held two *hôtels* (urban mansions) next to the *poissonerie* (fish market), in addition to four other buildings she inherited from her son Elzéar. One, next to the Dominicans at the gate Brianson, was only a small house that served as a cellar, but the other three were much more important. One house, located at the Grands Changes, was rented to the Florentine banker Aginolfo de Pazzi; the second one, in St. Didier, was the *Hôtel du Heaume*, which also contained an inn (*l'Auberge de la Servellerie*); the last building was a brothel (*stufra*, bathhouse), which had been bought in 1353 at the enormous price of 1,440 florins.⁶³ Delphine finalized the purchase, proof that she considered prostitution a simple business with no sense of prohibitive morality. Delphine also received rents from stalls at the butcher market; houses in the parishes of St. Peter and Agricol; and vineyards in Avignon, Massilargues, and Bonne-Juive.⁶⁴ As Elzéar's universal heir, Delphine was also charged with executing the will of Pierre Pons Raubat I, her father-in-law, who had founded a chapel in St. Agricol with a pension of some twenty annual florins. His initial successors, his son and grandson, had neglected the bequest, but the *officialité* (ecclesiastical court) of Avignon and the Commissary for Souls and Charitable and Testamentary Causes caught up with Delphine. She agreed to offer sixteen florins from her personal inheritance and four florins from the rent of a stall at the fish market for the endowment of the chapel.⁶⁵ It is quite interesting to note that the ecclesiastical justice asked the sole feminine survivor of a family to fund a legacy that the testator's previous male heirs had refused to pay some thirty years earlier.

In her testament, Delphine gave a glimpse of her personal preferences when discussing her funeral arrangements. After the typically long prologue, listing all the arguments and complications that would result from dying intestate, and after enumerating the prescribed prayers to warrant against evil spirits addressed to Jesus, the Virgin, Saint Michael, the holy angels, the apostles, martyrs, confessors, eleven thousand virgins, and the celestial court, she focused on giving directions for her funeral. She chose to be buried with her husband and son in the parochial church of St. Agricol, and detailed the black shroud carrying the words *Jesus* and *Ave Maria* that would cover her body. Her coffin was to be accompanied by five poor disabled men each carrying a taper of ten pounds, who would each receive a robe of black cloth with hood and shoes, while seven poor "helpless women" would be dressed in white robes and shoes. These traditional twelve poor persons would be fed at the Raubat's house for the length of the novena.

Following the model of precise "flamboyant accounting" analyzed by Chiffolleau, Delphine then listed the many masses to be said in her memory

by the members or residents of all male and female religious and lay institutions that existed in both Avignon and Nîmes—that is, all churches, convents, monasteries, confraternities, hospitals, and prisons—as well as the freed hostages taken by Saracen pirates. In addition, her funeral procession was to be accompanied by a symphony of lights and bells. Only after discussing the details of her funeral does Delphine spell out legacies to her closest surviving family members, listing bequests and gifts to her brother and two sisters in Nîmes in the form of money, rosaries, and coats. She offered her brother Jacques the remainder of her dowry and left less important sums of money to several women who may have been distant relatives, servants, or friends.

Delphine's property comprised movable and immovable goods. In typical medieval fashion, she left specific objects of affective value to her legatees in addition to sums of money—mainly rosaries and clothes that could either be worn or recut into liturgical cloths. The tactile and personal quality of these bequests was supposed to memorialize her physicality. The clothes she wore would be placed on an altar, thus linking her presence to the holy sacrament. She also left money for a family chapel to be built in St. Agricol in the name of her deceased son Elzéar, for which purpose she ordered a sumptuous red coat lined with fur (*folraturam*) to be cut into an altar cloth and complete priestly garb for holy days; this cloth bore both her and her husband's coat of arms. She also left a cape (*houpelanda*) to be cut for sacerdotal cloth to the same chapel. To the Chapel of Our Humble Lady inside the Dominican convent, she gave a satin cape to be cut into an altar cloth (*casublam*). Her liturgical preoccupations continued with the bequest of twenty-five florins to buy a chalice for the same chapel.

To many convents and churches she left bequests insisting on the physical preservation of her name—a substitute for the continuation of her flesh in the form of children. Lacking an extended familial network, she left commemoration to the experts. From the convent of Fonte in Nîmes she requested two anniversary masses in perpetuity, to be paid with the one hundred florins from Elzéar's inheritance, now held by her brother Jacob.

Finally, Delphine designated the church of St. Agricol and the Dominican convent as her universal heirs. In recompense, she required one thousand masses for the dead to be sung for her and her husband's souls by the mendicants of Avignon and the clergy of St. Agricol, in addition to a Gregorian *trentain* (thirty masses during thirty consecutive days). Most of the male and female religious establishments of Avignon received two florins each for their prayer services. She also granted dowries to seven poor girls.

Delphine was certainly not forgetful of her dowry and other personal inheritance. To her brother Jacob she left her and her son Elzéar's share from her mother's inheritance. If Jacob died with no descendants, said inheritance would pass on with the rest of her dowry to the four mendicant orders of Avignon. Delphine, like many other women in Avignon, thus received a temporary reprieve from the unfavorable legal situation of women

at a time when lives were short and traditional kinship systems gone. For a few decades in fourteenth-century Avignon, daughters and wives inherited with relative ease, and were free from male guardianship and tutelage.

NOTES

- * I wish to thank the URI Council for Research: Faculty Development Program Award, which funded my research for this essay during the summer of 2007. Please note that I chose to keep the many spelling variations for a single name present in all the documentation.
1. Yves Renouard, *The Avignon Papacy* (New York, 1970), 8.
 2. *Ibid.*, 93; Anne-Marie Hayez and Michel Hayez, "Juifs d'Avignon au tribunal de la cour temporelle sous Urbain V," *Provence historique* 23 (1973), 173; Bernard Guillemain, *La cour pontificale d'Avignon (1309–1376): Étude d'une société* (Paris, 1966), 213.
 3. Jean Favier, *Les papes d'Avignon* (Paris, 2006). See also the following by Joëlle Rollo-Koster: "The People of Curial Avignon: A Critical Edition of the *Liber Divisionis* and the Lists of Matriculation of the Confraternity of Notre Dame la Majour," (PhD diss., State University of New York at Binghamton, 1992); "The Women of Papal Avignon: A New Source: The *Liber Divisionis* of 1371," *Journal of Women's History* 8 (Spring 1996): 36–59; "Medieval Trades in Provençal Cities: The Crieés Publiques of Avignon and Toulon," in 1996 *Proceedings of the Western Society for French History*, ed. Barry Rothaus (Greeley, 1997), 52–60; "Mercator Florentinensis and Others: Immigration in Papal Avignon," in *Urban and Rural Communities in Medieval France*, ed. Kathryn L. Reyerson and John Drendel (Leiden, 1998), 73–100; "Death and the Fraternity: A Short Study on the Dead in Late Medieval Confraternities," *Confraternitas* 9 (Spring 1998): 3–12; "Forever After: The Dead in the Avignonesse Confraternity of Notre Dame la Majour (1329–1381)," *Journal of Medieval History* 25 (1999): 115–40; "Amongst Brothers: Italians' Networks in Papal Avignon (1360s–1380s)," *Medieval Prosopography* 21 (2000): 153–89; "Merchants' Tales from Avignon," in 1999 *Proceedings of the Western Society for French History*, ed. Barry Rothaus (Greeley, 2001), 33–42.
 4. Anne-Marie Hayez, "Les bourgs avignonnais du XIVe siècle," in *Bulletin philologique et historique (jusqu'au 1610) du comité des travaux historiques et scientifiques* (Paris, 1977), 77–102.
 5. Jacques Chiffolleau, *La comptabilité de l'au-delà: Les hommes, la mort, la religion dans la région d'Avignon à la fin du Moyen âge* (Paris, 1980), 441–445.
 6. *Ibid.*, 201.
 7. Isabelle Chabot, "La loi du lignage: Notes sur le système successoral florentin (XIVe/XVe–XVIIe siècles)," *Clio* 7 (1998): 51–72.
 8. Chiffolleau, *La comptabilité de l'au-delà*, 70–74.
 9. Paul Ourliac, *Droit romain et pratique méridionale au XVe siècle* (Paris, 1937); René Girard, "Marriage in Avignon in the Second Half of the Fifteenth Century," *Speculum* 28 (1953): 485–498; Charles de Ribbe, *La société provençale à la fin du moyen âge d'après des documents inédits* (Marseille, 1975); Chiffolleau, *La comptabilité de l'au-delà*, 36–50.
 10. See Chiffolleau, *La comptabilité de l'au-delà*, 36–50.
 11. See Ourliac, *Droit romain et pratique méridionale*.
 12. *Ibid.*, 140–150.

13. Ibid., 43, 53, 111–164.
14. “Marcharentur seu signarentur marcha seu signo.” Ibid., 125.
15. Ibid., 127–131.
16. March 3, 1481; *ibid.*, 131–132.
17. Archivio Segreto del Vaticano (hereafter ASV), *Registra Avenionensa* 204, folio 428r–507v; see also Rollo-Koster, “Mercator Florentinensis and Others” and “The Women of Papal Avignon.”
18. Anne-Marie Hayez, “Citoyens et notables avignonnais au milieu du XIVe siècle,” *Bulletin philologique et historique (jusqu'à 1610) du comité des travaux historiques et scientifiques* (Paris, 1982–1984), 203, 213, 215. The Avignonesse pattern of widows' remarriage seems to follow the Tuscan pattern described by Christiane Klapish-Zuber in “The ‘Cruel Mother’: Maternity, Widowhood, and Dowry in Florence in the Fourteenth and Fifteenth Centuries,” in *Women, Family, and Ritual in Renaissance Italy* (Chicago, 1985), 117–132.
19. *Registra Avenionensa* 204, folios 470r, 472r.
20. Pierre C. Timbal and Paul Ourliac, “Le droit privé dans les villes du midi de la France,” in *Recueils de la Société Jean Bodin pour l'histoire des institutions*, vol. 8 (Brussels, 1957), 115–123, 125–133; Claudia Opitz, “Contraintes et libertés,” in *Histoire des femmes: Le moyen âge*, ed. Christiane Klapish-Zuber (Paris, 1991), 279–280, 325–328.
21. Kathryn L. Reyerson, “Women in Business in Medieval Montpellier,” in *Women and Work in Preindustrial Europe*, ed. Barbara A. Hanawalt (Bloomington, 1986), 119.
22. *Registra Avenionensa* 204, folio 473r.
23. Bernard Guillemain, “Citoyens, juifs et courtisans dans Avignon pontificale au XIVe siècle,” *Bulletin philologique et historique (jusqu'à 1610) du comité des travaux historiques et scientifiques* (Paris, 1961), 148; Guillaume Mollat, “Les conflits de juridiction entre le maréchal de la cour pontificale et le viguier d'Avignon au XIVe siècle,” *Provence historique* 4 (1954), 16.
24. Mollat, “Les conflits de juridiction,” 152.
25. Guillemain, *La cour pontificale*, 502–503, 635–640.
26. Anne-Marie Hayez, “Les gabelles d'Avignon d'Innocent VI à Grégoire XI,” *Actes du 102ième congrès national des sociétés savantes* (Paris, 1979), 171–206; Anne-Marie Hayez, “Travaux à l'enceinte d'Avignon sous les pontificats d'Urbain V et de Grégoire XI,” *Actes du 101ième congrès national des sociétés savantes* (Paris, 1978), 193–203.
27. Heinrich Denifle, *La désolation des églises, monastères et hôpitaux en France pendant la guerre de cent ans*, vol. 1 (Paris, 1897), 388, no. 4.
28. Guillemain, *La cour pontificale*, 612, 640.
29. Rollo-Koster, “The Women of Papal Avignon,” 36–59.
30. By contrast, 64 percent of the male population declared an occupation.
31. The nature of the document makes it difficult to identify single women with certainty. In most instances, a daughter (*filia*, *filia quondam*), widow (*vidua*, *relictæ*, *uxor quondam*), or married woman (*uxor*) was recorded and identified as such. My assumption is that women who lacked these epithets were unmarried single women.
32. Pierre Pansier, *L'oeuvre des repenties à Avignon du XIIIe au XVIIIe siècle* (Paris, 1910); Rollo-Koster, “From Prostitutes to Virgin Brides of Christ: The Avignonesse Repentees in the Late Middle Ages,” *Journal of Medieval and Early Modern Studies* 32 (2002): 109–144; Rollo-Koster, “Prostitutes,” in *Women and Gender in Medieval Europe: An Encyclopedia*, ed. Margaret Schaus (New York, 2006), 675–678.

33. Otis, *Prostitution in Medieval Society: The History of an Urban Institution in Languedoc* (Chicago, 1985), 64–66.
34. Rollo-Koster, “From Prostitutes to Virgin Brides of Christ.”
35. Anne-Marie Hayez, *Le terrier avignonnais de l'évêque Anglic Grimoard* (1366–1368) (Paris, 1993), 314–315.
36. See *ibid.*
37. *Ibid.*, 69, 90.
38. *Ibid.*, 161.
39. *Ibid.*, 77, 161.
40. *Ibid.*, 202, 216.
41. *Ibid.*, 201.
42. *Ibid.*, 202–203.
43. Archives communales d'Avignon, boîte 82, #2678.
44. Hayez, *Le terrier avignonnais de l'évêque Anglic Grimoard*, 156–157.
45. H Sainte Catherine 54, folio 46; Archives Hospitalières d'Avignon (AHA), Hôpital Sainte Marthe H 32, 9G29; and Hayez, *Le terrier avignonnais de l'évêque Anglic Grimoard*, 157.
46. Hayez, *Le terrier avignonnais de l'évêque Anglic Grimoard*, 93.
47. Archives Départementales du Vaucluse (ADV), 1G9.
48. Hayez, *Le terrier avignonnais de l'évêque Anglic Grimoard*, 94.
49. *Ibid.*, 93.
50. *Ibid.*, 94.
51. In this case the pattern seems to run counter to suggestions advanced by historians such as Joan Kelly, who claim that aristocratic status during the Middle Ages favored women's control of property in contrast to women's lack of involvement during the Renaissance. See Joan Kelly, “Did Women Have a Renaissance?” in *Women, History, and Theory: The Essays of Joan Kelly* (Chicago, 1984), 19–50.
52. Hayez, *Le terrier avignonnais de l'évêque Anglic Grimoard*, 302.
53. *Ibid.*, 303.
54. On the social analysis of Avignon's parishes, see Rollo-Koster, “Mercator Florentinensis and Others,” 73–100.
55. Hayez, *Le terrier avignonnais de l'évêque Anglic Grimoard*, 304.
56. *Ibid.*, 295.
57. ADV, H St. Praxedes 52, #39, September 16, 1317.
58. AHA, Notre Dame de la Petite Fusterie, B1, May 1, 1369.
59. ADV, 8G9, December 6, 1399.
60. *Ibid.* Anne-Marie Hayez, “La fortune d'une famille de poissonniers à Avignon au XIV^{ème} siècle,” in *Mémoires de l'Académie de Vaucluse*, 7^{ème} série, 3 (1982), 143–179; and Hayez, *Le terrier avignonnais de l'évêque Anglic Grimoard*, 54. See also ADV, 8G36–40, 8G10, 8G11.
61. ASV, Collect. 456 f. 35; Schäfer II, 486, 615, 654, 685, 758.
62. The inventory of the goods of Delphine's son Elzéar, compiled at his death in 1397, describes her as “Honesta mulier domina Dalphina Mendole filia quondam nobilis Jacobi Mendolli domicelli Nemausensis relictaque Petri Robati burgensis Avinionis quondam.” ADV, 8G9.
63. Hayez, “La fortune,” 148–149.
64. *Ibid.*, 149.
65. *Ibid.*, 150.

3 Women in Court in Early Fourteenth-Century Venice

Linda Guzzetti

In his famous work *Dei delitti e delle pene* (1764), Cesare Beccaria criticizes the monarchic character of republics in which only the heads of family were part of the body politic.¹ Though Beccaria attacks the exclusion of “all” other citizens from political representation in republican urban governments, he actually meant to condemn only the exclusion of sons under *patria potestas*—not considering the representation of women and men outside the elites. Almost two and half centuries after the publication of Beccaria’s essay, it is generally agreed that in late medieval cities, the majority of inhabitants had no right to participate in city governance, but just how much access to public space was granted to women as well as lower-class men, minors, slaves, Jews, and foreigners is still under debate.²

In the law courts of late medieval republican cities and territories, women were barred from becoming judges—in contrast to feudal territories, where queens and abbesses could assume this function³—but they were generally allowed to be plaintiffs and defendants. In some cities, women had to be represented in court by a man.⁴ In Venice, female witnesses could give their testimonies in person in front of judges; in Florence, they needed to make their depositions in front of a notary outside the actual court building.⁵

Daniel L. Smail has argued for medieval Marseille that “though women’s legal capacity is now fairly well known by medieval historians, it remains important to insist that women were fully visible to the law in medieval Europe.”⁶ Women were not, however, equally “visible to the law” in every European city, and we have yet to examine women’s public agency and formal visibility at the local level. In the course of this debate on gendered spaces, Robert C. Davis has rightly remarked that there was no straight line dividing “male” and “female” spaces in medieval cities, and that law courts cannot be simply placed on the male side.⁷ This chapter contributes to the historical discussion of women’s presence in the male-dominated public space of late medieval cities by analyzing women’s presence in a Venetian fourteenth-century civil court, the *Giudici di petizione*.⁸ It also highlights specific aspects of women’s property rights in medieval Venice. As Smail points out, most legal scholarship up until now has been based on law texts and jurists’ opinions, neglecting court registers and other documentary sources. In addition, most existing research concerns criminal courts rather than civil ones.⁹

The main source for this chapter is the second register of the *sentenze ad interdetto* (plur. *sententiae ad interdictum*, or sentences pronounced by a court of appeal) for the years 1313–1314.¹⁰ This series of registers contains cases in which the *Giudici di petizione* were required to intervene in a trial judged by an inferior court—the *Giudici del proprio, del forestier, or del mobile*. The *Giudici di petizione* would intervene if one party was making an *interdictum*—a request for the invalidation of an act or prior sentence.¹¹ In the thirteenth century, only higher courts could rule in cases of appeal, usually based on the free evaluation of oral testimonies.¹² This register contains seventy-nine recorded cases; each entry lists the names of the parties, the date, the subject of the dispute, the names of the witnesses that the plaintiffs proposed, and the testimonies of those witnesses who were actually deposed. Almost one-quarter of the litigations in this register concern the liquidation of debts between business partners. The court decisions are recorded in only thirty-one cases (39.2%); no reasons for these decisions are given, so we do not know how the court appraised the testimonies. Contrary to the standard practice of identifying women in notarial acts, this register does not always mention the marital status of female parties and witnesses.

The relationship between civil courts and property rights seems at first sight an obvious one: free citizens could go to court, and those who were excluded from owning property—including slaves and dependent peasants—could not. But in most cases access to court was more complicated, taking into consideration not only the legal status of a person but also the kinds of goods under debate. Married women, for example, could not defend their dowries in court because this part of their estate was under the responsibility and administration of their husband.¹³ In many Italian cities other than Venice, this exclusion concerned other properties as well.¹⁴

As we will see, Venetian women went to court both on their own behalf and on that of other people. This latter circumstance contradicted the *Senatus consultum velleianum*,¹⁵ an ancient Roman law that barred women from assuming liability for other people—that is, from doing businesses on behalf of someone else (*intercedere pro aliis*).¹⁶ Because of their alleged mental weakness, women were assumed to be unsuitable for taking engagements whose consequences were not real but only possible and lay, at any rate, in the future. Even if women could voluntarily renounce protection under the *Senatus consultum velleianum*, and exceptions were made in its application, the prohibition to act on behalf of others had both a practical and a symbolic significance: it reduced women's chances of acting as guarantors and proxies, and confirmed their limited responsibilities as participants in economic and social life.

Medieval women often appeared publicly in someone else's name through subsidiary functions that allowed them to play leading roles in domains otherwise reserved for men.¹⁷ This happened most often when men were not available because of travel or death, or when aristocratic women ruled territories in the name of their absent husbands or underage sons. These

subsidiary functions were not restricted to the social elite; artisans' widows continued the trade of their husbands, and widows of all social groups became heads of household.

Proxy appointments for court action or business transactions constituted a form of subsidiary function, but the *Senatus consultum velleianum* made it difficult for women to assume such tasks. According to the majority of Roman law jurists, women could substitute for men as business partners, but not in court.¹⁸ Patricia Skinner emphasizes that in Amalfi, where men engaged in maritime trade and were often absent for months at a time, women appeared in court as substitutes for their husbands, even if Byzantine law permitted women access to court only in matters affecting them personally. She explains that the capacity of wives and mothers to act as proxies for absent merchants or seamen represented an adaptation of customary law to the local situation. And this resulted in "considerable discretion and freedom of action on the part of the women."¹⁹

When lending money or receiving a dowry, guarantors could be required, just like when presenting a court claim or depositing bail. In Venetian charters and court language, the term used for guarantors was *pletius* (masculine; *pletia*, feminine).²⁰ Not only in medieval Amalfi but also in Genoa and Venice, wives and other female relatives could become proxies of traveling merchants.²¹ Proxies could be appointed through a notarial act, but wives could also assume this responsibility on the basis of traditional rights. In Venice, most women who acted as financial guarantors were mothers vouching for the repayment of the dowries of their sons' wives.²² The Venetian statutes also allowed women to give receipts to debtors for the repayment of their absent husbands' credits without mentioning the need for an official power of attorney.²³

In Venice, wives also acted as proxies in court. For instance, in 1314, Richelda appeared in court on behalf of her husband, Sclavolinus de Bonaventura, against his former associate, Petrus Zoto *bereter* (cap maker). The court record states explicitly that Richelda had power of attorney from her husband (*carta commissionis*).²⁴ Similarly, in a trial between Bartholomeus Constantino and the monastery of S. Michael on the island of Murano over the payment of six years of back rent, Bartholomeus's wife, Graciosa, and Henricus Zancani appeared in court on his behalf, both officially appointed with powers of attorney.²⁵

Although guarantors in judicial matters were mostly men, Tomasina Vidal constituted an exception, being referred to as "female guarantor and payer according to the will of two *Giudici di petizione*."²⁶ The *Giudici di petizione* ordered her to warrant for Iacobus (also called Iacobellus) de Stane, condemned to build a roof for three pounds *grossorum* on the house he had bought from Iohannes Cavatorta within two weeks. The judges added that she was guarantor *in solidum* (jointly and severally) with Iacobus de Stane. The record does not say if Tomasina Vidal and Iacobus de Stane were related to each other. Also *dona* Anthonia Michiel was a

guarantor, and possibly business associate, of Bertholinus de Molino, a merchant traveling on a boat belonging to the Lauredano family (*coca de cha Lauredano*).²⁷ After the ship sank near Mljet (Dalmatia), she pledged for him up to thirty pounds *grossorum*, a considerable amount of money.

In a trial involving Marcus Viadro, Marcus dal Mangano, a witness, was asked if *dona* Beruzia Viadro acted as guarantor for Marcus Viadro in his business dealings with Nicoletus Viadro, son of said Marcus or of Beruzia (*filius suus*).²⁸ Marcus dal Mangano did not directly answer this question and reported instead that Beruzia and Marcus Viadro were involved in a transaction with a merchant from Friuli. Even though Beruzia denied being Marcus's guarantor, the merchant from Friuli asked her to pay for a matter concerning Marcus Viadro, which she did.²⁹

Court registers give no hints about the subjective experience of women who went to court. One medieval woman who wrote about such matters was Christine de Pizan (c. 1363–1434), who related how she had to file costly, lengthy, and, in the end, unsuccessful lawsuits to recover certain investments. In court, she was the only woman among men, who treated her with contempt.³⁰ She found it difficult to understand her late husband's financial affairs because he had kept her ignorant of the family's finances. Venetian women may have found it easier to appear in court because they were better informed about their families' financial affairs, as we will see, and because they could count on the presence of other women in local civil courts.

On September 26, 1283, the Venetian Great Council passed a bill that showed indirectly that women appeared in court as plaintiffs. The bill concerned the penalty the plaintiff had to pay when the court rejected the *interdictum*. The penalty had previously been fixed at one shilling per pound (5%) of the value of the disputed property. The Great Council allowed courts to fix the penalty amount independently except in suits filed by clerics and married women, for whom the rate of one shilling per pound remained valid. In this way, the Great Council intended to protect the two groups of "weaker" plaintiffs from the discretion of the judges.³¹

Women constituted about 15 percent of the parties in the cases studied, as shown in Table 3.1. The difference between the percentage of women as plaintiffs and defendants refers to absolute figures that are too small to justify any conclusion (see Table 3.2).

Table 3.1 Men and Women in Court, 1313–1314

Sex	No	Percent
Men	143	83.1
Women	26	15.1
Testamentary executors, no sex identified	2	1.2
Unknown	1	0.6

Table 3.2 Women's Roles in Court, 1313–1314

Role in Court	No.	Percent	No. of Women	Percent
Defendant	81	47.1	9	11.1
Plaintiff	83	48.3	15	18.07
Proxy	8	4.6	2	25

It is evident that almost everyone went to court personally: out of 172 persons, only eight appointed proxies. These were relatives or business associates; professional lawyers were uncommon.³³ Giovanni Italo Cas-sandro remarks that in the fourteenth century, proxies were mainly used for convents, for people absent from Venice, and for “women,” but he fails to give evidence for his claim that women were customarily represented by proxies.

In his study of justice in medieval Marseille, Smail states that women appeared as plaintiffs and defendants in approximately 22 percent of the cases.³⁴ Skinner, studying court registers from different areas of southern Italy in the tenth to twelfth centuries, found that in 11.25 percent of the cases (27 out of 240), women appeared on their own as defendants or plaintiffs.³⁵ All these women came from areas under Byzantine law; in areas under Lombard law, women had to be represented in court by a male guardian. The ratio of Venetian women's appearance in court was thus comparable to that of their counterparts in medieval Marseille and southern Italy.

Although the *corpus iuris civilis* allowed women to be witnesses,³⁶ the medieval interpretation of Roman law curtailed this possibility, and the systematization of canon law contributed further to reducing women's ability to give testimony. Most jurists trained in Roman law considered female witnesses to be more acceptable in civil cases than either criminal cases or those connected with last wills. Moreover, when courts accepted female witnesses, jurists recommended that two women equaled one man. Indeed, ever since Ulpianus (d. 228) and Justinianus (482–565), jurists expressed their proverbial contempt for female witnesses: “It must be noted that women provide fickle testimony, outside of the truth” and “the woman always produces a changeable and unsteady testimony.”³⁷

Venetian law admitted female witnesses in three kinds of trials: those converting oral declarations into valid last wills, those confirming bequests, and those prompting the restitution of dowries.³⁸ For other trials, thirteenth-century commentaries to the statutes, called glosses, stated that the testimony of a woman had to be reinforced by at least one man, and presented the list, derived from Roman law, of unsuitable witnesses, among whom we find women, relatives of the parties, slaves, felons, and minors. Generally, Venetian statutes underscored the judges' freedom in sentencing and choosing the witnesses, and recommended them to consider carefully

whether the selected witnesses were trustworthy.³⁹ The register studied here shows that the *Giudici di petizione* often heard witnesses belonging to the categories that Roman law defined as unsuitable.

In 1299, the *Giudici di petizione* recorded the testimony of Maria, wife of Nicolaus Baseggio, together with those of her brother Vitalis Badoer and another man, in a case concerning business between Maria's husband, her brothers Vitalis and Marcus Badoer, and an associate, Thomas Iuliano.⁴⁰ Contrary to common custom, the court notary recorded the testimonies in the vernacular instead of Latin. Maria reported the complicated discussions held in her house to settle the business dealings of the four men and started her testimony by repeating the words all witnesses, women as well as men, had to pronounce: "I, Maria Baseggio, say as a guarantee and I affirm under oath that . . ." ⁴¹ She reported on conversations between several men, even though legal theory recommended that women be heard as witnesses only when absolutely necessary—for instance, in the absence of men. Discussing medieval jurists' attitudes toward female witnesses, Susanne Lepsius assumes that women must have appeared in numerous court proceedings nonetheless, out of practical considerations.⁴² The Venetian practice confirms this assumption for both the medieval and the early modern periods. In his study of a minor court, the *Giustizia Vecchia*, in the sixteenth and seventeenth centuries, James E. Shaw states that women's and men's testimonies were given the same consideration.⁴³ Kathryn Reyerson comes to a similar conclusion in her analysis of a lawsuit brought in Montpellier around 1330.⁴⁴

In my Venetian sources, women comprised about one-fifth of all witnesses (see Table 3.3); it is apparent that their testimonies had as much weight as those of men and informed the judges' decision.

In dowry-restitution cases conducted by the *Giudici del proprio*, an even higher proportion of women participated. In such suits, the Venetian statutes explicitly allowed female witnesses. Between 1366 and 1391, 45.3 percent of the witnesses (126 of 278) were women.⁴⁶ The lower rate of female witnesses in the court of the *Giudici di petizione* thus reflects the conditions of medieval Marseille, where in the 945 trials held between 1316 and 1416, 21 percent of the witnesses were women.⁴⁷

Another example of female testimony concerning business is the case of Michaletus Suriano against Marcus Baseggio, a man who had given him twelve pairs of shoes and twelve pairs of boots to sell to the Venetian army

Table 3.3 Men and Women as Witnesses in Court⁴⁵

	No	Percent
Women	36	20.9
Men	135	78.5
Unknown	1	0.6

in Zadar (Dalmatia). The deal apparently fell through, because Marcus aimed at recovering either the shoes and boots or their monetary value, twelve shillings *grossorum*. Michaletus insisted that he had nothing to give back. Unexpectedly, we find a woman, Guidota (Vidota) *quondam Marci*, who was able to shed light on the affair.⁴⁸ She and Nicolaus Bon reported that when the army retired, Michaletus was ill and took refuge on a boat. When Guidota and Nicolaus Bon helped him pack his belongings, they found some unsold pairs of shoes, which subsequently got lost in a shipwreck. We do not know what the court decided.

In some trials, the testimonies and oaths of women were the only foundation for the court's decisions.⁴⁹ For instance, the *Giudici di petizione* commanded Fantina Gambaro to repeat in front of the *Giudici del mobile* the same oath she had taken earlier.⁵⁰ She had to explain the terms of her business association with Damianus Quintavalle, for which he provided the capital and she her skills as goldsmith (*peritia in arte auri*).⁵¹ Fantina confirmed that she and Damianus had agreed to divide the profits evenly.

Like Fantina Gambaro, Florderosa was an artisan, but in the less-qualified profession of *vendrigola* (secondhand seller). According to Marcus *batiore* (gold beater), he had given Florderosa six pieces of clothing to sell.⁵² He now wanted to have the clothes back or their cash value, which he estimated at fifteen shillings *grossorum*, but she denied having ever received the clothes. The matter had already been dealt with in the court of the *Giudici del forestier*.⁵³ In this case, all the witnesses were working women: Clara de Boseto; Maria, wife of Leonardus *barcharolo* (boatman); Diamante, wife of Iohannes de Boseto; and Thodora *vendrigola*. The four witnesses referred to a chest containing clothes that belonged to the late Gullielmus, brother of Florderosa, and confirmed that Marcus *batiore* was eagerly looking for this chest. We do not know whether Florderosa was married or how the court decided, but we do know that she was a working woman directly responsible for her business.

Maria, widow of Deolosalve, is an example of a testamentary executor invested with the business of her deceased husband.⁵⁴ The trial, concerning a business deal between the deceased Deolosalve and Iohannes Dalma, had started in the court of the *Giudici del mobile*. In front of the *Giudici di petizione*, Iohannes declared he had made no profit, but Maria demanded four and a half pounds *grossorum* as her husband's share.⁵⁵ The first witness, *nobilis vir* Petrus Belegno, remembered that Deolosalve and Iohannes Dalma had balanced their accounts after importing wood from *Barbaria* (North Africa), then had reinvested their profits in wine from Treviso.⁵⁶ All witnesses stated that Maria had given receipt for the money they paid her. When finishing their second deal, she had a lively discussion with a former partner of her husband, as Petrus Belegno reported: Maria said "there was no rest, give it to me" and he said "I want to be paid for my work as I was the servant of my [probably meant: your] husband" and she said "you were

not that, but you were an associate."⁵⁷ Eventually, the court decided in favor of Maria, ordering Iohannes to pay what he owed her plus trial fees.

A lawsuit, which in 1313 had already lasted some years, opposed two former associates, the stonemasons (*solari*) Iacobus and Petrus Crisi.⁵⁸ Iacobus claimed he had made no profit but offered to pay the nominal sum of one *denarius parvus*. Several witnesses referred to a previous attempt at settlement through arbitration. Dominicus Rizo mentioned the efforts of Petrus Crisi's wife to end the partnership between her husband and Iacobus two years prior. She wanted Dominicus Rizo to come to her house with Iacobus to settle the accounts. On this occasion, she identified each partner's debts and credits. In spite of her central role in this affair, the register calls her *uxor Petri Crisi* throughout, her first name never being mentioned. The record does not reveal whether she was endowed with official power of attorney. It is certain that she was not Petrus's testamentary executor, as her husband was still alive at the time of the trial.

In these two cases, the interests that Maria, widow of Deolosalve, and the wife of Petrus *solarius* defended in court did not concern their own properties or activities but those of their husbands—or rather those of the economic partnerships they built with their husbands. As Anna Bellavitis remarks, it was common for couples from the working classes to act jointly. In spite of the legal division of marital properties, couples' wealth or means of survival was usually the result of their common work.⁵⁹

In fourteenth-century Venice, promissory notes (*manifestacionis carta*) had to be destroyed or canceled after the debt was paid.⁶⁰ If a party claimed to have paid but the corresponding act was still untouched, the *Giudici di petizione* usually settled the dispute through witnesses. Some defendants claimed to have entered an oral agreement with the plaintiff, freeing them from paying the entire sum shown in the *manifestacionis carta*,⁶¹ since such oral agreements were hard to prove, the *Giudici di petizione* preferred written evidence. In Robertus Trevisan's case, however, the court accepted his argument that he had already paid the 25:4:4 pounds *grossorum* (more than 250 ducats) listed in a still untouched *manifestacionis carta*.⁶² The plaintiff was Nicolaus Bono, an inhabitant of Zadar, represented in court by Marcus de Molino. All of Robertus's witnesses were women—friends of Grotelda, his late wife: *domina* Maria Nantichieri; Nicolota *filaoro* (gold wire drawer); and Bona, a slave of a certain *ser* Gracianus. Maria Natincheri testified that she went with Grotelda and Nicolota *filaoro* to the house of Nicolaus Bono and the slave Bona, where Grotelda spoke to Nicolaus without mincing her words. She accused him of knowing perfectly well that her husband owed nothing more to him and added that she had his power of attorney. She wanted Nicolaus to either give her the *manifestacionis carta* or draw up a receipt, but instead Nicolaus Bono formally assured her in front of the other three women as witnesses that the debts were liquidated. Since the contract was in Zadar, he promised to bring it the next time he came back to Venice. According to Bona's testimony, he even gave Grotelda

his hand, the typical gesture of merchants sealing a contract. The judges accepted Robertus Trevisan's defense and invalidated the act still held by Nicolaus Bono, ordering the latter to pay the trial fees. Both Grotelda and the wife of Petrus Crisis are examples of women who actively managed their husbands' businesses and defended their interests in court. Robertus Trevisan even built his defense entirely on the depositions of women—one of them a slave—but the judges considered their testimonies more reliable than a written promissory note.

Many more artisan women than noblewomen were involved in their husbands' businesses and inherited them after their deaths.⁶³ Nonetheless, the noblewoman Biriola, wife of Leonardus Mudazo, knew her husband's business arrangements, having received the first installments of a credit extended to Iohannes Vitali.⁶⁴ After Vitali's death, his sister and testamentary executor, Maria Vitali, maintained that she had only one pound left to pay, while Leonardus Mudazo claimed he was owed fifty-nine shillings (almost three pounds, or thirty ducats). Eventually, the court decided in his favor, after having weighed the depositions of Biriola and Diamante, wife of Franciscus Premarini. Biriola declared that Iohannes Vitali had paid her two installments of five and three shillings *grossorum*. Diamante reported that about one month before Iohannes died, the son of Leonardus Mudazo tried to recover the debt. On the day of Iohannes's death, Leonardus Mudazo himself appeared to recover his money. Iohannes said that he had already paid several installments of the debt, everything being neatly registered in his ledger, but unfortunately for his sister, the court decided in favor of Mudazo.

These litigations show that the women appearing in court as plaintiffs and defendants belonged to different social groups—noblewomen as well as artisans and workers—and that they were numerous enough not to be considered exceptions. There are several reasons why fewer women than men appeared in court: local laws barred women from participating in certain kinds of trials; social habits prevented women from appearing in court; and women had fewer occasions to defend their properties legally, since they played minor parts in the economic life of the city. But Venetian law did allow women to claim and defend properties in their own name, without the need to appoint a guardian. In addition, the *Giudici di petizione* ignored the *Senatus consultum velleianum*, which prevented women from acting on behalf of others. These were all positive factors that explain the relatively high proportion of women as witnesses in civil suits in medieval Venice.

Florderosa and Fantina Gambaro even acted in court on their own behalf. Commentators on Roman law wrote much on husbands' income derived from dowries and their wives' nondotal goods, but very little on revenues from wives' work. This is not surprising, as female work concerned only artisans and other modest social strata. According to Roman law, a wife's salary belonged to her, just as did rents and profits from nondotal goods.⁶⁵ Venetian statutes did not touch the right of a wife to her wages, unlike

those of other Italian cities. In northwestern Europe, married women who exercised a trade could claim the legal status of “feme sole,” allowing them to act on their own account.⁶⁶ In Italy, jurists developed a legal fiction in order to protect men against claims arising from their wives’ businesses: they assumed that working women acted with the general, possibly tacit, agreement of their husbands.⁶⁷ I suppose that the *Giudici di petizione* followed the same principle, which is why they did not register the marital status of women plaintiffs.

Several women in the records acted on behalf of others: Biriola Mudazo; Richelda; Graciosa; Maria, widow of Deolosalve; and the wife of Petrus Crisis were either proxies or testamentary executors for their husbands. Tomasina Vidal was a judicial guarantor, and Anthonia Michiel gave surety in a financial transaction. These women’s involvement in other persons’ property disputes suggests their conspicuous radius of action in the public sphere of courts.

In the court cases under investigation, female witnesses were numerous, and some of their testimonies were decisive. The *Giudici di petizione* accepted female witnesses in more circumstances than those outlined in statutory law. Moreover, they considered the depositions of persons who, according to Roman law, should have been excluded, such as the defendants’ and plaintiffs’ family members and slaves. In some cases, the judges even pronounced their sentences on the basis of a woman’s oath without further testimony, as happened to the goldsmith Fantina Gambaro. In the case of Robertus Trevisan vs. Nicolaus Bono, all three witnesses were women, one of them a slave.⁶⁸

Yet there were limitations: women could not sign notarial acts as witnesses, either private ones or those relating to court decisions. Even though such testimonies were merely of formal significance, warranting that the act conformed to legal restrictions, the impossibility of drawing up a valid contract without the signatures of at least two men had a symbolic value, marking women’s inferior legal condition.

In the public space of medieval Venice, male dominance was evident in numerous instances: in the exclusion of women from governing councils, in the danger of sexual assaults in the streets and canals, in women’s secondary role in many public festivals,⁶⁹ and in the absence of female merchants in the highly profitable overseas trade. But considering the instances of women’s presence and agency in the registers of the *Giudici de petizione*, it’s clear we need to revise Christiane Klapisch-Zuber’s conclusion that urban space in late medieval cities was unambiguously male.⁷⁰ In Venice, male dominance in the public realm was not absolute, nor did it remain unchallenged.

NOTES

1. Cesare Beccaria, *Dei delitti e delle pene* [On Crime and Punishment], ed. Franco Venturi (1764; repr., Milan, 1993), 68–69. Manlio Bellomo, *Ricerche*

- sui rapporti patrimoniali tra coniugi: Contributo alla storia della famiglia medievale* (Milano, 1961), 250.
2. Maria Teresa Guerra Medici, *L'aria di città. Donne e diritti nella città medievale* (Napoli, 1996), 13–20, 161–162. See also Bryce Lyon, “Commune,” in *Dictionary of the Middle Ages*, ed. Joseph R. Strayer (New York, 1988), 3:493–503, esp. 501; Renato Bordone, “Kommune: Allgemein und in Italien,” in *Lexikon des Mittelalters* (München-Zürich, 1991), 5:1285–1287; Kathryn L. Reyerson, “Cities and Towns,” in *Women and Gender in Medieval Europe: An Encyclopedia*, ed. Margaret Schaus (New York, 2006), 142–144.
 3. Maria Teresa Guerra Medici, *I diritti delle donne nella società altomedievale*, *Ius nostrum*, 4 (Naples, 1986), 292–295; Guerra Medici, “Origini storiche e fondamenti giuridici della giurisdizione della badessa di Conversano,” *Commentarium pro religiosis et missionariis* 75 (1994), 309–358; Guerra Medici, “Sulla giurisdizione temporale e spirituale della badessa,” in *Monachesimo femminile in Italia dall’alto medioevo al secolo XVII: A confronto con l’oggi*, ed. Gabriella Zarri, *Atti del VI convegno del “Centro di studi farfensi”* (San Pietro in Cariano, Verona, 1997), 75–86.
 4. Thomas Kuehn, “‘Cum consensu mundualdi’: Legal Guardianship of Women in Quattrocento Florence,” in Kuehn, *Law, Family and Women: Toward a Legal Anthropology of Renaissance Italy* (Chicago, 1991), 212–237. Maria Teresa Guerra Medici, “Diritto e società,” in *Storia del Mezzogiorno* (Napoli, 1999) 3:153–210, esp. 161–163.
 5. *Statuti della repubblica fiorentina*, vol 2, *Statuto del Podestà 1325*, ed. Romolo Caggese (Firenze, 1921); *Statuti della Repubblica fiorentina*, ed. Giuliano Pinto and Piero Gualtieri, *Documenti di storia italiana* 2, 6 (Firenze, 1999) 4:51.
 6. Daniel Lord Smail, *The Consumption of Justice: Emotions, Publicity, and Legal Culture in Marseille, 1264–1423* (Ithaca, NY, 2003), 245.
 7. Robert C. Davis, “The Geography of Gender in the Renaissance,” in *Gender and Society in Renaissance Italy*, ed. Judith C. Brown and Robert C. Davis (London, 1998), 19–38. On Venice, see also Dennis Romano, “Gender and Urban Geography of Renaissance Venice,” *Journal of Social History* 23 (1989): 2, 339–353; Linda Guzzetti, “Le donne nello spazio urbano della Venezia del Trecento,” in *Donne a Venezia*, ed. Susanne Winter (Roma, 2004), 1–22.
 8. The court of *petizione* (*curia petitionis* or *petitionum*) is studied in a seminal essay, Giovanni Italo Cassandro, “La curia di petizion,” *Archivio veneto*, 5th series, 19 (1936): 72–144; 20 (1937): 1–201. On the regulation of this court, see *Magistrature giudiziarie veneziane e i loro capitolari fino al 1300*, ed. Melchiorre Roberti (Padua, 1906), 1:209–213; and (Venice, 1909–1911), 3:105–130; Dieter Girgensohn, *Kirche, Politik und adelige Regierung in der Republik Venedig zu Beginn des 15. Jahrhunderts*, Veröffentlichungen des Max-Planck-Instituts, 114 (Göttingen, 1996), 1:57–58.
 9. On general aspects, see Maria Teresa Guerra Medici, “La donna nel processo longobardo,” *Rivista di storia del diritto italiano* 60 (1987), 311–334; Giovanni Minnucci, *La capacità processuale della donna nel pensiero canonistico classico*, vol. 1, *Da Graziano a Ugucione da Pisa* (Milano, 1989); vol. 2, *Dalle scuole d’oltrealpe a S. Raimondo di Pennaforte* (Milano, 1994). On Venice, see Stanley Chojnacki, “Patrician Women in Early Renaissance Venice,” in *Women and Men in Renaissance Venice* (Baltimore, 2000), 115–131, esp. 121–122; Stefano Pisentini, “Alla luce della luna”: *I furti a Venezia (1270–1403)* (Venezia, 1992); James E. Shaw, *The Justice of Venice: Authorities and Liberties in the Urban Economy, 1550–1700* (Oxford, 2006). On

- civil cases, see Patricia Skinner, "Disputes and Disparities: Women in Court in Medieval Southern Italy," *Reading Medieval Studies* 22 (1996): 85–105; Harry Miskimin, "Widows Not So Merry: Women and the Courts in Late Medieval France," in *Upon My Husband's Death: Widows in the Literature and History of Medieval Europe*, ed. Louise Mirrer (Ann Arbor, MI, 1993), 207–219. On criminal cases, see Barbara A. Hanawalt, "The Female Felon in Fourteenth Century England," in *Women in Medieval Society*, ed. Susan Mosher Stuard (Kalamazoo, 1977); Samuel Kline Cohn Jr., "Donne in piazza e donne in tribunale a Firenze nel Rinascimento," *Studi storici* 22 (1981): 515–533; *Women, Crime and the Courts in Early Modern England*, ed. Jenny Kermode and Garthine Walker (London, 1994); Trevor Dean, "Writing the History of Crime in the Italian Renaissance," in *Crime, Society and the Law in Renaissance Italy*, ed. Trevor Dean and Kate J. P. Lowe (Cambridge, 1994), 1–15, esp. 10–11.
10. The examined register covers the year between October 1313 and September 1314; it is on parchment and is well preserved. Single registers of this series are preserved for the fourteenth century, but the series is continuous only into the fifteenth century. On the Venetian court system, see note 8.
 11. Cassandro, "La curia di petizion," 20: 41–62.
 12. In the course of the fourteenth century, the Great Council attributed this capacity to several other Venetian courts. The Venetian statutes (Stat. ven.), books 1 to 5 and their glosses, are quoted from Roberto Cessi, *Statuti veneziani di Jacopo Tiepolo del 1242 e le loro glosse*, Memorie del reale istituto, 30, 2 (Venice, 1938). The sixth book, which is not included in the Cessi edition, is quoted from an unofficial edition: *Statuta veneta* (Veneciis, 1548). Stat. ven. 6:59, 60, 61, fols. 152v–154r. Cassandro, "La curia di petizion," 20: 50–51.
 13. Manlio Bellomo, "Dote," in *Enciclopedia del diritto*, ed. Dino Marchetti (Milan, 1965), 14:8–32, esp. 15–17.
 14. The Venetian statutes affirmed the rights of wives over their goods outside the dowry (Stat. ven. 1:39): "Cartula, quam fecit aliqua coniugata mulier in potestate viri sui, nulla ratione contra repromissam suam et dimissorias, que in eiusdem viri sui potestate devenerit, valeat, sed e omnibus bonis, que ipsa possidet, etiam sine consensu viri sui cartam facere possit et secutiatem et alienationem, sicut sibi placuerit. Item, et securitatem facere possit pro exigenda dimissoria vel alia, que exigere potest." [A deed that a married woman—who is under the authority of her husband—has concluded on the basis of her dowry or of other bequests that had passed under the control of her husband, is by no means valid, but she is permitted to draw acts of guarantee and sale on the basis of all other goods that she owns also without the permission of her husband, as she likes. In the same way she can give a guarantee in order to exact bequests or other things she can exact.]
 15. In Venice, the *ius commune* was not as important as in other Italian cities. Lamberto Pansolli, *La gerarchia delle fonti di diritto nella legislazione medievale veneziana*, Fondazione Guglielmo Castelli 41 (Milano, 1970).
 16. Digest 16.1. See also *Encyclopedic Dictionary of Roman Law*, ed. Adolf Berger (Philadelphia, 1953), 350–351: *adpromissio* (on securities), 700: *senatusconsultum velleianum* (on the exclusion of women). Dieter Medicus, *Zur Geschichte des Senatus Consultum Velleianum*, Forschungen zum römischen Recht 8 (Köln and Graz, 1957); Alberto Burdese, *Manuale di diritto privato romano*, 3rd ed. (Torino, 1975), 359–361; Jane F. Gardner, *Being a Roman Citizen* (London, 1993), 85–109.
 17. Maria Teresa Guerra Medici, "Le origini dello Stato moderno tra *res familiaris* e *res publica*," in *A Ennio Cortese*, ed. Italo Birocchi, Domenico

- Maffei, Mario Caravale, Emanuele Conte, and Ugo Petronio (Roma, 2001), 2:174–195.
18. On the opinions of medieval jurists about women as proxies in court and for businesses, see Minnucci, *Capacità processuale*, vols. 1 and 2, esp. 2: 245–250.
 19. Skinner, “Disputes and Disparities,” 91.
 20. Mostly we find the double denomination *plecius et appacator*, *plecia et appacatrix* (guarantor and payer), but sometimes only one.
 21. In the registers of Venetian notaries, there are numerous acts appointing women as proxies. See Linda Guzzetti, *Venezianische Vermächtnisse: Die soziale und wirtschaftliche Situation von Frauen im Spiegel spätmittelalterlicher Testamente*, Ergebnisse der Frauenforschung 50 (Stuttgart and Weimar, 1998), 91. In eleventh- and twelfth-century Genoa, 23.9 percent of investors were women. See Mark Angelos, “Women in Genoese *commenda* contracts, 1155–1216,” *Journal of Medieval History* 20 (1994): 299–312.
 22. Fathers and brothers-in-law were the most frequent dowry guarantors, with mothers-in-law in third place. Chojnacki, “Getting Back the Dowry,” in *Women and Men*, 109–111; Guzzetti, “Dowries in Fourteenth-Century Venice,” *Renaissance Studies* 16 (2002): 464.
 23. Stat. ven. 5:7.
 24. Giudici di petizione, sent. interdicta; reg. 2, fol. 75r (August 14, 1314). Scavolinus de Bonaventura and Petrus Zoco *bereter* had bought a nonspecified amount of pepper from Iohannes *da le frute*. As part of the payment of thirty shillings *grossorum*, they had pledged a mantel by him. Richelda claimed her husband’s share of the mantel or its value.
 25. Giudici di petizione, sent. interdicta; reg. 2, fol. 66r (June 17, 1314).
 26. Ibid.; reg. 4, fol. 3v (June 3, 1342): “Pleziam et principalem appacatricem ad voluntatem duorum iudicum petitionis.”
 27. Ibid., reg. 5, fol. 5r (July 7, 1352): She stood “pleziam et propriam ac specialem appacatricem.” Thirty pounds *grossorum* corresponded to three hundred ducats.
 28. Ibid., reg. 6, fol. 2r (June 10, 1347).
 29. Ibid.: “Interrogatus item dictus testis si predicta domina Beruzia dixit quod de predictis ipsa esset plezia, respondit quod non.” [When asked whether *domina* Beruzia said that she was the guarantee of the previously mentioned things, the witness answered in the negative.]
 30. Christine de Pizan, *Le livre de l’advison Cristine*, ed. Christine Reno and Lilaine Dulac, *Études christiniennes* 4 (Paris, 2001), 100–105.
 31. Deliberazioni del Maggior Consiglio di Venezia, pag. 51, [172], 26.09.1283: “. . . capta fuit pars quod consilium, continens quod debeat dari pignus de 12 den pro libra iudicibus petitionum, sit revocatum in omnibus personis, exceptis clericis et mulieribus maritatis.” [A bill was passed, saying that the decision according to which one must give a pawn of 12 pence (12 denarii = 1 shilling) per pound (libra) to the *Giudici di petizione*, was repealed for everybody except for priests and married women.] See also Cassandro, “Curia di petizion,” 20: 58–59. In this bill, the Great Council spoke only of married women; it was common for governing councils to disregard that not all women were married, at least not all their lives long.
 32. Obviously there were at least two people as parties in each case, but often more.
 33. The testamentary executors were called *commissarii* and, considered as a group, they built the *commissaria*. Most often only one executor appeared in court, in which case he or she is counted in the table according to his or her sex.
 34. Cassandro, “Curia di petizione,” 20: 99–101.

35. Smail, *Consumption of Justice*, 44.
36. Skinner, "Disputes and Disparities," 88.
37. Julius Ficker, *Forschungen zur Reichs- und Rechtsgeschichte Italiens*, 4 vols. (Innsbruck, 1868–1874), 1:326; Susanne Lepsius, "Die Frau die (wider-)spricht: gelehrte Juristen über Frauen als Zeuginnen," in *Zeitschrift der Savigny-Stiftung, Kanonische Abteilung*, 85 (1999): 203–224.
38. Albertus de Rosciate: "Item notandum quod mulieres . . . mutabile testimonium producent et extra de veritate" (quoted by Guerra Medici, *L'aria di città*, 24, n. 48). Comp. I, 5.36.10 (= X 5.40.10): "Nam varium et mutabile testimonium semper femina producit" (quoted by Minnucci, *Capacità processuale*, 2: 251). See also Harold J. Berman, *Law and Revolution: The Formation of Western Legal Tradition* (Cambridge, MA, 1983), 252; *Encyclopedic dictionary of Roman law*, 736: *testis, testis idoneus*.
39. Stat. ven. 1:20, glossa 122 (= pages 48, 50–51). Stat. ven. 1:24, gloss 148: "Prohibentur enim mulieres in causis, nisi ad minus sit cum eis unius hominis testimonium, qui earum corroborit testimonium. Possunt autem plures femine vel una testificare in breviariis, que firmanur in testamento; item, in breviariis dimissoriarum; item, in breviario repromisse, quod vocatur vadimonium." [Women are prohibited in trials, except if there is with them at least the testimony of one man that corroborates their testimony. However, several women or one woman can witness the documents to be certified as legal last wills; the same for documents concerning bequests; the same for dowry documents, documents called *vadimonium*.]
40. Stat. ven., 1st Proemium, 5–6; Stat. ven. 1:22; Stat. ven. 1:24, gloss 148.
41. *Testi veneziani del Duecento e dei primi del Trecento*, ed. Alfredo Stussi, Studi di lettere, storia, e filosofia pubblicati dalla Scuola normale superiore di Pisa 27 (Pisa, 1965), 23–24. Giudici di petizione, frammenti antichi; busta 1, charter between fols. 15–16.
42. "Dico eo Maria Baseio per varentissia et ço posso afermar per sacramento che . . ." *Testi veneziani*, 23–24.
43. Lepsius, "Die Frau die (wider-)spricht," 223. See also Minnucci, *Capacità processuale*, 2:251–260.
44. Shaw, *Justice of Venice*, 165–166. Shaw remarks that women were present as plaintiffs, defendants, and guarantors, but were less numerous than men.
45. Kathryn L. Reyerson, "Public and Private Space in Montpellier: The Bon Amic Square," *Journal of Urban History* 24 (1997): 3–27, esp. 15.
46. In this table I counted both the witnesses whose testimony were recorded and those who were proposed by a party but not heard. The breakdown by sex is similar in both groups.
47. Guzzetti, "Dowries in Fourteenth-Century Venice," 463.
48. Smail, *Consumption of Justice*, 57.
49. Giudici di petizione, sent. interdicta; reg. 2, fol. 60r + cedola (May 14, 1314). *Quondam Marci* may mean "daughter of the deceased Marcus" or "widow of Marcus." Twelve shillings grossorum corresponded to six ducats.
50. The judges could ask a party to confirm their own conviction through an oath. According to Venetian law, this oath was a sufficient basis for the court to condemn the other party. Stat. ven. 1: 45. Cassandro, "Curia di petizion," 20:27.
51. *Ibid.*, 20: 17, 202 (case 94: October 30, 1338).
52. This kind of business association was called *collegantia* in Venice, but *commenda* elsewhere. Originally it was used in long-distance trade, but in the fourteenth century it existed only in its "local" form—that is, for investments in Venice. Ageo Arcangeli, "La commenda a Venezia specialmente nel secolo XIV: Contributo alla storia delle società commerciali," *Rivista italiana per le scienze giuridiche* 33 (1901),

- 107–164. Frederic Chapin Lane, *Venice: A Maritime Republic* (Baltimore, 1973), 52, 138; Reinhold C. Mueller, *Money and Banking in Medieval and Renaissance Venice*, vol. 2, *The Venetian Money Market: Banks, Panics and the Public Debt, 1200–1500* (Baltimore, 1997), 147; John E. Dotson, “Bank and Banking,” in *Medieval Italy: An Encyclopedia*, ed. Christopher Kleinhenz (New York, 2004), 91.
53. Giudici di petizione, sent. interdicta; reg. 2, fol. 54 (April 30, 1314). Numerous secondhand sellers were women. Fifteen shillings *grossorum* corresponded to seven and a half ducats.
54. This court dealt with disputes on rents of buildings in the city, on maritime matters, and cases in which at least one party was a foreigner. Cassandro, “Curia di petizione,” 20: 44–45.
55. Giudici di petizione, sent. interdicta, reg. 2, fol. 71r-v (July 15, 1314). Four and a half pounds *grossorum* corresponded to forty-five ducats.
56. Many defendants declared not to be able to “give better conditions” (*non poterat facere meliorem rationem*) and offered, as a standard and symbolic amount, one *denarius parvus*.
57. On the low degree of specialization of small-scale Venetian merchants, see Lane, *Venice*, 143.
58. Dicebat ipsa Maria: “non est residuum, des mihi” et ipse [Iohannes] dicebat: “ego volo solvi de meo labore quia fui puer viri mei (sic)” et ipsa dicebat “non fuistis sed fuistis socius.” Giudici di petizione, sent. interdicta, reg. 2, fol. 71r-v (July 15, 1314).
59. Giudici di petizione, sent. interdicta, reg. 2, fols. 9–10v (October 15, 1313; November 13, 1313).
60. Anna Bellavitis develops these arguments in her forthcoming *thèse d’habilitation*. I thank the author for allowing me to read it.
61. The denomination comes from the beginning formula: *manifestum facio* (I make public).
62. In the acts drawn up by notaries, the standard penalty for failed or delayed payment was the double of the original sum (*poena de duplo*).
63. Giudici di petizione, sent. interdicta, reg. 4, fol. 24r–v, fol. 25r (January 17, 1342).
64. Diane Owen Hughes, “Domestic Ideals and Social Behavior: Evidence from Medieval Genoa,” in *Family in History*, ed. Charles Rosenberg (Philadelphia, 1975), 115–143; Hughes, “Struttura familiare e sistemi di successione ereditaria nei testamenti dell’Europa medievale,” *Quaderni storici* 33 (1976): 929–952, esp. 939–940; Dennis Romano, *Patricians and Popolani: The Social Foundations of Venetian Renaissance State* (Baltimore, 1987), 56–60; Elisabeth Crouzet-Pavan, “*Sopra l’acque salse*: *Espaces, pouvoir et société à Venise à la fin du Moyen Age* (Roma, 1992), 1:413–418; Sally McKee, “Households in Fourteenth Century Venetian Crete,” *Speculum* 70 (1995): 27–67, esp. 48–49.
65. Giudici di petizione, sent. interdicta, reg. 2, fol. 51r (April 26, 1314).
66. Julius Kirshner, “Family and Marriage: A Socio-Legal Perspective,” in *Italy in the Age of Renaissance 1300–1550*, ed. John M. Najemy (Oxford, 2004), 82–102, esp. 96. See also Francesco Ercole, “L’istituto dotale nella pratica e nella legislazione statutaria dell’Italia superiore,” *Rivista italiana per le scienze giuridiche* 45 (1908), 210; Christiane Klapisch-Zuber, “Un salario o l’onore: come valutare le donne fiorentine del XIV–XV secolo,” *Quaderni storici* 79 (1992): 41–49. Klapisch-Zuber points out that Florentine husbands signed contracts for their wives even in professions such as wet nurse, which they were not likely to exercise together.
67. Sue Sheridan Walker, “Feme covert,” and Janet S. Loengard, “Feme sole,” in *Women and Gender*, 282–83.

68. The statutes of Treviso (*Statuti carraresi*) from the end of the fourteenth century state that daughters could be “public merchants,” in which case fathers were not responsible for their transactions. The same was not considered for married women. *Gli Statuti del comune di Treviso (secoli XIII–XIV)*, ed. B. Betto, *Fonti per la storia d’Italia*, 109 (Roma, 1984–1986), 2:336, rubrica 59.
69. Smail relates that many cases in Marseille were decided only on the basis of women’s testimonies. Smail, *Consumption of Justice*, 56–57.
70. See note 7.
71. Christiane Klapisch-Zuber, “Les femmes dans les espaces publics de la ville italienne (XIVe–XVe siècles)” in *Anthropologie de la ville médiévale, textes réunis et présentés par Michal Tymowski* (Warsaw, 1999), 83–90; esp. 90: “L’espace urbain, dans la ville toscane de la fin du Moyen Âge, est masculin.”

4 Testamentary Bequests of Urban Noblewomen on the Eastern Adriatic Coast in the Fourteenth Century

The Case of Zadar

Branka Grbavac

This chapter looks at the way in which urban noblewomen of fourteenth-century Zadar used their property resources for charitable and pious purposes. At that time Zadar was the greatest city of the Kingdom of Croatia-Dalmatia, distinguishing itself as a cultural, political, and economic metropolis. The city, which maintained a strong continuity with antiquity, was closely connected to its Croatian surroundings and embedded in the Mediterranean lifestyle and civilization. I will begin with a brief historical survey of the region, which is largely unknown in Western scholarship, and then proceed to analyze the composition of my target group (Zaratin noblewomen testators), examining the characteristics that influenced their ability to dispose of their goods (marital status and health conditions) and their testamentary practice. I will continue with a survey of the types of property that they owned and used in their testaments as bequests, making a distinction between those goods over which they had less freedom of disposal (immovable property) and those that were subject to far fewer limitations (movable property). A certain amount of attention will be paid to the cases of noblewomen's patronage through donations of especially valuable items, such as liturgical objects, paintings, and books.

The Kingdom of Croatia-Dalmatia consisted of two rather different parts. The first of them, medieval Croatia, was a coherent territory stretching from the mountain chains of the Dinaridi to the Adriatic Sea. The second part of the kingdom, medieval Dalmatia, referred to territorially disconnected cities and islands stretching from the Kvarner in the north to Boka Kotorska in the south.¹ The whole area shared similar characteristics due to the fact that all of its constituent parts had maintained a strong continuity with the late antique settlements in their ecclesiastical as well as secular traditions, and had a similar economy to that of neighboring Italy. However, the population (including the urban nobility) had become highly slaviced in the early Middle Ages. In confessional matters, however, Dalmatia embraced (as did the whole of Croatia) Latin Christianity, with almost no adherents of other religions.² In the early Middle Ages, Dalmatian cities were under the sovereignty of Byzantium; during the eleventh century, they were incorporated into the Kingdom of Croatia and together became a constitutive

part of the Kingdom of Hungary-Croatia around 1100. However, as early as that time, sovereignty over them—especially over Zadar—was, with varying degrees of success, also claimed by Venice.³

As mentioned previously, my focus is on the urban noblewomen of Zadar, who belonged to what may be called the patrician class. Much like their Venetian counterparts after the *serrata* of 1297 (closure of Great Council), this stratum went from an open elite to a closed ruling class during the fourteenth and fifteenth centuries.⁴ The term most frequently used in the sources is *nobiles*, but to speak of them simply as noblemen would be misleading, because they differed from the nobility of their hinterland, who were landed elites with judicial and administrative functions, much like the ruling classes of the Kingdom of Hungary-Croatia in general.⁵ Contrary to that group, the rights of the urban nobility were confined within the borders of the communes, where they held exclusive political power and formed an economic and social elite.⁶

For this chapter, the primary research base is testaments, recorded by professional notaries mostly trained in Italy who wrote *lege artis*, using the standard legal formulas of Roman law. In form, these documents are identical to their counterparts made in Italy or elsewhere in the Mediterranean.⁷ Because Zaratín testaments are commensurate with their Western Christian counterparts, their study fits well into the research framework proposed by the previous historiography of wills in medieval western Europe.⁸

The sample of testaments analyzed here contains all the extant fourteenth-century testaments made by Zaratín noblewomen. All in all, we have 1,211 testaments notarized in Zadar between 1301 and 1400. Of all testators, 538 were women and 673 men. From the members of the Zaratín urban nobility, we have 473 testaments, 228 of them authored by women. Only one testament was drawn up jointly by a married couple.⁹

The marital status of Zaratín noblewomen testators was crucial to their ability to dispose of property.¹⁰ Out of 228 testaments, 194 identify marital status: ninety-eight female testators were married, one was engaged (*uxor futura*),¹¹ and ninety-five were widows, two of whom were on their second marriage.¹² Sixteen women were probably still unmarried, as they identified themselves only as daughters of certain persons, and their testaments do not suggest that they were married. One testator was a nun, the abbess Francisca de Civalellis.¹³ In some cases marital status cannot be ascertained, because the women used only the names of their families of origin, or because the documents are damaged and partially illegible.¹⁴ Of all female testators, widows seem to have had the greatest economic freedom and business ability. Many of them reacquired their dowries and gained control over the properties of their late husbands, either for life or until their remarriage, which corresponded to intestate succession laws.¹⁵ This happened most often if there were no children to inherit the husband's properties, especially no sons. In these cases, however, pressure from the widow's in-laws could be expected.

Married women's business ability was limited because their husbands controlled their dowries; however, this control did not apply to testaments, in which they could freely dispose of all their personal property (including their dowries). They also had complete control over their *bona paraphernalia*, goods ceded to them by their parents, husbands, or other relatives through testamentary bequests or on the occasion of marriage.¹⁶ Unmarried women had the least economic freedom and capability, as they were considered under the tutelage of their fathers until marriage. Again, this restriction did not apply to the testaments. In most cases, noble girls were married at a very early age, thus preempting their development of economic independence. For women, the most frequent means to acquire properties was through inheritance from female family members. In general, women's property mostly consisted of movable goods; landed property was usually transferred through the male line.¹⁷

Health concerns influenced testators' choice of bequests. The vast majority composed their testament when they were ill or old.¹⁸ Other women listed the dangers of childbirth,¹⁹ the plague,²⁰ or an upcoming pilgrimage as reasons for drawing up a testament.²¹ Francisca de Civalellis, the aforementioned abbess of St. Nicholas, wrote her testament in order to ensure that her duties as executor of another testament would be properly carried out by her successor. Fifteen women stated that they feared sudden death, while seven women did not give a particular reason for testating, as they were still in good health.

Thus, Dalmatian noblewomen composed their testaments for a wide variety of reasons, including sickness, old age, upcoming pilgrimages, epidemics of plague, and medical reasons such as pregnancy. In that respect they were not exceptional, as the same reasons are demonstrated in other cases, such as those in Linda Guzzetti's study of Venetian testaments.²² Yet the fundamental reason was usually the one expressed in the common testamentary formula: *nichil est certius morte et nichil incertius hora mortis* (nothing is more certain than death and nothing more uncertain than the hour of death). In this regard, Zaratina testators behaved like Christian testators all across late medieval Europe. The right to compose a testament was considered a fundamental right for any person, regardless of his or her social standing, marital status, gender, or age, as is clearly stated in the city's statute (lib. III, tit. XXIII, cap. 105).²³

The importance of testaments, both for the settlement of a testator's worldly life and as a means of ensuring eternal salvation, strongly influenced the way in which the testator's property was distributed. As has already been proposed by Philippe Ariès, the main purpose for composing testaments in the Middle Ages was religious, while secular arrangements for the disposition of material goods was to come to the foreground later in the early modern age.²⁴ In the case of Zaratina noblewomen, Ariès seems to be correct. The major emphasis of their testaments was on the organization of funerals and the regulation of testamentary dispositions. These

dispositions centered for the most part on pious bequests, while property transfers garnered less attention. The distribution of property was mainly regulated by custom and consisted of appointing the testator's principal heirs—in most cases sons—which did not leave much occasion for individual bequests.

The testaments deal only with a limited portion of a person's estate; the extent of the properties to be given away as legacies may have been restricted by the testator's gender or by the presence of children. Male testators, who inherited most of their fathers' properties, had the least freedom to make individual bequests, because they were supposed to transfer their possessions among their agnatic kindred. Sometimes, male testators might leave their properties to their spouses, but such bequests were usually accompanied by a clause restricting their wives' right to enter another marriage. Maffeo de Matafaris proclaimed as his principal heirs several groups of male relatives, who were to inherit successively, and ordered that if all the male members of the de Matafaris clan died out without male heirs, his entire estate should be distributed among the poor. Thus, Maffeo wanted to prevent at every cost that his patrimony fell to a female line.²⁵ On rare occasions, testators might decide to do the opposite, as did Ser Simon de Rosa, who proclaimed his wife and two daughters as his principal heirs, and ordered that only if both daughters died without heirs, his property was to be inherited by his brothers and male relatives (on both sides) or their descendants.²⁶

In the case of female testators, property was restricted to movable and acquired goods. Thus, they might buy some landed estates, over which they then had the right of free disposal, but they usually did not inherit immovable properties. Women were supposed to pass on their movable and acquired goods to their children, and had greater liberty to choose their heirs only if they had no offspring. Mothers followed Venetian rather than Florentine custom in making bequests, preferring daughters over sons, probably because the latter were the principal heirs of their fathers.²⁷ Still, when there were no children to inherit, the dowry, which made up the greatest part of a noblewoman's personal property, was generally given back to the woman's family, contrary to Venetian practice.²⁸

The aforementioned concerns were reflected in the types of property given for pious purposes. The donation of land was a rather insignificant part of this property, while pious bequests were regularly given in movable goods, principally money. In the earliest extant Zaratín testaments, dating back to the tenth and eleventh centuries, the situation was different, and donation of land was a traditional form of legacy.²⁹ This practice was gradually limited, as the commune began to take control of the land market,³⁰ and the inheritance patterns changed in favor of males inheriting immovable goods.³¹ However, the possibility of giving land for pious purposes still existed even in the fourteenth century. Prodana de Sloradis bequeathed her land containing thirty-three feet of olive trees to her female servant Stana.³²

Likewise, Pelegrina de Grisogonis left some of her olive trees to the nunnery of St. Catherine.³³ In many cases only general notions are recorded, such as land (*terra*) and landed estate (*possessio*). For example, Magdalene, the widow of the late Paul de Galcigna, left to the convent of St. Francis in the city “a possession of hers,” situated on the island of Ugljan. She also donated to the nunnery of St. Mary a ground (*locum*) for building a house in the city quarter of St. Trinity.³⁴ Still, most landed estates were passed on to family members; when testators wanted to use their immovable properties for pious bequests, the land in question needed to be sold and the money redirected toward pious purposes. A good example of such a bequest is the testament of the aforementioned Prodana de Sloradis, who ordered her executors to sell her landed property in Lukoran and Ugljan and distribute the money *ad pias causas* for the salvation of the soul of her brother Matthew.³⁵ On the other hand, some testators ordered that land be bought especially and given for pious purposes. For example, the aforementioned Pelegrina de Grisogonis bought certain lands in Petrčani for the large sum of 670 ducats from Francis, son of John de Zadulinis, to be given to the hospital she managed.³⁶ Besides making arrangements for her hospital, Pelegrina also purchased urban real estate for the nunnery of St. Catherine that she had founded.³⁷ Properties acquired and bequeathed in this manner were beyond the reach of the testator’s relatives.³⁸

Movable properties, by contrast, could be used for pious purposes much more freely; in fact, noblewomen testators could bequeath everything they owned in this manner. Thus, legacies bequeathed *pro remedio anime* varied considerably, as will be shown in the following.

MONEY³⁹

As stated previously, the most frequent bequests for pious purposes given by Zaratín noblewomen in the fourteenth century were paid in cash. Most noblewomen explicitly mentioned the monetary value of particular legacies in their testaments; others noted only the total sum to be spent. A good example of the first variety is that of Magdalene, wife of Daniel de Varिकासis, who left valuable monetary bequests—including several legacies to various monastic recipients (mendicants, convents, and nunneries)—totaling 750 ducats, 308 golden florins, 740 pounds, and 105 shillings (*solidi*). The size of her individual monetary legacies ranged from two hundred ducats for the reconstruction of the roof of the Franciscan convent in Zadar to ten shillings for each servant girl of the convent of St. Nicholas.⁴⁰ An example of the second variety is Palmuča, wife of the nobleman Krešol de Zadulinis, who left a lump sum of thirty-seven ducats to be distributed among not further specified *miserabiles personas*.⁴¹ Of course, testators were usually more precise when it came to bequests aimed at grandiose building schemes—such as Magdalene’s support for the roof of the Franciscan church, which

was accompanied by detailed further bequests for the construction of a chapel and a tabernacle, including the commissioning of paintings for other churches⁴²—or the foundation of ecclesiastical or social institutions, such as the Franciscan convent of St. Doimus in Kraj by Pelegrina de Grisogonis.⁴³

Testators were less precise on the myriad smaller legacies left to individuals, ranging from clergymen and nuns to the simple poor. These recipients were sometimes precisely named and sometimes only mentioned by some general label. For example, Margaret, wife of Saladin, son of the late Cosa de Saladinis, bequeathed ten ducats *pro anima sua* to the prior of the convent of St. Demetrius, and twenty pounds to the Dominican friar Thomasius. She also donated money to the nuns of the convent of the Poor Clares and of St. Mary in Zadar with the obligation that they read a psaltery on the anniversary of her death. In addition, Margaret bequeathed one hundred pounds to the friars of the convent of St. Francis, ordering that they should celebrate masses for the salvation of her soul.⁴⁴ Particularly personal were bequests to confessors and, very frequently, those to domestic servants (almost always cited by personal names). For example, Lucy, wife of Nicholas de Nassis, bequeathed six ducats to her confessor James Šimonić; and Catherine, wife of Nicholas de Gallelo, bequeathed ten pounds to her female servant Stoja.⁴⁵ Some of the bequests to domestic servants were quite generous, indicating that these relationships were rather close. Thus Gelenta, widow of the late Gregory de Saladinis, bequeathed three hundred pounds to her servant Budiša.⁴⁶

Zaratin noblewomen's generous monetary bequests to institutions and individuals suggest that they operated with rather large sums of money. The amount employed in various legacies by Magdalene de Varicassis was worth more than 1,250 ducats. Pelegrina de Saladinis bequeathed five hundred golden ducats just to the archbishop of Zadar, Peter de Matafaris.⁴⁷ Marica de Soppe left the same amount of money to the Franciscan convent in the city.⁴⁸ Pious bequests of such size indicate that their patrons belonged to the most wealthy and powerful families in the city. The women's families must have supported their testamentary choices, but it is important to acknowledge that these cases were unique. Magdalene de Varicassis and Pelegrina de Saladinis were elderly widows without children, so there was no one left to oppose their right to benefit the church. Marica de Soppe was still young and married, but childless, as were Magdalene and Pelegrina. She nominated her mother as her principal heir and testamentary executor, a task she was to share with her son-in-law. Thus, Marica was free to do with her property what she wished because it did not conflict with anyone's rights.

FOOD AND NATURAL PRODUCTS

Besides money, another kind of property that was not subjected to limitation involved yields of agricultural production and related income, as

these revenues were considered regenerative and of temporary value. Still, food and natural products made up a relatively rare form of bequest given for pious purposes, even though sometimes, a testator's entire income in kind was earmarked for a religious purpose. Nicolota, daughter of the late Thomadius de Varicassis, bequeathed the yearly income from her landed estates, located in the immediate neighborhood of the city, to Elizabeth de Matafaris, scion of another noble family and a nun of St. Mary.⁴⁹ Many noblewomen bequeathed wine (*vinum*), oil (*oleum*), and grain (*frumentum*) to a wide range of recipients, including members of the secular and regular clergy, servants, confraternities, the poor, and so on. Slava, the wife of the late Mogor, a citizen of Zadar, donated three *modia*⁵⁰ of wine and three *staria*⁵¹ of oil to the Dominican convent of Zadar;⁵² and Magdalene, the widow of Paul de Galcigna, donated twelve *staria* of oil to the convent of St. Francis in the city.⁵³ Prodana de Sloradis bequeathed seven jugs full of wine to her servant John.⁵⁴ Pelegrina de Grisogonis donated three *modia* of grain and three *modia* of barley to be distributed among the poor.⁵⁵ Livestock also counted as a possible type of property to be used for pious purposes. Prodana de Sloradis made use of this convention by bequeathing all of her livestock to her servants John and Stana.⁵⁶

A similar type of pious bequest consisted of sponsoring a meal (*prandium*) on the anniversary of the testator's death or funeral, or that of her close relatives, as did Stana de Civallelis. She ordered her executors to prepare one meal for the members of the convent of St. Plato.⁵⁷

GARMENTS⁵⁸

Garments, and textiles in general, might also be given for pious purposes. Since textiles were usually part of a woman's dowry or her personal belongings, they appear frequently in the testaments of Zaratina noblewomen. The value of the garments and textiles bequeathed varied, and depended on the quality of the weaving, the cut of the cloth, and its ornamentation. The textiles distributed as testamentary bequests can be divided into two major groups according to their value. The most valuable and luxurious objects were given for liturgical purposes. Prodana de Sloradis left generous bequests to the Dominican church of St. Plato, including a felt parament with pearls and other ornamentation, valued at fifty golden ducats;⁵⁹ and Magdalene de Varicassis left valuable garments to a priest at the church of St. George, valued at one hundred ducats, as a parament of silk.⁶⁰ Expensive clothes were also bequeathed to family members, primarily to sisters, daughters, or nieces. Less valuable garments and textiles were directed toward the everyday use of a wide range of recipients, including members of the clergy, the poor, and charitable institutions, as was the case with Pelegrina de Grisogonis, who bequeathed one hundred *brachia*⁶¹ of gray textiles to the Franciscans of the Bosnian province⁶² for their clothes.⁶³

Fumia, wife of Guido de Matafaris, ordered her executors to give a gray tunic each for seventy poor men and women, and left all of her own tunics to her servant girl Stančica.⁶⁴ Most garments donated to servants and the poor were usually gray, and of relatively low quality.

LITURGICAL OBJECTS⁶⁵

In addition to the garments that our testators had actually used in their lifetime, various liturgical objects ordered or bought specifically for the purpose of donating them to the church figure prominently in the noblewomen's testaments. Crosses and chalices were among the most frequently bequeathed liturgical objects. For example, Fumia, daughter of the late George de Rubeo and fiancée and future wife of Anthony, son of Francis de Grisco, bequeathed one chalice to the church of St. Chrysogonus and another one to the cathedral church of St. Anastasia, each worth one hundred ducats.⁶⁶ Dobra, daughter of the late Mathew de Varicassis, left fifty pounds for a chalice to the church of St. Plato.⁶⁷ Magdalene de Varicassis ordered the construction of a cross of the value of twenty ducats.⁶⁸ Also Nicolota, wife of the late Nicholas de Rastiso, ordered her executors to buy a silver crosslet at the value of two hundred pounds, to be given to the church of St. Francis.⁶⁹

Noblewomen also left large monetary bequests for the construction of church altars. Fumia, first wife of the nobleman Guido de Matafaris, ordered the construction of an altar in honor of the Virgin Mary in the church of St. Francis.⁷⁰ Guido's second wife, Michelina, left three hundred ducats for the construction of an altar under the title of Annunciation in the church of St. Francis in Zadar.⁷¹ Christina, wife of Bogdol de Rubeo, donated one hundred ducats for the construction of an altar devoted to St. Nicholas to the church of the convent of the Poor Clares;⁷² and Pelegrina, widow of the late Peter de Gliubauaçis, ordered her executors to construct an altar devoted to St. Pelerginus in the church of St. Francis for the price of thirty golden ducats.⁷³

PAINTINGS AND BOOKS

Bequests of paintings represent similar cases of patronage. The testaments rarely mention paintings because of their high cost and the difficulty of finding adequate artists. Some noblewomen already possessed the paintings that they bequeathed, while others left sums of money to be spent for their creation. Lucy, wife of John de Petriço, left an icon for the church of St. Savior and another for the church of St. Chrysogonus, each valued at one hundred pounds.⁷⁴ Likewise, Gelenta, wife of the late Gregory de Saladinis, left one icon to the church of St. Mary of Bičina.⁷⁵ Ann, wife of George de Matafaris, ordered her executors to make an icon with the motifs of the life of St. Jerome for the church of St. Mary the Greater.⁷⁶ Some women left a

monetary bequest for the repair of an already existing icon, as was the case with Mary de Mence from Dubrovnik, wife of the Zaratín nobleman Krešo de Varicasis, who left twenty pounds for the restoration of an icon placed above the altar of St. Margaret in the church of St. Stephen.⁷⁷

As paintings, donations of books rarely appear in the testaments of fourteenth-century Zaratín noblewomen. Whenever they do, the testators donated liturgical books, i.e., missals and breviaries that served to help worshippers follow liturgical ceremonies, which they either owned or commissioned. For example, Magdalene de Varicassis bequeathed a missal worth thirty golden ducats to Gregory the Older, priest of the cathedral church of St. Anastasia.⁷⁸ Pelegrina, widow of the late Peter de Gliubavaçis, left forty pounds to buy one breviary from the neighboring city of Šibenik for Prija, a nun in the convent of the Poor Clares of Zadar.⁷⁹ Likewise Boniza, wife of the late Krešo de Nassis, left twenty-five ducats for acquiring a missal to be given to the church of St. Francis.⁸⁰

This short survey of testaments shows that despite certain limitations, fourteenth-century Zaratín noblewomen were able to redirect a large portion of their properties according to their intentions. Women's possessions consisted primarily of movable goods, although they could also possess and dispose of immovable properties. The dowry formed the principal part of a woman's property, which replaced her share in her father's inheritance, but was controlled by her husband, and, to a certain extent, her kindred. These limited property rights were augmented by the so-called *bona paraphernalia* (additional goods) which wives owned in their own names; they were not considered part of their husbands' patrimonies and regarded as free from other claimants. In this respect, Zaratín women's property rights were similar to those in other Mediterranean regions, especially Venice.

In economic terms, noblewomen testators appear to have been rather well off, which allowed them to engage in different forms of charitable activities and cultural patronage, such as the commissioning of paintings, the purchase of liturgical books and objects, or even the building of churches and the foundation of convents. The value of their pious bequests in proportion to the total wealth they owned cannot be ascertained on the basis of testaments alone, however. Testaments might list individual bequests for pious purposes or particular gifts, but the bulk of a testator's property was passed on according to general succession rules. Most testators appointed only their principal heirs, usually their children. It seems that there was a certain preference for the female line (daughters over sons), which would conform to general Mediterranean patterns, but this is a question still in need of discussion.

NOTES

1. The number of publications regarding Croatian history in foreign languages is rather limited and frequently outdated. For more details, see Tomislav Raukar, "La Croatie dans l'espace européen," in *La Croatie et l'Europe*, vol.

- 2, *Croatie: Trésors du moyen âge et de la renaissance (XIIIe–XVIe siècle)*, ed. Eduard Hercigonja and Ivan Supičić (Paris, 2005), 9–17.
2. For more details, see Franjo Šanjek, “L’Église et le christianisme,” in Hercigonja and Supičić, *Croatie*, 213–241.
3. On Venetian rule, see Raukar, “La Croatie,” 9–13; Ivo Goldstein, *Croatia: A History*, trans. Nikolina Jovanovic (Montreal, 1999), 21–32.
4. On the Venetian *Serrata*, see Frederic C. Lane, “The Enlargement of the Great Council of Venice,” in *Studies in Venetian Social and Economic History*, ed. Benjamin G. Kohl and Reinhold C. Mueller (London, 1987), 3:237–274.
5. Pál Engel, *The Realm of St. Stephen: A History of Medieval Hungary, 895–1526* (London, 2001), 83–88, 119–122, 174–181.
6. For more information on urban nobilities, see the works cited in note 31.
7. For a correct although slightly outdated synthesis, see Milan Šufflay, *Die Dalmatinische Privaturkunde* (Vienna, 1904). For a similar case of a notariate in Venice, see Linda Guzzetti, *Venezianische Vermächtnisse: Die soziale und wirtschaftliche Situation von Frauen im Spiegel spätmittelalterlicher Testamente* (Stuttgart, 1998), 22–28.
8. On the various schools, see Samuel K. Cohn Jr., *Death and Property in Siena, 1205–1800: Strategies for the Afterlife* (Baltimore, 1988), 4. The chief proponent of scholarship of medieval Croatian testaments is Zoran Ladić, who has carried out quantitative studies of religious history. For a synthesis of his research, see his “Urban Last Wills from Late Medieval Dalmatia with Special Attention to the Legacies *pro remedio animae*” (PhD diss., Central European University, Department of Medieval Studies, 2003). Zdenka Janeković Römer has studied testaments of late medieval Dubrovnik to examine legal issues, property matters and inheritance rights, family history, and the history of women. See Janeković Römer, “‘*Pro anima mea et predecessorum meorum*’: The Death and the Family in 15th Century Dubrovnik,” *Otium* 3 (1995)/*Medium aevum quotidianum* 35 (1996): 25–34. For Western scholarship on Dalmatian testaments, see Susan Mosher Stuard’s socio-anthropological analysis of the late medieval nobility of Dubrovnik, *A State of Deference: Ragusa/Dubrovnik in the Medieval Centuries* (Philadelphia, 1992).
9. This is the case of Stephen, an illegitimate member of the Zaratín noble family of de Stumulo, and his wife, Nicolota. The testament was made in 1346. The document is kept in Državni arhiv u Zadru [the State Archive of Zadar], Spisi zadarskih bilježnika [the Deeds of the Notaries of Zadar] [hereafter DAZd, SZB], Pergamene [Parchments], b. 1, no. 25.
10. For comparative material regarding the marital status of the testators, see Ellen E. Kittel, “Testaments of Two Cities: A Comparative Analysis of the Wills of Medieval Genoa and Douai,” *European Review of History—Revue Européenne d’Histoire* 5 (1998): 59–61; Guzzetti, *Venezianische Vermächtnisse*, 56–61.
11. This was *Fumia filia condam Georgii Rubei, sponsa et futura uxor ser Antonii filii ser Francisci de Grisco, nobilis ciuis Iadre*, who composed her testament in 1389: DAZd, SZB, Articutus de Riuignano [hereafter AR], b. 5, fasc. 3, fol. 60r–60v.
12. The first of these cases is that of *domina Dobra filia condam Nicolai de Iuriso et uxor olim Gregorii condam Damiani de Fraxolo, ciuis Iadre et nunc uxor Nicolai condam Mirisse de Sibenico* from 1349. For the edition of the testament, see Jakov Stipišić, *Spisi zadarskog bilježnika Franje Manfreda de Surdis iz Piacenze, 1349–1350* [Register of Francis, the Son of Manfred de Surdis of Piacenza, a Notary of Zadar], *Spisi zadarskih bilježnika* 3 (Zadar: Historijski arhiv u Zadru, 1977) [hereafter SZB 3], doc. 43, 27–28.

- The second case is that of *Agnētis relicta condāam strenui militis domini Stephani de Nosdrogna et nunc uxor ser Iohannis condāam ser Grisogoni de Calcina* from 1382. This testament is extant only in a *regestum* made by Zaratīn Ferrante Guerrin, *Regesti dell'Archivio notarile di Zara*, in Znanstvena knjižnica u Zadru [Scientific Library in Zadar] [hereafter ZKZd], ms. 461, Petrus Perenčanus [hereafter PP].
13. This was *venerabilis et honesta domina Francisca de Ziuaelis, abbatissa monasterii sancti Nicolai de Iadra*, who composed her testament in 1391. See DAZd, SZB, Petrus de Sarčana [hereafter PS], b. 1, fasc. 1/8, fol. 242r.
 14. For example, in one case a person is defined as a sister-in-law, but it is not clear whether she is the wife of a brother or the sister of the wife of the person in question. She was *Maria filia condāam Bitthe de Petrina, cognata Iacobi de Faffogna*. See Tadija Smičiklas, ed., *Diplomatički zbornik Kraljevine Hrvatske, Dalmacije i Slavonije*. Codex diplomaticus regni Croatiae, Dalmatiae et Slavoniae [hereafter CD], vol. 8 (Zagreb, 1910), doc. 359, pp. 436–437.
 15. For the importance of the dowry within the structure of women's property, see Stanley Chojnacki, "Dowries and Kinsmen in Early Renaissance Venice," *Journal of Interdisciplinary History* 5 (1975): 571–600; Chojnacki, "Patrician Women in Early Renaissance Venice," *Studies in the Renaissance* 21 (1974): 190–193; Stuard, *A State of Deference*, 69–80; Janeković Römer, *Rod i grad: Dubrovačka obitelj od XIII. do XV. stoljeća* [The Kin and the City: Family in Dubrovnik from the Thirteenth to the Fifteenth Century] (Dubrovnik, 1994), 77–89.
 16. The right to the unhindered use of *bona paraphernalia* was guaranteed by the city statute (lib. III, tit. XX, cap. 98). See Josip Kolanović and Mate Križman, eds., *Statuta Iadertina cum omnibus reformationibus usque ad annum MDLXIII factis. Zadarski statut sa svim reformacijama odnosno novim uredbama donesenima do godine 1563* (Zadar, 1997), 342–343. For similar legal solutions and practice in Venice, see Chojnacki, "Patrician Women," 189–191.
 17. The literature on noblewomen's property rights and economic abilities in medieval Dalmatia is immense. See, for example, Stuard, *A State of Deference*, 100–114; Janeković Römer, *Rod i grad*, 89–93, 130–137; Janeković Römer, "Noble Women in Fifteenth Century Ragusa," in *Women and Power in East Central Europe: Medieval and Modern*, ed. Marianne Sághy, special issue, *East Central Europe* 20–23, part 1 (1993–1996): 141–170. For more discussion of economic and property relations and their legal aspects, I am preparing an article for project Conex II, BMBWK (Business Life and Women's Rights), headed by Martha Keil of the *Institut für Geschichte der Juden in Österreich* in St. Pölten.
 18. This was *domina Tomasina filia condāam ser Matei de Georgiis*, who composed her testament in 1391 (DAZd, SZB, AR, b. 5, fasc. 3, fol. 87r–87v).
 19. These were *Dobra uxor Grixogoni olim Mathey de Georgio* in 1347 (DAZd, SZB, PP, b. 1, fasc. 11, fol. 24r) and *nobilis domina Fantina filia qm. ser Lombardini de Saladinis et uxor ser Blasii filii qm. ser Georgii de Soppe* in 1394 (DAZd, SZB, AR, b. 5, fasc. 2, no. 27). That pregnancy and giving birth were a real threat may be seen from testimony given in the latter case, in which she explained that she made her testament "currently pregnant, fearing the accidents which are wont to happen in the case of many pregnant women."
 20. For the Zaratīn noblewomen, these cases are connected to the epidemics of 1391 and 1392. The testators were *nobilis domina Michelina filia qm. ser Gregorii de Zadulinis et uxor qm. ser Viti de Zadulinis* (DAZd, SZB, AR,

- b. 5, fasc. 2, no. 21), *domina Maria uxor ser Iohannis filii qm. ser Nicolai de Nassis et filia qm. ser Petri de Pedreto* (DAZd, SZB, AR, b. 5, fasc. 2, no. 25), and *nobilis domina Michelina filia qm. ser Iohannis de Botono et uxor egregii regii militis domini Guidonis de Matafaris* (DAZd, SZB, AR, b. 5, fasc. 3, fol. 89r–90r).
21. These were *domina Daria relicta qm. nobilis viri ser Bartholi qm. ser Mauri de Grisogoni* in 1370 (DAZd, SZB, Pergamene, b. 1, no. 41), *domina Lucia relicta qm. ser Matei de Begna filii qm. ser Damiani* (DAZd, SZB, AR, b. 5, fasc. 2, no. 18) and *domina Zuuiça relicta qm. ser Gregorii Cressii de Zadulinis* (DAZd, SZB, AR, b. 5, fasc. 2, no. 19) in 1390, and *domina Maria uxor ser Iohannis Nicolai de Nassis* in 1400 (DAZd, SZB, AR, b. 5, fasc. 2, no. 34).
 22. For more details, see Guzzetti, *Venezianische Vermächtnisse*, 68–70.
 23. Kolanović and Križman, *Statuta Iadertina*, 34–349.
 24. Philippe Ariès, *Western Attitudes toward Death: From the Middle Ages to the Present* (Baltimore, 1974), 63.
 25. DAZd, SZB, PS, b. 1, fasc. 1/4, fol. 111v–12v.
 26. DAZd, SZB, AR, b. 5, fasc. 3, fol. 61r–62r.
 27. This pattern may be seen in Venetian testaments, demonstrated in Guzzetti, *Venezianische Vermächtnisse*, 156–163, and runs contrary to the practice in Florence, where sons and male relatives were generally preferred. See also Julius Kirshner's review of Guzzetti's book in *Speculum* 77 (2002): 183.
 28. The Venetian custom of bequeathing the dowry to husbands is demonstrated in Guzzetti, *Venezianische Vermächtnisse*, 147.
 29. Prior to the 1260s, the composing of testaments was relatively rare and generally reserved for members of the highest social strata of the city. The first extant testaments are those of the city prior Andrew, made in 918, and of Agapis, a daughter of the tribune Dabro, from 999. For the texts of these documents, see Jakov Stipišić and Miljen Šamšalović, *Diplomatički zbornik Kraljevine Hrvatske, Dalmacije i Slavonije*. Codex diplomaticus regni Croatiae, Dalmatiae et Slavoniae, vol. 1, ed. Marko Kostrenčić (Zagreb, 1967), doc. 21, 25–28; doc. 33, pp. 48–49.
 30. The commune was worried because after becoming ecclesiastical, landed property was no longer considered alienable and was thus removed from the land market. This principle is confirmed by the aforementioned city statute (lib. 3, tit. VII, cap. 23, pp. 268–271), which strictly forbade alienating landed property to ecclesiastical institutions by testament and other types of donations (lib. 3, tit. V, cap. 14, pp. 258–261).
 31. For more details on the changing of kinship structure and inheritance patterns of the early medieval Dalmatian urban elite, see Zrinka Nikolić, *Rođaci i bližnji* [Relatives and Neighbors] (Zagreb, 2003), 60–75. A preliminary version of this book (in English) can be found in Nikolić, “The Family Structure of the Dalmatian Protopatricians in the Tenth and Eleventh Century” (master's thesis, Central European University, 1997). See also Nikolić, “The Formation of Dalmatian Urban Nobility: Examples of Split, Trogir and Zadar” (PhD diss., Central European University, 2004), 175–194.
 32. DAZd, SZB, Vannes Bernardi de Firmo [hereafter VBF], b. 2, fasc. 1/1, fol. 8r–10r. Leaving bequests to the servants was a usual practice among the members of Dalmatian urban nobility. Such a bequest had various implications, and was both a pious bequest to the poor and a present to persons with whom the testator had some connection during his life, especially because most domestic servants spent almost all their lives in the service of certain families. In certain cases it was even specified why the donation was made: *pro dilectione* (out of love), *pro salario* (in the case of delayed payments),

- and so on. For the attitude of the Venetian nobility toward their servants, see Guzzetti, *Venezianische Vermächtnisse*, 171–179. For a case showing the testamentary practices of female domestic servants in the early modern period, see Giovanna Benadusi, “Investing the Riches of the Poor: Servant Women and Their Last Wills,” *American Historical Review* 109 (2004): 805–826.
33. DAZd, SZB, AR, b. 5, fasc. 3, fol. 97v–99r.
 34. DAZd, SZB, VBF, b. 1, fasc. 1/4, fol. 44v–45v.
 35. DAZd, SZB, VBF, b. 2, fasc. 1/1, fol. 8r–10r.
 36. CD 16, dok. 227, str. 274–76.
 37. CD 17, dok. 317, str. 431–32.
 38. This was so particularly when houses were involved, because there was a significant difference between inherited family palaces (treated as an important part of patrimony) and acquired houses (treated as simple property). Thus, as a valuable bequest, Magdalene de Varicassis left to the city hospital of St. Martin one of her houses, situated in the city quarter of St. John *de Pusterla*, with the intention that poor people could live in it (DAZd, SZB, AR, b. 5, fasc. 3, fol. 51r–53r). The quarter of Pusterla was largely inhabited by the urban poor.
 39. For an analysis of monetary bequests in Venice, see Guzzetti, *Venezianische Vermächtnisse*, 103–109.
 40. DAZd, SZB, AR, b. 5, fasc. 3, fol. 51r–53r.
 41. DAZd, SZB, Iohannes de Casulis [hereafter IC], b. 1, fasc. 3/1, pp. 18–19.
 42. Magdalene, the wife of Daniel de Varicassis, bequeathed the greater part of her movable goods to various churches in the city and district; DAZd, SZB, AR, b. 5, fasc. 3, fol. 51r–53r. In another example, Nicolota, the widow of the late Nicholas de Carbono, left a significant monetary bequest (200 ducats) to the convent of St. Francis in Zadar, ordering that the donated money be spent on reconstruction (*in reparatione*) of that convent (CD 16, doc. 323, pp. 424–426). There are a great number of similar examples.
 43. DAZd, SZB, AR, b. 5, fasc. 3, fol. 97v–99r; CD 17, doc. 204, pp. 287–291. It is worth mentioning that Pelegrina’s foundation was well accepted by other Zaratian noblewomen, who started to support the convent. For example, Ann, the wife of George de Matafaris, bequeathed twenty ducats to the convent of St. Doimus in her testament (DAZd, SZB, IC, b. 1, fasc. 3/1, pp. 73–74).
 44. DAZd, SZB, IC, b. 1, fasc. 3/1, pp. 36–38.
 45. CD 17, doc. 270, pp. 369–370 [bequest to confessor]; DAZd, SZB, IC, b. 1, fasc. 3/2, pp. 10–11 [bequest to servant].
 46. DAZd, SZB, VBF, b. 2, fasc. 1/1, fol. 5v–6r.
 47. DAZd, SZB, AR, b. 5, fasc. 3, fol. 97v–99r.
 48. DAZd, SZB, IC, b. 1, fasc. 3/2, pp. 5–6.
 49. DAZd, SZB, VBF, b. 2, fasc. 2, nr. 18.
 50. *Modium* (Italian *moggio*) is a volume measure used in the Mediterranean. In Zadar, one *modium* of grain corresponded to 333.26 liters and one *modium* of wine corresponded to ca. 80 liters.
 51. *Starium* is another measure used in the Mediterranean; in Zadar, one *starium* corresponded to 83.31 liters.
 52. Mirko Zjačić and Jakov Stipišić, *Spisi zadarskih bilježnika Ivana Qualis, Nikole pok. Ivana, Gerarda iz Padove 1296 . . . 1337* [Register of John Qualis, Nicholas, the Son of the Late John, and Gerard of Padua, Notaries of Zadar 1296 . . . 1337], *Spisi zadarskih bilježnika 2* [hereafter SZB 2] (Zadar, 1969), doc. 117, pp. 55–56.
 53. DAZd, SZB, VBF, b. 1, fasc. 1/4, fol. 44v–45v.
 54. DAZd, SZB, VBF, b. 2, fasc. 1/1, fol. 8r–10r.

55. Item voluit et ordinavit moli debere modia frumenti tria et tria modia ordei et de farina ipsorum panem fieri et ipsum panem dari et distribui pauperibus Christi miserabilibus existentibus in ciuitate Iadra pro anima ipsius testatricis (DAZd, SZB, AR, b. 5, fasc. 3, fol. 97v–99r).
56. DAZd, SZB, VBF, b. 2, fasc. 1/1, fol. 8r–10r.
57. CD 10, doc. 54, pp. 92–94.
58. For comparative material in Venice, see Guzzetti, *Venezianische Vermächtnisse*, 95.
59. The *paramentum* was a liturgical garment. Since Prodana was a wealthy noblewoman, the garments were made of fine linen and ornamented (DAZd, SZB, VBF, b. 2, fasc. 1/1, fol. 8r–10r).
60. DAZd, SZB, AR, b. 5, fasc. 3, fol. 51r–53r.
61. *Brachium* is a measure for length; in Zadar, one *brachium* equaled 679.3 mm.
62. The Bosnian Franciscans were settled in the newly founded convent of St. Doimus in Kraj, established by Pelegrina, as previously noted. Their convents were founded outside their domicile province both to facilitate their missionary activity against the supporters of the Bosnian dualist church in Bosnia (the so-called *Bosanski krstjani* [Bosnian Christians]) and to provide them with a secure shelter in case of persecution. During the fifteenth century, they became more frequent recipients of pious bequests due to Ottoman pressure on them.
63. DAZd, SZB, AR, b. 5, fasc. 3, fol. 97v–99r.
64. CD 16, doc. 149, pp. 167–171.
65. For Venetian bequests of liturgical objects, see also Guzzetti, *Venezianische Vermächtnisse*, 219–221.
66. DAZd, SZB, AR, b. 5, fasc. 3, fol. 60r–60v.
67. DAZd, SZB, VBF, b. 2, fasc. 1/4, fol. 70r–71r.
68. DAZd, SZB, AR, b. 5, fasc. 3, fol. 51r–53r.
69. CD 16, doc. 373, pp. 494–495.
70. DAZd, SZB, PS, b. 2, fasc. 20, fol. 7r.
71. DAZd, SZB, AR, b. 5, fasc. 3, fol. 89r–90r.
72. DAZd, SZB, AR, b. 5, fasc. 3, fol. 106r–106v.
73. DAZd, SZB, VBF, b. 2, fasc. 1/2, fol. 31r–32v.
74. DAZd, SZB, AR, b. 5, fasc. 3, fol. 70r–70v.
75. DAZd, SZB, VBF, b. 2, fasc. 1/1, fol. 5v–6r.
76. DAZd, SZB, IC, b. 1, fasc. 3/1, pp. 73–74.
77. DAZd, SZB, AR, b. 5, fasc. 3, fol. 21v–23r.
78. DAZd, SZB, AR, b. 5, fasc. 3, fol. 51r–53r.
79. DAZd, SZB, VBF, b. 2, fasc. 1/2, fol. 31r–32v.
80. DAZd, SZB, IC, b. 1, fasc. 3/2, pp. 15–17.

5 Women, Testaments, and Notarial Culture in Bologna's Contado (1348)

Shona Kelly Wray

Many, if not most, aspects of Mediterranean life were carried out within the context of a written, legal culture facilitated by notaries who lived and worked in cities and rural areas. Since the mid-thirteenth century, Bologna had been a center of notarial culture for the Italian peninsula and, indeed, for much of southwestern Europe, because the principal formularies used by notaries practicing throughout the western Mediterranean were produced by professors of notarial law in Bologna, viz., Salatiello and Rolandino Passagieri.¹ In the city of Bologna itself, notaries dominated politics, administration, and the courts, serving as secretaries and officers in the halls of justice, government, and civic bureaucracy.² They were present throughout the streets, markets, homes, and churches writing up the testaments and the many types of contracts (loans, sales, rentals, apprenticeship, guardianship, dowry, peace, compromise, arbitration, and more) that permeated the daily life of townspeople from all social levels. Notaries also populated rural areas, writing up whatever contracts the peasants needed. As Edward Muir has proposed, notarial culture may have had a larger impact than religious culture on the largely illiterate countryside, because educated priests were rare, whereas the itinerant notary was commonplace.³ The rich notarial archives of Bologna and other Italian urban centers have generated many detailed studies of urban life, but, despite the recognition that notaries also served the needs of residents living in the contado (the rural district subject to the city), scholars have undertaken fewer examinations of the notarial records in these areas. Developments in Italian medieval rural society and economy were certainly fundamental to those of the city, yet scholarship still shines its spotlight mainly on cities, leaving the larger and more populous rural areas in the dark.⁴ Within these under-studied areas, the lives of women remain almost entirely hidden.

This chapter will examine the extent of rural women's participation in notarial culture in terms of the practice of making a will. Recently, Samuel Cohn examined testaments of the rural subjects of Florence from late fourteenth and fifteenth centuries to compare spirituality in the Tuscan countryside with that of Florentine citizens.⁵ My intention here is not to study rural spirituality, but instead focus on testamentary practice among

peasants as a way to determine their role in notarial culture. While wills certainly could contain declarations of piety, such pious statements are not the objects of investigation here. Instead, focus is on the social events of declaring, recording, and preserving the testament. It should be remembered that the naming of an heir, not the distribution of pious bequests, was the principal and necessary purpose for a testament, as made explicit in notarial law.⁶ Donations for pious causes were not limited to the testament, and, while most testators included pious bequests as part of their list of last wishes, there are many testaments that contain few or no such declarations. We can only offer estimations about the extent of a testator's piety when there are few or small pious bequests in a will and, similarly, we must be sensitive also to the presence of a priest and the notary when evaluating the pious bequests that were made.⁷ Transmission of property is always present in the testament, although the form and value of a testator's patrimony are not stated. Peasants, one might assume, would have little property to transmit and thus little reason to make a will, but the Bolognese evidence suggests otherwise: peasants were almost as active as their urban counterparts in this common late medieval practice.

The onslaught of the Black Death of 1348 caused an enormous number of people to consider their last wishes for the future of their family. They turned to notaries to ensure these were written in legal form. Bologna's city statutes further required that testaments (as well as all contracts with a value greater than 20 lire) be registered in abstracted form, with a tax paid, at the Office of the *Provisori* and that the *nota* be deposited for the testaments and contracts to be copied out in full by notaries working for the Office of the *Memoriali*.⁸ Despite what must have been terrifying circumstances, notaries at each level of this large bureaucracy—from the notary traveling to the homes of clients to those working at the government offices—worked hard to preserve their records. The twenty-eight extant registers of the notaries working for the *Memoriali* are found today bound together in three large volumes of over 1,400 folios covered with the tightly packed, often inelegant, notarial hand. Some notaries kept separate sections to their registers for contracts and testaments written in the contado (with the rubric *comitatus* at the top of each such folio), while others simply transcribed acts from the contado alongside others from the city as they were received.

For the year of 1348 there appear in the *Memoriali* registers 1,147 testaments that were written either in the city or in the *guardia civitatis* (the district immediately outside of the city walls) and 927 testaments from the contado. These enormous numbers reveal well the horror of the epidemic. Antonio Ivan Pini proposed a mortality rate of about 35 percent for the Black Death in the city, which may be low given the much higher rates documented for other northern Italian cities, such as Florence, Orvieto, Siena, and Venice, and the upward revisions by recent demographic scholarship.⁹ Rolando Dondarini has estimated the city's population at the brink of the epidemic at about 35,000, but there are no estimates for the contado at

that time. The census carried out in 1371 by Cardinal Anglico Grimoard de Grisac, known as the *Descriptio civitatis Bononie eiusque comitatus*, does furnish estimates for 40,000 in the contado, with 28–30,000 in the city and *guardia*.¹⁰ Ole Benedictow has argued that rural areas suffered more than urban areas during the Black Death. It is difficult to judge, because testaments are unreliable sources for estimating mortality rates, but the comparably high numbers for the contado in this study indicate that plague there was at least as significant as it was in the city.

The high numbers of remaining wills also demonstrate the fact that writing up a testament was a common experience not only for city dwellers, but also for rural folk. Women made up 40 percent of the rural testators in the *Memoriali* of 1348. The urban wills of 1348, on the contrary, belonged to more women than men (52.5 percent were female testaments). This high participation of women can in part be explained through a law of 1333 that allowed men in Bologna to avoid registration in the *Memoriali* and have their wills deposited in the mendicant sacristies, while women's wills had to be registered in the *Memoriali*.¹¹ Before the implementation of the 1333 law, men created 60 percent and women dictated 40 percent of the wills in the archive, as was the case for rural testators in 1348.¹² This rate of testation is similar to those produced by recent scholarship that has found women's participation at 34–39 percent and 50 percent in several northern Italian cities, except Venice, which displayed exceptionally high rates of female testation.¹³ In Venice, women tended to make wills when they were married (especially in anticipation of the perils of childbirth), but the women of Bologna and its contado made wills when they were ill at any stage of their adult life, married or unmarried. In the contado the numbers are roughly equal between female testators who were wives, widows, or unmarried, single women, while in the city there were slightly more widowed testators.¹⁴ The evidence from the *Memoriali* of 1348 demonstrates that the women of Bologna's contado were as familiar with making a will as many of their urban counterparts.

Plague produced similarly strong reactions in the notarial record for both the city and the contado, but the number and timing of the acts were different. In the city, the average number of registered wills in the months before the epidemic entered, i.e., from January to April, was thirteen, but once plague arrived in May the number jumped to forty-one and exploded to 309 in June. It is possible that women suffered more initially because their wills form 75 percent of all wills made in June. July was the worst month of plague in the city, seen by the fact that it produced 585 testaments that remain in the *Memoriali* registers. The numbers of wills in the contado are lower than the city. For the pre-plague contado, the *Memoriali* hold an average of five wills per month from January through May, with men and women testating in roughly the same numbers (fourteen female testators and twelve male testators). The effect of plague appears only in June when the number of wills doubled from the previous month of seven to fourteen.

The change is present initially in women's wills that jump to nine in May, while men's stay steady at five. Thus, as was the case in the city, women may have been early victims of plague (65 percent of wills in May and 55 in June belong to women), but this situation is reversed for the later part of the epidemic. The *Memoriali* registers hold ninety-seven rural wills from July, strongly indicating the presence of the epidemic at that time, but the worst was yet to arrive in August when 294 wills were written. The plague kept its hold longer on the contado than the city. While the number of urban wills dropped by two-thirds from July to August and then again in September, the rural wills did not decline significantly until October (remaining high at forty-five).

Plague changed behavior in that many more people were forced all at once to dictate their last wishes. For this preliminary study, I have taken a sample of 200 wills written by 116 men and eighty-four women for which I have collected information on names, location, social and marital status, and a smaller subset of eighty-five wills for which I have collected also material on heirs and bequests. The sample is broadly representative of the massive amount of notarial documentation remaining from 1348, as it includes rural wills copied into the *comitatus* sections of ten of the twenty-eight individual registers (*quaterni* or *libri memorialium*) of the notaries working at the office of the *Memoriali*.¹⁵ The number of wills ballooned during the epidemic and the sample reflects this fact: all of the thirty-eight extant wills made during the first half of the year are included, but the remaining 162 wills of the sample drawn up from July through December comprise not even one-fifth of the testaments written for *contadini* and registered in the *Memoriali* during that time. The sample also broadly represents people living throughout the rural district of Bologna: the testators came from seventy-six different villages located in the plains of the Po Valley as well as the foothills and mountains of the Apennines to the south of the city.¹⁶ The testators of the contado came from only half as many locales in the river plains than the mountainous region, but the *pianura* was home to larger communities which furnished larger numbers of testators. Women and men from all over the contado—from the plains and mountains, from close in and far away from the city—had access to notaries.

Who were these testators of the contado? We must first establish whether or not these are city dwellers who fled social chaos for safety from plague in the countryside, along the lines of the famous group of storytellers of Boccaccio's *Decameron* who retired to a villa outside of Florence. For each will, the notary identifies the residence of the testator and also notes who is the owner of the house in which the testament was made (the vast majority of wills were made in a private home). In fact, during July and August there are several individuals identified by a parish in the city of Bologna, which might be taken as a sign of panicked flight from the city during the epidemic, a phenomenon emphasized by the medieval chronicles and literary accounts (and repeated uncritically by modern textbooks). One

certainly can find examples of possible flight and social disruption in the rural wills, such as that of the notary and citizen of Bologna, Nicolaus Jacobi Bartholomei, who left his home in the parish of San Biagio to have his will drawn up on July 17 in the home of a smith in Castel San Pietro (22 km along the Via Emilia in the eastern plains region of the contado). Such examples, however, must be examined carefully and placed in a wider evidential context before any judgment can be made. Nicolaus, it turns out, did not abandon his post as notary in Bologna, for he was writing up testaments in the city only days before he was in Castel San Pietro. So, while he created a will outside of the city, he had not left it during the epidemic. Furthermore, there is ample evidence that Bologna was well served by its notaries throughout the entire epidemic.¹⁷

There are eighteen testators in the sample who are identified by the notary as residents of a parish of Bologna; eleven of these were from the months of June, July, and August when the epidemic was raging in town. The majority were actually in their own homes in the contado. Most were landowners who had connections to the contado as well as the city, and thus it made sense for them to leave the city during the epidemic. For example, in June, a widow from the parish of San Tecla was in her house in Budrio. She held land and houses in Budrio that she gave to her siblings, and she arranged for burial in the church of San Lorenzo in Budrio. Similarly, in July, the wealthy Tencarina Deghi de Tencararis of the parish of San Cataldo dei Lambertini located in Bologna's aristocratic center had her will drawn up in the village of Cadriano in the plains "in the home of her husband" who "lived there at present" (though he too was identified by a parish of Bologna).¹⁸ Another rural testament from July belonged to the widow Guida Bertolini, who identified herself as belonging to the parish of Santa Maria del Turleone and her deceased husband as from Sant'Alberto, but she was in the house of "the heirs of her father" in rural Pizzocalvo.¹⁹ In August, wealthy Agnesia de Carbonesibus from the parish of Santa Maria degli Alemanni had her will drawn up outside her home in Pizzocalvo.²⁰ In fact, several residents of that village were also residents of Bologna: Jacopo Zanipoli de Manelinis, a well-off citizen from the parish of San Tommaso della Braina, was in Pizzocalvo in July; his widowed sister made her will in his house three days later; while on the same day, a third sibling, married to a man in Pizzocalvo, left money in her will for three hospitals in Bologna.²¹ These privileged, landowning Bolognese could easily leave town and retire to the countryside, where they could rely on their other social networks. Movement to the contado from the city during plague was not necessarily panicked flight, creating social chaos, but could also have been the result of people having social ties rooted both in the city and contado.

Indeed, the division between urban and rural often appears fluid in the notarial record. Several rural testators did not express any identity that was either solidly rural or urban. Fifteen men and women of the sample declared that they were residents in a location in the contado, but also came

from a parish in Bologna. Again, the majority (eleven) were in their contado homes when they dictated their wills. An elite woman, Maria Gillioli de Timellis, represents those for whom the boundary between urban and rural was porous, since she declared that she was from the parish of San Martino dell'Aposa and "now spends most of her time" in the village of Vedriano, in the hills south of Castel San Pietro (in the eastern plains on Via Emilia). She had her will written up in Vedriano in the home of a man from the aristocratic Basacomari family, a prominent Bolognese family.²²

Clearly, the contado was home to many men and women who moved easily between the city and their rural holdings. These people were not, however, the majority of the notarial clients in rural areas. The remaining 167 testators of the sample declared only one residence in the contado. Were they as well off as the landowners who moved back and forth from town to contado? Notaries in Bologna did not usually record the occupation of their clients (as this was not considered necessary for the proper identification of an individual). In the city, only about one-third of male testators and no women have a recorded occupation. They noted even fewer occupations in the contado: only six men (out of 200) had a recorded profession. As they did in town, notaries were more likely to recognize their own. Thus, two notaries are named: one was Nicolaus Jacobi Bertolomei from San Biagio in Bologna and the other was a notary of Castel San Pietro, who was of very modest means as the dowry he returned to his wife was only 75 lire, much less than the dowries of urban notarial families at that time that ranged from 200 to 300 lire.²³ Two spice dealers appear: one who lived in San Giovanni in Persiceto, but was originally from the parish of San Giuseppe in Bologna, and the other, rather well-off as he returned a dowry of 195 lire to his wife, declared that he was from the parish of San Giorgio in Poggiale, but owned a house in Budrio where he made his will.²⁴ Among the rural testators there also figured the rector of the church of San Antonio in Castel dei Britti, who dictated his will in a room of his church. The last named occupation was of a smith from Pizzocalvo, originally from San Giovanni in Persiceto. He was not rich, nor was he poor: he paid off debts of 58 and 41 *solidi* used to buy iron, provided for his servant or assistant (*famulus*) with a salary of 4 lire and some tools, and left a house to the wife of another smith, while he named as his heirs his minor children, who were to receive his principal home.²⁵ These few occupations contrast with the broad range displayed in the city, where notaries recorded occupations of artisans and retailers of leather, fur, and textiles, of wood-, stone-, and metalworkers, of merchants and goldsmiths, health care practitioners, legal professionals, and university professors. It is likely that many of these occupations were practiced in the contado, and with a larger sample more might be revealed.

If we examine the occupations of spouses of female testators in the sample, two more are apparent: one was married to a shoemaker who lived in the flats at Budrio and the other to a judge from the village of Pizzano, up

the Apennine valley of the Idice River.²⁶ Working with the often fragmentary tax records from the thirteenth through the fifteenth centuries for Bologna's mountains, Arturo Palmieri found several examples of rural notaries, doctors, architects, painters, builders, as well as several artisans (such as tailors, shoemakers, and barber-surgeons).²⁷ Francesca Bocchi argued, on the contrary, on the basis of the more complete fourteenth-century *estimi* that cover the entire contado, that social levels were low and there were few artisans or professionals.²⁸ The information on occupations from the wills is sparse, but it appears that the rural women were cultivators, who worked land they owned or held in rent through contracts of *mezzadria* and emphyteusis.²⁹ We may also assume that they were involved in small-animal husbandry and producing textiles, alongside child rearing. None in the sample is labeled as *serva* or *in servitio*, because the commune of Bologna had freed all serfs in its contado in 1257 with the *Paradisus* decree.³⁰ They were small landholders paying taxes to the city and rural communes. The key distinction in the mid-fourteenth century was whether and, if so, where they were *fumantes* and thus taxpayers (not of the exempted nobility, clergy, or poor), a term that made no difference to the notary writing up a testament.

Instead of occupations and titles, the best indicator for social status is the amount of dowry, a detail which is more available in these records. In their testaments, fathers often granted dowries to their daughters, and husbands, as a rule, returned their wives' dowries. It was also possible for mothers to make testamentary provisions for their daughters' dowries, or for wives to bequest their dowries to their husbands (in the sample there are two such examples). A standard dowry for the artisan or commoner classes in the city of Bologna at this time was 100 lire. Among the urban testators of 1348, this amount is returned to the wives or assigned to the daughters of shoemakers, butchers, master carpenters, parchment-makers, and secondhand clothes dealers, as well as those of a dyer, a baker, and a market-gardener.³¹ It is rare, but possible, to find dowries of 25 or 50 lire (from 1348, there is one butcher who returned 50 lire to his wife and one shoemaker who returned 25 lire). Dowries of the elite families or wealthy professional class began at 200 lire and often rose to 300, 400, or 500 lire.³²

The dowry sums for the rural testators reveal a different economic climate from the city. The few high dowries consist of amounts of 140, 150, 195, 300, and 500 lire, and *all* belong to families in the contado who named a parish in Bologna as their principal residence. There is one exceptional case in the sample of a nobleman of the Boccadiferro family living in Piumazzo, in the plains near the Panaro river at the edge of the Modenese countryside, who returned his wife's dowry of 500 lire and assigned to his unborn daughters the extraordinary sum of 1,000 lire each. This was matched in the city by only one woman who represented the highest elite of Bologna: Bartolomea Bonincontri Johannis Andree, the wife of law professor Jacopo Bottrigari (named after his father, the professor of Bartolo da Sassoferato) and granddaughter of the famous jurist Giovanni Andrea, also had a dowry

of 1,000 lire. The wives and daughters of most rural testators, however, were of a completely different social order. Here dowries were quite low: the average amount of stated dowries in the sample was 57 lire (though no dowry was that exact figure), but the most common amounts were from 40 to 48 lire (for nine testators), with 50 and 60 lire also frequent.³³

Rural testators, thus, were of modest means, consisting primarily of cultivators with a few artisan and professional or literate families. Most women and men of the *contado* had much less wealth than city dwellers, but nevertheless had access to the same notarial services. The task of the notary was not simply to write up acts in a legally correct way, but preservation of those records was also a necessary component. Bolognese laws demanded that notaries and clients submit the acts and pay for their preservation in its city registers. For townspeople this was not such a big deal, but for rural residents this could present a hardship, because it meant travel to the city. Women were not expected to make this journey, but instead were required to appoint a proxy (*procurator*) to make the trip, as were testators who were too sick to travel. We will examine the distance and altitudes of the villages of rural testators to further understand just what participation in notarial culture meant for these *contadini*.

Those who may have had the least difficulty engaging the services of notaries and submitting to the bureaucratic requirements of the city were the residents of the villages that dotted the plains of the Po Valley on the northern side of the Via Emilia (the Roman road that ran along the southern edge of the *pianura padana*, from Rimini on the coast, through the middle of Bologna, linking the towns of Emilia Romagna). The largest group of rural testators were sixteen men and women who lived in Budrio in the plains (about 15 km northeast of Bologna). Four others lived in the nearby village of Bagnarola. Also from this area of the plains were residents from San Donino in the outskirts of the city, and the villages Fiesso, Castenaso, and Poggio (11, 12, and 23 km away, respectively). From the northwestern quadrant of the plains area were nine testators from San Giovanni in Persiceto located on the Via Emilia about 23 km to the west. Three residents from Nonantula, which Bologna had recently fortified, would likely have passed through San Giovanni in Persiceto.

The rivers that flowed across the *pianura*, such as the Samoggia, Reno, Savena, Idice, and Sillaro, originated high in the Apennine mountains, and the residents of the mountainous district would have followed roads down these river valleys to reach the Via Emilia and travel along it to the city. Living at the eastern edge of Bologna's *contado* in the Apennine hills and valley of the Sillaro River, six inhabitants of the mountain village Sassonero, about 40 km from Bologna, would have traveled down a road along the river to Castel San Pietro on the plains, which produced twelve wills, to then reach the city by way of the Via Emilia. Other folk from these eastern hills, from Frasineto about 30 km away (one will) and Monte Caldarara (five wills), would have passed down a road to Varignana, a community

at an altitude of 184 meters that produced ten wills, where they could have quickly reached Via Emilia to get to Bologna in a day.³⁴ Significant groups of peasants came from Castel dei Britti (eight) and nearby Pizzocalvo (five), where the Idice river flowed into the plains near Via Emilia. Residents from communities further up the Valley of the Idice who would have passed here on their way to the city were also represented: four each from Monte Armato (at 250 m) and Pizzano (366 m), where the relatives of the famous writer Christine de Pizan lived. The two principal river valleys more directly south of Bologna were those of the Savena and Reno, which were channeled to flow into the city in canals. Again, villages in the mountainous heights of these valleys were represented in the rural wills: three from Monghidoro (at 841 m), four from Loiano (715 m), five from Scanello and Monzuno (621 m) further down, to a couple from Pianoro (200 m) and Otto along the road that led through the southern gates of Bologna. At the southwestern edge of the Apennine contado, near the territory of Modena, six testators came from the villages of Roffeno, Savigno (259 m), and Zappolino (230 m) along the Samoggia river that flowed down to Bazzano (93 m), where two testators lived. Perhaps those who traveled the farthest and had journeys of more than one day were proxies and notaries who traveled 50–60 km to Bologna from the villages of Rocca Pitigliana and Pian di Favale (near Monzone and Poretta Terme) high up in the Apennines at the southern border with Tuscany.

Whether they traveled across the flats of the *pianura* or twisting, steep Apennine tracks, *contadini* were well integrated into notarial culture and, as savvy users of notarial culture, could take advantage of its benefits. Though Bologna, like other Italian communes, exploited its rural district for a ready food supply for its urban populace to consume and profits that its landowners could invest in trade and industry, the peasants could use Bologna's written culture to ensure their own financial, familial, and personal futures.³⁵ The rural testators used the services of notaries to transmit their property, and they named a wide range of heirs, demonstrating that they intended to exert their own choice rather than let intestacy law determine succession. I will now turn to the subset of testaments of forty-seven men and thirty-eight women to examine the choices of rural testators and compare this preliminary information with a larger study I have done on the urban testators of 1348.³⁶

Rural men had the largest range of choice in naming heirs: they named their children, spouses, male and female relatives (from brothers, sisters, nephews, and mothers). With the exception of one testator, men did not, however, transmit their patrimony to people unrelated to them. This conservatism was also common among urban men. Among women, both rural and urban, widows displayed the largest range of choices of heirs, naming sons, daughters, brothers (but not sisters), grandsons, and even, in one case, going outside of the family (one widow named the sisters of her executor, a notary). Married women's preferences were much more restricted, as they

passed their property down only to members of the nuclear household: their sons, daughters, or husbands, and in one exceptional case, the parents. The case was similar for nonelite widows and wives in the city (although the urban elite women were more narrowly focused on their sons and immediate family). The last group of women were single women. They displayed the most peculiar choices of all testators, because in the city 80 percent of the nonelite single women left their wealth to people unrelated to themselves. Rural single women also made more irregular choices, because they chose more sisters, more distant kin, such as a female cousin, unrelated men, and, in one case, a religious heir. The single woman who named the convent of Santa Maria of Monte Armato was exceptional, as no other ecclesiastical entity or clergy was named as heir. Both in the city and the contado, during the Black Death testators did not turn the bulk of their property over to the church, but instead kept succession largely in the family.

Intestacy law dictated that sons should inherit the patrimony while daughters be granted a dowry, thereby excluding them from the inheritance. In 1348, eighteen of the eighty-five rural testators (or 21 percent) named only sons. Surprisingly, the same proportion of testators named only daughters. Six fathers and one widowed mother named all of their children, sons and daughters together. It seems that during the plague, rural and urban families, due to the high mortality of the epidemic, decided to pass their wealth down in nontraditional ways by including their daughters more often. In the contado, it was common to name one's spouse during the epidemic (a phenomenon that decreased in the city at that time): twelve rural wives named their husbands; and five husbands named their wives (one of whom appointed a daughter to share equally with his wife). Siblings were also important: brothers were named by seven men and women (three widows, one single woman, and three male testators), while three single women and one man named sisters. The urban testators were also much more likely to turn to their siblings during the plague than before. It was rare, at any time or place, to name one's parents as heirs: two unmarried *contadini* appointed their mothers and one married woman chose her father and mother as universal heirs. The situation for this last example may have been caused by the epidemic, as this wife stated she was from the parish of San Biagio in Bologna, but made her will in the house of her father in Pianoro (up the Savena River valley) and named as executor an unrelated man from San Biagio who also lived in Pianoro. Her husband is not named in any bequests—perhaps he was too sick to join her.³⁷

Other families managed to stay together to the end. Their wills are poignant reminders of the difficulty so many people faced. Bartholomeus Guideti of Castel San Pietro dictated his will in his home on November 1; his wife, Zanollina, was already widowed when she had her will drawn up in the house of her father in the same town five days later. Another couple in the Apennine village of Sassuno dictated their wills seven days apart; again, the wife had to deal with her husband's death very shortly after he

made his final arrangements.³⁸ Symon Cambi, who lived in the village of Sassonero up the Sillaro River, cared for a large family. He made his will on October 2, providing dowries of 125 lire to four daughters and 80 lire to a fifth. He then went against the principle of *exclusio propter dotem* and named all of his daughters as his heirs! We know that within four days this generous father and one of the daughters were dead, because his wife Zenessa made her will as widow and named the remaining four daughters as her heirs.³⁹ The same notary, Bertus Gerardi from the village of Bissano, wrote both wills and went to Bologna to register them on October 10. Our last picture of familial dedication during the epidemic exemplifies also the new choices in succession. The smith from San Giovanni in Persiceto, noted earlier, made his will on August 4 naming his son and daughter as heirs. Four days later he had lost his son, so he made a codicil maintaining his bequests to his assistant and a colleague's wife, but now naming his daughter as his heir. The notary who had gone to Bologna to register the testament on, August 7, returned there on August 9 with the codicil.⁴⁰

The Bolognese contado was home to many well-off landowners with property in the city and country. During times of plague some returned to their country seats. All counted on the fact that notaries would serve them wherever they were. Most of the inhabitants of the contado had little money, however, but, nevertheless, they too could take advantage of notaries' services in their villages. Indeed, as John Drendel found for fourteenth-century Provence, "rural folk were enthusiastic consumers of notarial acts."⁴¹ Plague forced many people to write their wills—needless to say we are not talking of enthusiasm here—and all at once they come into the notarial record. The dire circumstances for them produced bounty for the historian, thanks to the efforts of notaries working in the city and throughout the contado. Women living in the contado had a significant presence in the notarial record as they exercised their right to make a will and transmit property. In will-making and participation in notarial culture, there were clear continuities of experience for women across the urban and rural realms. The wills of 1348 further demonstrate that high mortality from plague made families rethink their choices for succession, and, as a result, women came to benefit.

NOTES

1. John Drendel, "Notarial Practice in Rural Provence in the Early Fourteenth Century," in *Urban and Rural Communities in Medieval France: Provence and Languedoc, 1000–1500*, ed. Kathryn Reyerson and John Drendel (Leiden, 1998): 209–235, esp. 210–214.
2. Antonio Ivan Pini, "Bologna nel suo secolo d'oro: Da 'comune aristocratico' a 'repubblica di notai'," in *Rolandino e l'Ars Notaria da Bologna all'Europa: Atti del convegno internazionale di studi storici sulla figura e l'opera di Rolandino*, ed. Giorgio Tamba (Milano, 2002), 3–20; Gina Fasoli, "Il notaio nella vita cittadina bolognese," in *Notariato medievale bolognese* (Roma, 1977) 2: 134–144.

3. Edward Muir, "The Sources of Civil Society in Italy," *Journal of Interdisciplinary History* 29 (1999): 379–406.
4. The political development of the urban commune was naturally linked to economic and political control of the countryside. See Philip Jones, *The Italian City-State from Commune to Signoria* (Oxford, 1997), Chapters 3 and 4.
5. Samuel Kline Cohn, Jr., "Piety and Religious Practice in the Rural Dependencies of Renaissance Florence," *English Historical Review* 114 (1999): 1121–1142.
6. Rolandino Passaggeri, *Summa totius artis notariae* (Venice, 1546; reprint, Bologna, 1977), fols. 230v–232v.
7. As Roisin Cossar has argued, "wills need to be studied within the particular social, cultural, and political contexts in which they were generated." See Roisin Cossar, *The Transformation of the Laity in Bergamo 1265–c. 1400* (Leiden, 2006), 173–176. It is problematic to argue, as Cohn does, for "low levels of affection" towards mendicants or "lack of devotion" among rural testators, unless we know wills were used specifically to express such views: Cohn, "Piety," 1130, 1132.
8. Gina Fasoli and Pietro Sella, eds., *Statuti di Bologna dell'anno 1288* (Vatican City, 1937 and 1939), 2: 80–83. On the institution of the Memoriali, see Luisa Continelli's introduction to the catalogue she edited, *L'Archivio dell'Ufficio dei Memoriali: Inventario: Vol. I Memoriali, 1265–1436, Tomo I, 1265–1333* (Bologna, 1988) and Giorgio Tamba, "I Memoriali del comune di Bologna nel secolo XIII: note di diplomatica" *Rassegna degli Archivi di Stato* 47 (1987): 235–290.
9. Antonio Ivan Pini and Roberto Greci, "Una fonte per la demografia storica medievale: le 'venticinquine' bolognesi (1247–1404)," *Rassegna degli Archivi di Stato* 36 (1976): 337–418; Ole J. Benedictow, *The Black Death 1346–1353: The Complete History* (Woodbridge, Suffolk, 2004).
10. For bibliography and discussion of population estimates, see Rolando Dondarini, *Bologna medievale nella storia delle città* (Bologna, 2000), 163–177.
11. On testation rates for Bologna, see Shona Kelly Wray, "Tracing Families and Flight in Bologna During the Black Death," *Journal of Medieval Prosopography* 25 (2004; published in 2008), pp. 153–154 and *Communities and Crisis: Bologna During the Black Death* (Leiden, 2009), Chapter 1.
12. Martin Bertram has determined the percentage of women's wills in the *Memoriali* for 1268 and 1300 as 41 percent and 40 percent, respectively. See Bertram, "Bologneser Testamente: Zweiter Teil: Sondierungen in den *Libri Memoriali*," *Quellen und Forschungen aus italienischen Archiven und Bibliotheken* 71 (1991), 212–215.
13. For figures of around 40 percent female testation, see Samuel Kline Cohn, Jr., "Last Wills: Family, Women, and the Black Death in Central Italy," in his *Women in the Streets: Essays on Sex and Power in Renaissance Italy* (Baltimore, 1996), 39–56; Ann Crabb, *The Strozzi of Florence: Widowhood and Family Solidarity in the Renaissance* (Ann Arbor, 2000); James S. Grubb, *Provincial Families of the Renaissance: Private and Public Life in the Veneto* (Baltimore, 1996), 81. Equal rates for men and women have been found in San Gimignano, Bergamo, and Genoa: Anna Vallaro, "Il significato religioso dei testamenti sangimignanesi in tempo di peste," *Studi Medievali* ser. 3, 41 (2000), 375–376; Steven Epstein, *Wills and Wealth in Medieval Genoa, 1150–1250* (Cambridge, Mass., 1984), 38; Cossar, *Transformation of the Laity*, 175.
14. Of the female testators in the contado, 36 percent were widowed, 32 percent were married, and 32 percent were single. In the city, 40 percent were widowed, 35 percent were married, and 25 percent were single.

15. The registers are from all three volumes and thus span the entire year of plague: seven registers are from volume 228 that covers January to June, and three are from volumes 229 and 230 that contain acts made in July through December.
16. According to the 1371 census, there were 297 communities in the contado.
17. ASB, Memoriali [hereafter as Mem], vol. 229, fol. 269r. He wrote up the wills for residents in Bologna on July 6 and 11 (Mem, vol. 228, fols. 113v and 267v). His brother, Bartolomeus Jacobi Bartolomei, wrote up wills in town on January 1 and June 12. On the number of notaries remaining at work during the epidemic. see Kelly Wray, "Speculum et Exemplar: The Notaries of Bologna During the Black Death," in *Quellen und Forschungen aus italienischen Archiven und Bibliotheken* 81 (2001): 200–227.
18. Mem, vol. 229, fol. 274r.
19. Mem, vol. 229, fol. 274r.
20. Mem, vol. 229, fol. 278r. She left her widowed daughter her dowry of 500 lire, an amount corresponding to marriages of the most elite families in Bologna.
21. Mem, vol. 228, fol. 278v.
22. Mem, vol. 229, fol. 53v.
23. In Bologna, in 1348, the mother of notary Francesco Bedoris Bresche left 200 lire for his sister's dowry (Mem, vol. 228, fol. 168r); the wife of notary Phylippus Boniohannis de Muglio had a dowry of 150 lire, while he provided 250 lire each to two daughters for their dowries (Mem, vol. 228, fol. 171r); notary Guilielmus Jacobini Mathei returned a dowry of 300 lire to his wife (vol. 229, fol. 99v).
24. Mem, vol. 228, fol. 272r; vol. 230, fol. 398v.
25. Mem, vol. 228, fol. 279r.
26. Mem, vol. 229, fols. 56v and 60r.
27. On the demography and society of Bologna's mountains, see Arturo Palmieri, *La montagna bolognese del Medio Evo* (Bologna, 1929), Part 2, Chapters 1 and 2.
28. Francesca Bocchi, "I debiti dei contadini (1235): Note sulla piccola proprietà terriera bolognese nella crisi del feudalesimo," in *Studi in Memoria di Federigo Melis*, ed. L. De Rosa (Naples, 1978), 1:202–204.
29. Alfred Hessel, *Storia della città di Bologna 1116–1280*, ed. Gina Fasoli (Bologna, 1975), 159–166.
30. See Francesca Bocchi, "La città e l'organizzazione del territorio in età medievale," in *La città in Italia e in Germania nel Medioevo: Cultura, istituzioni, vita religiosa*, eds. Reinhard Elze and Gina Fasoli (Bologna, 1981): 51–80, esp. 73–77 on the historical debate over this law.
31. Notaries and butchers, who were often landowners not simply meat handlers, could belong to either the elite or commoner classes, as there are examples of the wives and daughters of these men with dowries of 100, 200, and 300 lire.
32. Dowries for elite daughters were listed in lire as 200 (Cavalieri family), 250 (Basacomari), 300 (Pepoli, de Lana, and Desiderii families), 325 (Garisendi), 350 (Conforti), 400 (Zaccagnani and Maglavacchi), 500 (Bernardini and Torelli), 600 (Desiderii). Of the professional families, a doctor (*medicus*) provided his daughter with dowry of 200 lire. Wives of a spice dealer and a member of the da Saliceto family (law professors in the later fourteenth century) had 300-lire dowries returned to them, while another spice dealer left dowries of 300 lire to each of his three daughters. A man from the elite Grassi family returned 500 lire to his wife born into the Azzoni family. One daughter of a law professor left her dowry of 325 lire in a legacy to her husband, a notary.

33. The dowry amounts that I have recorded in the sample from rural residents (i.e., excluding those with a Bolognese parish) are in lire: 18, 24, 25, 25, 30, 34, 35, 40, 40, 40, 41, 42, 44, 45, 46, 48, 50, 50, 50, 50, 50, 60, 60, 60, 60, 65, 75, 80, 85, 88, 100, 100, 110, 110, 116. This preliminary study of dowry amounts does not take into account the important factors of family size and property of testators.
34. John Lerner provides examples of Renaissance travelers, often soldiers, who commonly crossed the Apennines in the neighboring Romagnol province in a day or two. See his “Crossing the Romagnol Apennines in the Renaissance,” in *City and Countryside in Late Medieval and Renaissance Italy*, eds. Trevor Dean and Chris Wickham (London, 1990): 147–170. For distances, I have used the satellite maps on Google, which probably underestimate distances as modern roads are straighter than the medieval footpaths and mule tracks that mountain residents would have used.
35. On Bologna’s efforts to control its contado through demographic and fiscal policies, see Francesca Bocchi, “La città e l’organizzazione del territorio in età medievale,” in *La città in Italia e in Germania nel Medioevo: Cultura, istituzioni, vita religiosa* (Bologna, 1981), 51–80 with bibliography on earlier studies of the Bolognese contado and Antonio Ivan Pini, “Un’aspetto dei rapporti tra città e territorio nel Medioevo: La politica demografica ‘ad elastico’ di Bologna fra il XII e il XIV secolo,” in *Studi in memoria di Federico Melis*, 1:365–408.
36. See Kelly Wray, *Communities and Crisis*, Chapter 6.
37. Mem, vol. 228, fol. 301r. Another unusual aspect of this testament is that she names specific sums as the inheritance for each parent, instead of simply passing along all or her goods. This may have been another indication of the uncertain situation with her husband away.
38. Mem, vol. 229, fols. 50r–v, 47r–v.
39. Mem, vol. 229, fols. 42v–43r.
40. Mem, vol. 229, fols. 279r–280r.
41. Drendel, 218.

6 Jewish Women and Property in Fifteenth-Century Umbria

Karen Frank

On 10 June 1449, three people sat down to formalize a contract in the central Italian city of Perugia. One of these was a Christian notary, Mariano di Luca di Nino. The remaining two—a Jewess, Rema, and her son-in-law, Abraham—until this point had been partners in banking and property management, along with Rema’s deceased husband, Jacob. The terms of this notarial contract indicate that Rema, not Abraham, took over the family business—a loan bank—upon Jacob’s death. Unless Rema chose to leave the family by remarrying, Abraham would remain the junior partner, for in addition to acquiring the bulk of Jacob’s estate, Rema also retained control of the bank. Undeniably, Rema became the head of the household and the family business upon her husband’s death.¹

Rema’s right to control her own property would not have been considered unusual within the medieval Jewish community, as classical Jewish law allowed widows to control their own assets. What is striking about this contract, however, is that according to Jewish laws of inheritance, Rema should have acquired nothing upon her husband’s death but her continued maintenance within his household, or, if she wished to remarry, her dowry.² Rema thus represents a medieval Jewish widow who claimed what was due to her—the right to manage her own property—as well as a bit more.

An examination of fifteenth-century notarial contracts from the central Italian region of Umbria, spanning the years 1435 to 1484, reveals that Umbrian Jewish women inherited property from a variety of sources, sold and leased property, and, like Rema, even owned and managed loan banks.³ Because a woman’s right to financial autonomy was based on her marital status, the actions of some of the women who appear in these documents, including those of widows and divorcées, were quite legal. Some, including those of married women whose property rights technically belonged to their husbands, were not. In sum, the notarial evidence suggests that whether allowed by law or not, in practice medieval Umbrian Jewish women were sometimes able to act financially in ways that resembled those open to Jewish men.

WOMEN, PROPERTY AND THE LAW: JEWISH TRADITION AND MEDIEVAL PRACTICE

From the very beginning of the Jewish tradition, the law curtailed women's property rights, particularly in terms of inheritance. For example, the Torah allowed daughters to inherit only if their fathers had no sons. If a man had neither sons nor daughters, the estate passed to his brothers. If he had no brothers, the estate passed to his father's brothers. If he had no paternal uncles, the property passed to the nearest male relative. Thus the only women who could inherit from men were daughters in the absence of sons; as a rule, women—including wives and mothers—did not inherit men's estates (Numbers 27:1–11).

The Mishnah, a compilation of Jewish law based on the Torah and redacted during the first and second centuries CE, slightly expanded women's inheritance rights, stating that a woman could "share in her father's wealth," even if she had brothers, through the provision of her dowry.⁴ Married women, however, were not allowed to manage their own dowries, but relied on their husbands to do so. The latter alone enjoyed the usufruct from these properties, which constituted daughters' shares of their fathers' estates, thus in theory reducing the potential value of women's inheritance in comparison to that of their brothers.⁵ In addition, married women were barred from bequeathing their property—including their dowries—to whomever they chose, due to the rabbis' pronouncement that a husband was always the sole heir to his wife's property, and in his absence, her sons.⁶

Women's control of property was restricted in other ways as well. The Mishnah made clear that a father retained almost complete legal control over his daughter so long as she was less than twelve and a half years of age, although he himself was under no legal obligation to provide her material support.⁷ This included control of a daughter's money, documents made in her name, the fruits of her labor, and any vows she might make. He also retained the right to arrange her marriage. The only exception to what a father could not do was to alienate any property a daughter had received from her mother, presumably as a gift during the mother's lifetime, since her mother's property upon her death would pass to her husband, not her daughter.⁸ If a daughter reached majority and remained unmarried, a father was legally required to maintain her until his death.⁹ It was probable that most daughters would marry earlier rather than later, however, and pass immediately into the control of their husbands, who assumed all of the economic privileges of Jewish fathers, including the duty to provide their wives' maintenance for the duration of their lives.¹⁰

The rabbis whose commentaries make up the Babylonian Talmud, redacted sometime between the third and sixth centuries CE and constituting the foundation of Jewish medieval society, reinforced these rulings, and in doing so, seemed to make Jewish women perpetual minors, at least in theory.¹¹ The rabbis of the Mishnah and Talmud also recognized that

women were not chattel, however, and modeled their commentaries on biblical laws to reflect this.¹² As Judith Romney Wegner argues, rabbis viewed women as “. . . sentient beings . . .,” and at times maintained that women were “. . . virtually equivalent to men, [and] ascribe[d] to them the same rational minds, practical skills, and moral sensibilities.”¹³ This notion was reflected in the Jewish marriage contract, the *Ketubbah*, which stipulates that while a husband owes his wife certain things, such as material support, a wife is charged with certain duties to her husband. As Wegner points out, this precludes wives from being chattel, as the latter possesses neither rights nor duties.¹⁴

It is also true that although the rabbis sometimes limited women's property rights, particularly the managing or selling of property, they also sometimes allowed women complete economic autonomy.¹⁵ According to Wegner, the rabbis treated women in the custody of their fathers or husbands as subordinates and legal minors for one specific reason: Neither young unmarried women nor married women were understood to own the rights to their sexuality; instead, these women's reproductive capacity belonged to men.¹⁶ But the sages willingly granted women not only full personhood, but absolute legal and economic autonomy when the latter's reproductive capacities were understood to be under their own control, as in the case of women who had attained their majority and remained unmarried, and those who had been widowed or divorced.¹⁷ Women who fell into this category could sue in court and retained full control of their own properties, purchasing, managing, and alienating assets as they saw fit.¹⁸

For a woman widowed or divorced, these assets could be substantial, as women in both situations were entitled to their dowry upon the dissolution of the marriage, whether through death or through a *get*, the Hebrew bill of divorce. And unlike the dowries of late medieval Christian Florentine widows, which returned to widows' natal families if they decided to leave their late husbands' households, newly single Jewish women's dowries belonged to the women themselves, and not to their natal families.¹⁹ These women could arrange their own marriages as well, and Wegner argues that some men may have wanted to waive their right to usufruct of their future wives' property in order to convince wealthy women to marry them. Thus a twice-married woman could in practice retain control of her own property.²⁰

Wegner's study makes clear that, at first glance, an independent woman like Rema, mentioned at the onset of this essay, may not seem to be out of the ordinary. As a widow, she would have been recognized as legally autonomous by Jewish law, and could have managed her own considerable property, including the loan bank, as she desired, and without the interference of men. She would have also had full right to her dowry, and to the usufruct and management of that, as well. But as stated earlier, what makes Rema's case interesting is that she was also made her husband's heir, despite Jewish legal restrictions to the contrary, and despite the presence of a living daughter, who by rights should have inherited

Jacob's estate. The question is, how common were independent Jewish women like Rema?

Historians of medieval Jewish communities for the past several decades have argued that despite some negative late antique and medieval rabbinical opinions concerning women's roles and economic privileges, medieval Jewish women in practice could behave independently of their fathers and husbands, like Rema, and even inherit property from their husbands. According to Avraham Grossman, Jewish men in fact went to great lengths to leave property to their wives.²¹ Kenneth Stow asserts that Jewish women often headed families after their husbands' deaths, even when adult sons were extant.²² And Judith Baskin notes that Jewish women throughout Europe—including married women—engaged directly in business with both Jewish and Christian men,²³ as Rema would have been required to do as head of the bank.

Most studies that describe medieval Jewish women's activities have been fairly general in scope, and usually pertain to *Ashkenazi* Jewish women, from northern Europe.²⁴ Recently, however, scholars have begun to examine the historical situation of southern European Jewish women. Several studies focus on female economic autonomy in medieval Spain and Provence, and historians such as Kenneth Stow and Howard Adelman have added much to the discourse about Italian Jewish women in the early modern era.²⁵

Although the works of the latter two historians address the period after the Middle Ages, they do reveal that in early modern Italy Jewish women were not as limited in practice as a strict reading of Jewish law might suggest, but rather engaged in the same sorts of activities and enjoyed the same types of privileges in practice as their contemporaries in Germany and France. An examination of fifteenth-century notarial records reveals that within the Jewish community of late medieval Umbria, this seemed to be the case as well.

THE JEWISH UMBRIA: COMMUNITY, WOMEN, AND PROPERTY

In the thirteenth century, demands for credit drew a number of Roman Jews to the northern cities of Italy.²⁶ These were predominantly bankers, who were accompanied by their families, servants, craftsman, butchers, and rabbis. Once settled, these new communities became firmly entrenched in the economic structure of the communes. The large amounts of money Jewish banks loaned to civic governments proved vital in running the day-to-day operations of growing northern cities. In addition, Christian governments became dependent on the annual tax placed on the entire community, and regularly reissued *condotte*, or contracts between the Jews residing in the city and the city itself, in order to continue to benefit from Jewish financial activities.²⁷ Due to the revenues Jewish settlements brought to northern Italian

cities, their presence was not only tolerated, but seemingly welcomed, at least in the first few centuries. Their numbers grew modestly, but significantly; where at first there were only a few families, in the fifteenth century there were about 150 Jewish inhabitants in Perugia, the largest and the dominant city in Umbria at the time,²⁸ as well as at least two synagogues.²⁹ Smaller settlements were scattered throughout Umbria, in Assisi, Todi, Spello, Gubbio, and other cities, as well as in the countryside.

Notarial documents presented in the second volume of Ariel Toaff's edited collection, which spans the years 1435–1484, indicate that Jewish women were important in these small communities. A number of the documents point to women's direct involvement in their own legal and business affairs, including women who were not technically allowed to so do by Jewish law. They also include many examples of Jewish fathers and husbands in fifteenth-century Umbria who attempted to secure both the inheritance and the usufruct of that inheritance for their female heirs.³⁰

One caveat must be mentioned, and that is that notarial records must be analyzed with care. These records present no more than snapshots in time, a glimpse of the participants' wishes at one moment of their lives, and may not be accurate representations of the participants' real actions. This is particularly true of wills, which record only what the testator desired: that the testator required specific actions on the part of his heirs does not mean that those heirs felt compelled to follow them.³¹ Yet another complication exists: These may be the only records that survived, but not the only records created. Thus it is impossible to reconstruct fully economic transactions involving Umbrian Jewish women.

Also, it must be admitted that few documents created by Christian notaries regarding Jewish women and property have survived and can be found in Umbrian archives today.³² Of 987 documents in this second volume of Toaff's edited collection, only fifty-five relate to Jewish women and property, or slightly below 6 percent of all documents. But this is not a surprisingly low number. Most of the Umbrian documents relating to Jews do not discuss men and their property either, but rather criminal cases, loan banking contracts between civic authorities and Jewish families, and privileges afforded to specific Jewish communities and individuals. But though small in number, these fifty-five documents when closely examined reveal much about Jewish expectations—both men's and women's—regarding Jewish women's financial autonomy in fifteenth-century Umbria.

DOWRY MANAGEMENT

As we have seen previously, dowries were an important source of support for Jewish women in the absence of a father or husband. Dowries enabled single women to marry and enabled widowed or divorced woman to remarry. Clearly, her dowry was something she would want to hold on to in her

lifetime. After her death, a woman's dowry passed to her husband, or if he was deceased, to her sons, and in the absence of sons, daughters. In other words, Jewish women were not at liberty to bequeath or gift their dowries, even in the cases where they could manage them in their own lifetimes.

One of the very first cases encountered in this volume, however, has to do with a woman named Marchigiana, who alienated her entire dowry from her family. On 16 March 1438 in Bettona, Marchigiana ceded her property, including her dowry, to Jacopo, son of Lello Mantini.³³ Jacopo's patronymic implies that Marchigiana was not closely related to Jacopo, though he may have been a distant relative. The document could refer to a marriage between Marchigiana and Jacopo, although this is unlikely as it does not include the usual wording of marriage contracts. While it is tantalizing to speculate who Jacopo was to Marchigiana, what is certain is that this in no way follows the prescriptive Jewish law concerning women and their dowries. In addition, it suggests that Marchigiana may have been independently wealthy, or at least well-off: It would be difficult to imagine a single woman alienating the entirety of her property in own her lifetime without other means of support.

Several other documents show women taking charge of their daughters' dowries, and not always in conjunction with male legal representatives. In Spoleto in May 1462, Stella, daughter of Gaio of Rieti, but herself a resident of Spoleto and widow of Mose, negotiated the marriage contract of her daughter Fiorina, settling upon her daughter a dowry of 150 florins and an unspecified trousseau.³⁴ Although Stella was a widow, she did not have to act in this case with the approval or through the agency of any male family member.³⁵ It is significant, too, that by publicly settling this dowry on her daughter as part of an immediate marriage contract, Stella here played a role usually reserved for fathers, and entered into a contract on an even footing with her daughter's soon-to-be father-in-law, Aleuccio of Rieti, resident of Foligno. In this case, the sex of the parent apparently was not a problem for the groom and his family.

As stated earlier, Jewish law also specified that while a woman was married, her dowry was under the direct management of her husband. What could a woman do if her husband mismanaged it? In the case of Rosella, daughter of Ventura, son of Mose, resident of Foligno, dated in Foligno 23 June 1473, we find that a woman's father might interfere on her behalf, although whether this was due to his own initiative or at the request of his daughter it is impossible to know. Here, Ventura had to ask his daughter's mother-in-law—who apparently held the dowry in trust as part of the familial holdings, and thus represents yet another example of a woman acting as head of the household despite the presence of adult males—not to give any more of his daughter's dower to his son-in-law, who was gambling it away, and instead to entrust it to his daughter's keeping.³⁶ Thus, despite her unfortunate circumstances, this young woman may have been able to manage her own dowry within her husband's lifetime due to his bad habits and lack of responsibility.

INHERITANCE

Although dowries were an essential source of support for Jewish women—even when married, as the previous case suggests—the available evidence vividly illustrates that Jewish women in Umbria had access to other property. Those leaving goods in their wills clearly assumed that women could not only inherit from their fathers, but their mothers, as well, and even, in some cases, their daughters. Toaff's collection includes five wills created by Jewish men from the period between 1439 and 1475. They reveal that these men at some point fully intended to establish their wives and daughters as either universal or partial heirs. A full four out of five of these Umbrian Jewish men made their wives their universal heir and/or the property manager of the children and their guardian as well, acting in practice outside of the law.

An interesting case is that of the will of Mose, son of Abramo of Terni, a resident of Spoleto. Mose made not one, but two wills, these within two weeks of each other. The first is short and to the point: Mose split his property equally between four universal heirs, his son, his two daughters, and his wife. To the latter he left a share of the property with no further stipulations, and no insistence upon continued widowhood. Should his daughters expire with no children, their portions were to be divided equally between his son and his widow.³⁷

Only two weeks later, however, Mose changed his mind concerning the distribution of his property after his death. In his second will, he left small but significant amounts of gold (usually a florin) to various charities, including a half-florin to the synagogues in Spoleto, Perugia, Todi, Terni, Rieti, Foligno, and Aquila as well as a whole florin for the synagogue in Rome, all intended to pay for oil for lamps in those buildings. To his wife, Stella, Mose left the dowry of twenty-five Venetian ducats, as well as a further twenty-five he had promised to her at the time of the betrothal contract. He indicated that he would leave her ten more Venetian ducats, the monetary value of goods she initially had brought to the marriage. He also promised to leave her various household items, including her trousseau and all of her clothes. Lastly, he awarded both Stella and her mother a small amount of money intended to buy mourning clothes. The rest he left to his three children.³⁸ In effect, he changed his will to exclude Stella from his estate while still following the exact stipulations of Jewish law.

What happened? One possible scenario is that Mose's estate may have been deeply in debt. Had this been the case, and Mose had left Stella as one of his universal heirs, as he did in his first will, Stella, along with the children, would have been legally responsible for repaying the debt from the estate. As a widow, Stella would have been the first lienholder on Mose's estate. But because the second will indicates that very few assets would have been left over after her dowry was repaid from his estate, there may have been some question about her actually receiving it, as creditors would have demanded payment from Stella and her children. By disinheriting Stella and

the children, however, Mose freed them from the responsibility of repaying the estate's debt. At the same time, he ensured that Stella received all of her property by spelling out that what she was to receive was not the estate *per se*, but her dowry, which she was entitled to legally by civic and Jewish law. The assumption is that Stella would have supported her children with her dowry and, in turn, been able to dower her daughters and bequeath property to her son, thereby sidestepping the consumption of the estate's assets by debt.³⁹ Regardless of how it turned out for Stella and her children, however, the juxtaposition of these two wills reveals that Jewish men could be cognizant of the limitations imposed on female inheritance by Jewish law, but still choose to supersede that law.

Another way Jewish women inherited property in fifteenth-century Umbria was from other women. The evidence suggests that Jewish women expected, or hoped, to dispose of their own property as they saw fit. The will of Ora, a daughter of Giuseppe of Spain, dated 25 May–10 July 1457, provides a striking example of one woman's expectations.⁴⁰ Ora left to her servant, Gentilina, and to her nieces Letizia, Biellita, and Meora "various amounts" and made her nephew, Giuseppe, her universal heir. To her husband, should he outlive her, Ora left three hundred florins, or the amount of her dowry. Ora also left various amounts for Jewish poor relief and for lamp oil in all the Perugian synagogues. Thus, despite the fact that her husband should have been made her heir according to Jewish law, Ora expected that she could designate an alternative heir. Noteworthy, too, is the fact that she possessed a fair amount of wealth apart from her dowry. Perhaps she had earned this wealth in some manner during her lifetime and, contrary to Jewish law, been allowed to keep it, or perhaps she herself had inherited it. Regardless, the case of Ora reveals that Umbrian Jewish women had a range of practical choices available to them in the fifteenth century when it came to disposing of their property.

ECONOMIC AUTONOMY

Other published records describe women selling, leasing, and managing property. This property must have been acquired either through gifts, the women's own efforts, purchased from profits accrued in some business venture, or inherited. This volume contains four documents detailing women leasing property, all houses.⁴¹ Seven documents describe women alienating property: Two refer to the sales of vineyards, one describes the sale of land for an unspecified use, and four detail the sale of houses.⁴²

Because widows possessed the autonomy to manage and alienate their own property, it is not surprising to find that four of the women involved in the aforementioned transactions were widows. It is revealing, however, to find that the rest involved married women and single daughters, the latter apparently of age and financially independent, or divorced.⁴³ The married

women involved in these transactions did not follow Jewish legal prescription, since their husbands were supposed to manage couples' assets. The latter, while technically legal, is still surprising, but for another reason. In such a small community, marriage partners would have been in high demand. One would assume that few women would remain unmarried, and that single women would have been under a good deal of pressure from their families to marry or remarry. The fact that single women appear in the records with some regularity suggests that perhaps Jewish women had some say in their marital status, and their independence.⁴⁴

Of the remaining documents, four detail Jewish women's personal involvement with small loans and pawn banking. Three discuss small personal loans,⁴⁵ but the fourth document describes the actions of Anna of Assisi, sister to the recently deceased Magister Bonaiuto, in reference to the bank she inherited in Assisi. Essentially, Anna sold the bank to one Elia of France, as "she did not feel up to directing the bank's affairs personally, not having any relatives within thirty miles who could share the responsibility."⁴⁶ But until she decided to liquidate this inherited asset, Anna had possessed sole management of the bank, far more autonomy than even Rema had possessed, since the latter shared the management of the family bank with her son-in-law, Abraham. This last example of Anna demonstrates the range of economic opportunities available to Jewish women in fifteenth-century Umbria. Anna inherited the family bank, managed it on her own, and then independently decided to alienate it permanently from the familial holdings. All of these documents make clear that in fifteenth-century Umbria, Anna's recognized economic privileges were not out of the ordinary, and that some Jewish women in late medieval Italy were able to engage in activity similar to their sisters in France and Germany and, regardless of the law, enjoy in practice privileges which the rabbis of the Mishnah and Talmud had reserved for men.

CONCLUSIONS

Although biblical law had greatly limited women's economic rights, the rabbis of the Mishnah tended to interpret biblical law in such a way that it favored the extension of female property rights.⁴⁷ But, again, this was not because the rabbis understood women to be equals of men. Rather, the rabbis reinterpreted the law to recognize women's personhood and, in doing so, allowed them some property rights at certain times, while at other times they denied women any control over even their own property. The preceding documents reveal, however, that in fifteenth-century Jewish Umbria, some women behaved financially in ways that resembled those open to men, indicating that in this time and place, women in practice were not bound by rabbinic law.

Kenneth Stow has noted the same sort of phenomenon for Jewish women in the medieval Rhineland, as well as in sixteenth- and seventeenth-century

Rome. According to Stow, women were able to claim financial rights in practice because the rights already granted them by the rabbis of the Mishnah and the Talmud in certain situations made it difficult to deny women similar rights in other situations. In addition, women's sometimes pivotal role in supporting their families influenced contemporary rabbis to reinterpret Jewish law in their favor. The result, according to Stow, was an elevation in the status of women that is reflected in some medieval and early modern rabbinic literature.⁴⁸

Howard Adelman, however, emphasizes instead the negative opinions of women promulgated by many of early modern Italian Jewish rabbis, and their discomfort with women playing any public role. Not only did the sorts of activities outlined earlier meet with rabbinical opposition, some rabbis also attempted to limit women's activity within the public sphere, as was the case between 1599 and 1630 when the rabbis from Padua barred women under thirty from appearing in public at all under threat of excommunication.⁴⁹ Dismissing notions that women's financial autonomy in practice signaled any kind of move towards recognizing female equality within the early modern Italian Jewish community, Adelman instead asserts that women were allowed economic privileges simply because by possessing them they in some way served the needs of this otherwise patriarchal society. According to Adelman, ". . . such apparent changes in [women's] roles as occurred during this period were not a function of Renaissance values or a new status of women but reflections of the normal give-and-take between traditional *halakhic* [legal] mandates and the ongoing needs of the community."⁵⁰

The answer to why some Jewish women in fifteenth-century Umbria were allowed economic autonomy is probably a combination of both scholars' assessments. Returning to the opening case of Rema, it is clear why a man in her husband's place would have made his wife his heir. To begin with, Rema had co-managed the bank with her husband, presumably for years. She thus would have had much more experience in keeping the bank solvent, the importance of which cannot be exaggerated as Jews' right to live in Umbria directly depended on their ability to provide credit to Umbrian Christians. Although the rabbis may have not approved of Rema maintaining a position of authority over her son-in-law, this nevertheless allowed her the opportunity to groom Abraham to run the bank her way—which was probably Jacob's way—in anticipation of the day when Rema died or remarried and Abraham took over the bank's operation. And by appointing Rema as his heir, Jacob also made sure she had access to the assets she might have needed in order to keep the family business afloat.

In sum, Rema's appointment made the most practical sense and served the family's interests, per Adelman's argument. It is also probable, as Stow contends, that the status of women like Rema continued to rise within the Umbrian Jewish community as men recognized their wives' and daughters' abilities; this rise in status may have further convinced men of the practical benefits of bending the laws regarding women and property rights. Thus,

despite contemporary Italian rabbis' discomfort with women managing finances and assuming public roles, Jewish men in practice were able to accept female economic autonomy in fifteenth-century Umbria.

NOTES

1. Archivio di Stato Perugia, Notarile, 116, Mariano di Luca di Pisa, fols. 36b–37b.
2. Louis M. Epstein, *The Jewish Marriage Contract: A Study in the Status of the Woman in Jewish Law* (New York, 1927), 175; Ze'ev Falk, *Jewish Matrimonial Law in the Middle Ages* (London, 1966), 145; Avraham Grossman, *Pious and Rebellious: Jewish Women in Medieval Europe* (Waltham, MA, 2004), 149; Judith Hauptman, *Rereading the Rabbis: A Woman's Voice* (Boulder, CO, 1998), 178.
3. Ariel Toaff, *The Jews in Umbria, Volume II*, 1435–1487 (Leiden, 1994).
4. See “Nashim” in *The Mishnah*, ed. and tr. by Herbert Danby (London, 1974). See also Hauptman, 177–194.
5. Hauptman, 67.
6. Judith R. Baskin, “Jewish Women in the Middle Ages,” in *Jewish Women in Historical Perspective* (Detroit, 1998), 109; Grossman, 149.
7. Judith Wegner, *Chattel or Person? The Status of Women in the Mishnah* (New York, 1988), 32–34.
8. What this property could be was limited, since according to the rabbis, anything a woman earned or found, plus the usufruct of her dowry, belonged to her husband, and was not hers to gift. See Hauptman, 184–187.
9. Presumably her brothers would take over the duty, as heirs to their father's estate, after her father's death; they could also separate her dowry from the estate, and turn that over to her in lieu of maintenance.
10. Wegner, 87.
11. According to Toaff, this was the case in practice, too, at least in Umbria. Toaff describes Umbrian Jewish women in this era as “passive and submissive,” “perpetual minors” and “victims of . . . deep emotional void[s] in their marriages . . .” in which their husbands took on the “role of protector-master.” Because heads of family were generally responsible for marriage contracts, and because he seems to assume that the heads of family were always male (although he does mention widowed mothers arranging their daughters' marriages), Toaff concludes that Jewish women were trapped against their wills by the activities of men, and, citing Claude Levi-Strauss, states, “a woman is always given to a man by another man.” *Love, Work and Death: Jewish Life in Medieval Umbria* (London, 1998), 29–30. For more on women in the Jewish legal tradition, see *Jewish Women and Jewish Law Bibliography*, compiled by Ora Hamelsdorf and Sandra Adelsberg (Fresh Meadows, NY, 1980).
12. Jacob Neusner, *How the Rabbis Liberated Women* (Atlanta, GA, 1998).
13. Wegner, 5–6.
14. *Ibid.*, 10–12. See also Wegner, “The Status of Women in Jewish and Islamic Marriage and Divorce Law,” in *Harvard Journal of Law and Gender* 5 (1982): 19–32.
15. Wegner, *Chattel or Person*, 114.
16. *Ibid.*, 5, 19, 20, 40–60, 175–180.
17. *Ibid.*, 114–119.
18. *Ibid.*, 138–139. It is questionable whether she could alienate her dowry. Kenneth Stow states that a Jewish woman's dowry could “. . . be willed to heirs

- of the widow's choosing." He states this in the context not of law, however, but of practice. See Stow, *Alienated Minority: The Jews of Medieval Latin Europe* (Cambridge, MA, 1992), 203. The Umbrian evidence to be introduced later in this essay suggests that women could, and did, do so in central Italy as well, but while accepted, it may not have been technically legal.
19. See Christiane Klapisch-Zuber, "The 'Cruel Mother': Maternity, Widowhood, and Dowry in Florence in the Fourteenth and Fifteenth Centuries," in *Women, Family and Ritual in Renaissance Italy* (Chicago, 1985). But again, this was only in her lifetime; it is improbable that the rabbis intended women to alienate their dowries, but rather goods or money acquired or earned; they did intend for the women to enjoy full usufruct of their dower properties while alive.
 20. Wegner, 209–210.
 21. Grossman, 121.
 22. Stow, 204.
 23. Baskin, 114. See also Grossman, 120.
 24. See Baskin, 101–127; Grossman; Martha Keil, "Business Success and Tax Debts: Jewish Women in late Medieval Austrian Towns," in *Jewish Studies at the Central European University, Public Lectures II, 1999–2001* (2002), 103–123, and "Public Roles of Jewish Women in Fourteenth and Fifteenth-Century Ashkenaz: Business, Community, and Ritual," in *The Jews of Europe in the Middle Ages (Tenth to Fifteenth Centuries): Proceedings of the International Symposium held at Speyer, 20–25 October 2002*, ed. Cristoph Cluse (Turnhout, 2004), 317–330; Ivan G. Marcus, "Mothers, Martyrs and Money-makers: Some Jewish Women in Medieval Europe," in *Conservative Judaism* 38 (1986): 34–45; Stow, 202–205, and "The Jewish Family in the Rhineland in the High Middle Ages: Form and Function," in *The American Historical Review* 92 (1987): 1085–1110; Cheryl Tallen, "Medieval Jewish Widows: Their Control of Resources," in *Jewish History* 5 (1991): 63–74.
 25. Howard Adelman, "Rabbis and Reality: Public Activities of Jewish Women in Italy During the Renaissance and Catholic Restoration," *Jewish History* 5 (1991): 27–40; "Italian Jewish Women," in *Jewish Women in Historical Perspective* (Detroit, 1998), 150–168, and "Law and Love: The Jewish family in Early Modern Italy," *Continuity and Change* 16 (2001): 283–303; Elka Klein, "The Widow's Portion: Law, Custom, and Marital Property among Medieval Catalan Jews," *Viator* 31 (2000): 147–163, and "Splitting Heirs: Patterns of Inheritance among Barcelona's Jews," in *Jewish History* 16 (2002): 49–71; Renée Levine Melamed, "Sephardi Women in Medieval and Early Modern Periods," in *Jewish Women in Historical Perspective*, 128–149; Kenneth Stow and Sandra Debenedetti, "Donne ebreè a Roma nell'erà del ghetto: affetto, dipendenza, autonomia," *La Rassegna Mensile di Israel* 52 (1986): 63–116; Stow, "Marriages are Made in Heaven: Marriage and the Individual in the Roman Jewish Ghetto," *Renaissance Quarterly* 48 (1995): 445–491; Rebecca Lynn Winer, "Family, Community, and Motherhood: Caring for Fatherless Children in the Jewish Community of Thirteenth-Century Perpignan," *Jewish History* 16 (2002): 15–48, and Winer, *Women, Wealth and Community in Perpignan, c.1250–1300: Christians, Jews and Enslaved Muslims in a Medieval Mediterranean Town* (Burlington, VA, 2006).
 26. Robert Chazan, *The Jews of Medieval Western Christendom, 1000–1500* (Cambridge, 2006), 125; Toaff, *Gli Ebrei a Perugia*, *Fonti per la Storia dell'Umbria* 10 (Perugia, 1975): 19; Toaff, *The Jews in Umbria, Volume I, 1245–1435* (Leiden, 1993), xliii.
 27. Toaff, *The Jews in Umbria*, xv.

28. *Ibid.*, xliii. While this number sounds low, Shlomo Simonsohn estimates that in the early sixteenth century, there were only approximately 1,800 Jews in the city of Rome, by far the largest community in Italy. *The Apostolic See and the Jews*, 16.
29. Toaff, *Jews in Umbria, Volume I*, xliii.
30. See Toaff, *Jews in Umbria, Volume II*.
31. For studies on medieval wills, see Steven Epstein, *Wills and Wealth in Medieval Genoa, 1150–1250* (Cambridge, MA, 1984), and Martha C. Howell, “Fixing Movables: Gifts by Testament in Late Medieval Douai,” in *Past and Present* 150 (1996): 3–45. For studies on heirs’ attempts to change wills, see Thomas Kuehn, “Law, Death and Heirs in the Renaissance: Reputation of Inheritance in Florence,” in *Renaissance Quarterly* 45 (1992): 484–516, and *Heirs, Kin and Creditors in Renaissance Florence* (Cambridge, 2008).
32. For more on medieval Jews and their use of Christian notaries, see in particular Robert I. Burns, *Jews in the Notarial Culture: Latinate Wills in Mediterranean Spain, 1250–1350* (Berkeley, 1996). As Burns notes, it is not surprising that medieval Jews would have utilized the services of Christian notaries for their own affairs since their day-to-day life would have involved business interaction with their host community and its civic culture; in addition, a Latin document, written by a Christian notary, might be more enforceable, as it carried more weight with Christian civic authorities. For Umbria, it only makes sense: not only were the charters which granted Jews privileges and the right to operate loan banks recorded by Christian notaries; so, too, were all of the transactions between these bankers and their Christian clients.
33. Toaff, *Jews in Umbria, Volume II*, 483.
34. *Ibid.*, 720–721.
35. See Wegner, 118–119. According to the framers of the Mishnah, Stella should not have been able to arrange her daughter’s marriage at all, for “. . . a woman cannot give her daughter in marriage . . .” because as a woman, she “. . . does not possess the power to affect the status of another Israelite.” Thus the rabbis contend that such a match is not legitimate unless consummated, because a mother has no power to give her daughter away, whereas a daughter cannot repudiate a marriage made by a father, no matter whether it has been consummated. Lastly, in no circumstances can a mother affect the marriage of her son.
36. Toaff, 858.
37. “. . . et instituisse suos heredes universales Liutium, Florinam et Pernam et alios filios et filias nascituros ex ipso testatore et Stella eius uxore, pro equali portione . . . Et si omnes dicte filie, nate et nasciture ex dicto testatore et Stella predicta, decederint sine filiis legitimis, voluit quod medietas partium hereditatis dictarum decedentium sit dicti Leutii et alia medietas sit dicte Stelle . . .” *Ibid.*, 712.
38. *Ibid.*, 714–716.
39. See Kuehn, “Law, Death and Heirs in the Renaissance” and *Heirs, Kin and Creditors in Renaissance Florence*.
40. Toaff, 662–663.
41. *Ibid.*, 469, 697, 867, 913–914.
42. *Ibid.*, 466, 477, 520–521, 529, 594, 610, 699.
43. Women were identified in documents by the name of their fathers, names of men to whom they were currently married, or by whom they had been widowed most recently. It is not possible to discover from the extant documents whether a woman had been previously married and divorced, unless children from previous marriages are mentioned. Women who had never married are

difficult to identify as they, like divorcées, would bear only their fathers' names.

44. See Stow, "Marriage Are Made in Heaven." Stow argues that early modern Roman fathers recognized even unmarried daughters' rights to have a say in their marriage, at least in refusing a proposed betrothal.
45. Toaff, 464, 537, 613.
46. *Ibid.*, 725.
47. See Neusner and Hauptman.
48. Stow, *Jews in Rome: Volume I, 1536–1551* (Leiden, 1995), xiii.
49. Adelman, "Italian Jewish Women," 153.
50. Adelman, 152–153.

7 The Power to Divide?

Germanía Marriage Contracts in Early Fifteenth-Century Valencia

Dana Wessell Lightfoot

On April 12, 1421, Johana Nanyes appeared before the court of the governor in the city of Valencia, hoping to get a ruling by the local civil justice in the town of Castellnou overturned. In her earlier suit, Johana sought control over half the marital property she owned with her husband, Lorent, as he had contracted numerous debts that threatened the financial integrity of their jointly held assets. The justice in Castellnou had denied Johana's petition, even though the couple was no longer living together and actually resided in separate towns. The governor in Valencia was equally unconvinced of the legitimacy of Johana's request and denied her appeal.¹ He did not state his reasons for his decision, but one can speculate about his concerns regarding this kind of legal action.

For justices at the local level as well as for the governor during appeals, Valencian law determined the validity of any suit. The prevailing legal code, the *Furs de Valencia*, had explicit and detailed regulations regarding marital property. These regulations provided wide protection for wives, but only for those who married under the dowry system. Johana Nanyes had not concluded a dotal contract when she married Lorent. Instead, the couple had chosen to use a very different system of marital assigns known as *germanía*. Unlike the dowry system, which mandated the separation of the couple's property, the *germanía* regime was based on the community of goods, in which all the assets owned by the husband and wife were pooled into one jointly held fund. Grounded in customary tradition, the *germanía* system held that both husband and wife should benefit equally from any gains made on their assets during the marriage. When one spouse died, the surviving spouse received half of the communal property, with the other half designated for the deceased's heirs. If there were no heirs, the survivor could receive all of the assets. This system of marital assigns was therefore decidedly different from the dotal regime, as it concerned conjugal rather than lineal rights.

The flip side of this arrangement was that those women who followed the *germanía* system—such as Johana Nanyes—were not afforded the same kind of legal protection as those under the dowry system in cases of marriages gone wrong. Women with dowries had the legal right to seek

restitution of this property from their husbands for a variety of reasons, and evidence from the court of the civil justice in Valencia indicates that they were more than willing to do so.² Based on Roman legal precepts, the *Furs de Valencia* gave wives the right to seek restitution of their dowries if their husbands became insolvent, misused their property in any way, abandoned them, did not provide the necessities of life (food, clothing, and shelter), or became madmen.³ This was not the case for wives who fell under the *germanía* regime. Indeed, this marital property system is almost entirely absent from the *Furs de Valencia*, mentioned only in two clauses added in 1428. So why, then, would a wife choose to gamble and enter into a *germanía* marriage contract instead of a legally protected dowry contract? Some obviously hoped that if they needed to, they could take the legal clauses that gave them the right to dowry restitution and apply them to their share of the conjugal fund, as Johana Nanyes tried to do. For others, socioeconomic background and location played a central role.

This chapter seeks to explore some answers to the questions raised regarding the use of *germanía* marriage contracts in early fifteenth-century Valencia, including an exploration of why particular groups of women chose to use the *germanía* system of marital assigns rather than the more common dowry regime, as well as whether or not these marriage contracts can be considered egalitarian, as some historians have argued. Although the *germanía* system was very different from the dotal regime, the couples who used these contracts still lived in a patriarchal society that mandated particular gender roles and norms, which mitigated some of the more “equal” aspects of the regime.

Before exploring what factors were influential in a couple’s choice to use the *germanía* system, let us examine what such contracts were like and how they differed from the more common dotal ones. On Thursday June 26, 1427, the notary Tomàs Argent drew up a *germanía* contract between the *llaurador* (tenant-farmer) Pere Ramon and Caterina Vilana.

In the name of the Lord amen. Let it be announced to all that we Pere Ramon, son of the deceased farmer Guillem Ramon of Benifaraig in the *horta* of Valencia, and Caterina, daughter of the farmer Guillem Vilana of Alfara, also located in the *horta*, each with the express consent and will of our family and friends, we make and we concede between us fraternity and *germanía* concerning and upon every good and right which we now hold and concerning the rest which we may hold, by whatever form, title, cause or reasons. Thus the one of us who first leaves this world, let the other hold half of all the said goods and rights, the same with children as without out . . . and thus we swear by the Lord God.⁴

Similar to dotal contracts, Pere and Caterina indicate that they are marrying with the consent of their family and friends. But beyond this commonality,

the differences between this *germanía* marriage contract and dowry contracts from the same time period are striking. The most obvious contrast is that Pere and Caterina's contract does not mention the specific goods being brought into the union. Instead, the contract refers generally to "every good and right which we now hold and concerning the rest which we may hold [presumably in the future]." Dowry contracts always explicitly laid out the amount and type of property brought as dotal assets by the bride, so that upon the dissolution of the marriage, or in a case of restitution, the specific goods or their value could be restored. For example, on Monday, May 16, 1429, a dotal contract was drawn up between the *llaurador* Joan Fortanet of Campanar and the *llaurador* Andreas Folgado, also of Campanar. It stated:

I, Andreas Folgado, *llaurador* living in Campanar in the *horta* of Valencia with the consent of my family and friends, join my daughter Isabel in marriage with you Joan Fortanet, *llaurador* of Campanar. I give and hand over to you Joan, as dowry for my daughter Isabel, thirty-five pounds of Valencian money, namely 20 pounds in cash and 15 pounds in household goods. And I the said Joan Fortanet accept Isabel as my future wife and I confess to have received the said thirty-five pounds as dowry. And according to the laws of Valencia, in and for her virginity, I give as augmentum or gift on account of marriage to you Isabel 17 pounds 10 sous. Thus in dowry and augmentum there is 52 pounds, 10 sous which I promise to restore to you Isabel, absent, for any case or reason of dowry restitution.⁵

Indeed, dowry contracts revolved around the exchange of specific property, making them very different from *germanía* agreements.

Despite the lack of explicit facts in *germanía* contracts regarding the couple's assets, extant evidence from notarial records can provide some information about this property. Of the eighty-eight *germanía* marriage contracts examined, thirty couples also concluded a *donatio inter vivos*, or living will donation contract, on the same day. These contracts acted to provide couples with a premortem inheritance from their families (or other donors) for the occasion of their marriages and included donations of both movable and immovable assets. For example, on the same day that he concluded a *germanía* contract with Ursola, the daughter of the *llaurador* Jaume Splugues of Foios, Pere Peres of Quart received a *donatio inter vivos* from his mother, Mari, and her second husband, Alvares Peres, which included a rented house in Quart, two *cafissades* of wheat-producing land, and four and a half *fanecadas* of vineyards held in emphyteutic tenure. Ursola received a sixty-pound donation from her father, which consisted of thirty pounds in cash and thirty pounds in household goods.⁶

While the size and value of the assets received by Pere and Ursola were higher than average, the kinds of property donated to couples by their relatives varied a great deal. What's more, in some cases only one member of

the couple received a donation. In terms of the property donated, women generally received cash, household goods, and jewelry; conversely, men were given immovable property, such as rented houses or pieces of land. Marital donations were therefore similarly gendered, whether a couple married under the *germanía* or dotal system. In both types of contracts, laboring-status Valencian women tended to receive movable assets, whereas their husbands were given immovable property, such as pieces of rented land or rights to a rented house. Yet more than half of the couples who signed *germanía* contracts did not receive a donation on the day of their marriage, and we do not know the details of the goods they brought. This aspect clearly differentiates *germanía* contracts from dotal ones, as they do not contain the kind of information that was essential to the separation of property mandated by the dowry system.

The *germanía* contract indicates that the couple's assets were to be combined, creating a conjugal fund from which both were to benefit. In fact, some *germanía* contracts clearly stipulated that this property was to be used jointly, "thus concerning the goods which we hold at present, and it is fitting, which we are about to hold, let us use them in common."⁷ This communal system of marital assigns was quite different from that of the dotal regime regulated by the *Furs de Valencia*, which, although giving the husband the right to control and administer his wife's property throughout the marriage, mandated that the dowry was to be held separately from his own property. In addition, under the dotal regime, a wife did not have access to any accretions on her dowry and did not have control of any income she earned throughout her marriage.⁸

Dotal contracts were largely concerned with property donated at the time of marriage, while *germanía* contracts stipulated how the conjugal assets were to be divided when the union was dissolved by the death of a spouse. All *germanía* contracts contained a clause directing that the surviving spouse was to receive half the couple's assets. Some also indicated that the survivor was to receive complete right of alienation for his or her share of the conjugal fund. The inclusion of such clauses demonstrates that in some ways this system was not just about marriage but also about inheritance. This is supported by evidence from the contracts themselves, some of which stipulate that each member of the couple include in their testaments the terms of property devolution established by their *germanía* contract. For example, in their contract of January 29, 1419, the *llaurador* Joan Fanos of Rafalell and Johana, the daughter of the *llaurador* Dominic Rielo of Valencia, promised to include the proviso granting the surviving spouse half of the conjugal assets in their testaments.⁹ As this property was jointly owned and not regulated by the legal code, it was important for the couple to determine the rules of inheritance in both their marriage contract and their individual wills.

Germanía marriage agreements were always concluded by women themselves, although this was not atypical for laboring-status women who

married under the dotal system. Approximately 50 percent of *donzellas*—virgin women marrying for the first time—concluded their own dowry contracts. This number is not surprising, as over half of these contracts indicate that the woman's father was dead when they were drawn up. In addition, many laboring-status women earned their dowries themselves, often working as domestic servants. Some were immigrants, whose fathers lived outside Valencia. Still, with both *germanía* and dowry contracts, it is difficult to determine the role that family played in the creation of these marital unions. Even if women concluded their own marriage contracts, it does not necessarily mean that their family members were uninvolved—a fact that was recognized by the formula “*cum consilio parentum et amicorum*” (with the advice of my family and friends), which was included in both dotal and *germanía* marriage contracts. In some contracts, wives indicated that they were marrying on the advice of specific family members. For example, in her *germanía* contract of June 26, 1427, with the *llaurador* Pere Ramon of Benifaraig, Caterina Vilana stated that she was marrying with the advice of her father Guillem Vilana.¹⁰

Although the majority of Valencians used the dotal regime of marital property, a large minority, approximately 20 percent, followed the *germanía* system. In the early fifteenth century, dotal contracts were employed by every socioeconomic group, from female servants to noblewomen; however, *germanía* contracts were largely used by couples of agricultural background. In two-thirds of couples with a *germanía* contract, one or both parties were of *llaurador* background; the remainder were of artisan or slave status. Geographically, the vast majority of spouses were from villages in the Valencian *horta*—the agricultural region surrounding the city over which it held jurisdiction.

The use of *germanía* contracts by rural couples can be largely attributed to the need to create a “threshold of property which assures the survival of the couple” and their household.¹¹ A key factor in these contracts was that they allowed couples to pool any financial resources they held, giving them greater economic stability. Agricultural production for farmers of modest means was largely subsistence level. What's more, the partible inheritance laws mandated by the *Furs* meant that land division was a growing problem in rural Valencia. The fifteenth century saw a great increase in the percentage of small land plots. Overall, the average plot size dropped by more than half of that granted to the original settlers of this territory in the thirteenth century, leaving modest farmers with often minuscule plots of land on which to scratch out a living.¹²

Antoni Furió, in his work on Sueca, found that in order to deal with this problematic situation, a number of farmers began to work their land collectively. In effect, they made contracts with family members or friends, in which they agreed to live together in one house and work together to exploit their individual holdings. At harvest time, each paid their rent, and the remaining profits were divided equally among all participants.¹³ This

form of land exploitation made small properties more sustainable than if they were being farmed individually because the risks and benefits were shared. Notarial evidence indicates that this kind of land exploitation was referred to as *per germanía*.¹⁴ Farming couples, aware of the economic benefits of this system, adopted and used it to govern their conjugal property. Combining their assets gave them a firmer financial base on which to found their new household while emphasizing that both members shared equally in the burden of supporting the family.

The mirroring of the *germanía* form of land exploitation by married couples in the Valencian *horta* is very similar to what took place in France during the same period. Peasants in various French regions began to use marriage contracts known as *frèreche* or *agermanament* in the fourteenth century. Originally used by families to create multigenerational obligations for commonly held property, such community-of-goods contracts were then expanded and began to be employed by people with no blood ties to one another.¹⁵ In both Valencia and France, these contracts emphasized the notion of brotherhood, as indicated by their names: *frèreche* from *frère* in France, and *germanía* from the Catalan *germà* in Valencia. As in Valencia, *frèreche* contracts were eventually adapted for use by married couples, pooling their assets to create a threshold of property to ensure their survival.

Similar systems of marital assigns that mandated a community of conjugal goods were in use elsewhere in the Iberian Peninsula and Europe. Examples of such contracts exist from Barcelona, Perpignan, and Zaragoza.¹⁶ Indeed, Teresa-Maria Vinyoles found that community-of-goods marriage contracts were the most common among people from France who had immigrated to Barcelona. Vinyoles also argues that many couples used both community-of-goods and dotal contracts to regulate their assets.¹⁷ This was the case in Castile, where marriage contracts based on jointly held assets predominated until the fourteenth century, when the Romanized dotal regime of the *Siete Partidas* was imposed by the Crown with greater force. By the fifteenth century, many couples in Castile followed the dotal regime and held in common any assets acquired after marriage.¹⁸ Like the *germanía* regime in Valencia, the commonly held property was equally divided at the dissolution of the marriage—usually by death, with half going to the surviving spouse, and the other half going to the deceased's heirs.

Outside of the Iberian Peninsula, marriage property regimes based on the community of goods were common. This was especially true in areas that did not have a notarial culture, leaving marital property arrangements unwritten. Late medieval Douai is one city where customary law mandating the creation of a conjugal fund at marriage prevailed. In Douai, the husband held administrative and ownership rights over the conjugal fund while alive, transferring both to his wife if she survived him. Douaisien custom stated that the surviving spouse was to receive half of the marital assets but could be made heir of the entire fund by contract.¹⁹ Other cities in northern Europe—including Cambrai, Lille, and Artois—had similar customs

regarding marital property.²⁰ In all of these areas, the community-of-goods regime was predominant until the late fourteenth or early fifteenth century, when marital property arrangements began to shift toward a system based on the separation of goods. This change can be attributed in part to the increasing use of marriage contracts, which clearly enumerated the goods that each member of the couple had brought to the union.²¹

Although I did not find numerous examples, it does appear that some couples in late medieval Valencia attempted to use both the *germanía* and dowry systems to govern their marital assigns. In a series of documents dated March 18, 1425, Guillem Noguera received a dowry of thirty pounds in household goods and jewelry from Dominic Martinez of Torrent, the father of his bride, Johana. At the same time, Guillem received a donation from the executor of his mother's estates for some pieces of land in the *horta* held in emphyteutic tenure. The final document in this series is a *germanía* contract concluded between Guillem and Johana.²² As in Castile, the goal of this couple seems to have been to use the dotal contract to govern her dowry and the *germanía* contract to cover any other property Guillem and Johana held at the time of marriage, as well as any assets gained during their union. The dotal contract gave Johana legal protection for her dowry, ensuring that those assets remained intact to provide for her in widowhood. Conversely, the *germanía* regime recognized her equal contribution to the financial sustenance of the household. Overall, the use of the two systems allowed Johana to enjoy the economic gains of marriage but protected her in case the conjugal assets were diminished through debts incurred or by any other means. This dual use of the dowry and *germanía* systems does not appear to have been common in late medieval Valencia, as the series of documents relating to Guillem and Johana Noguera's marriage were the only examples I found for the period 1420–1440.

While the earliest *germanía* contracts in Valencia date to the early 1280s, the majority of those extant are from the fourteenth and fifteenth centuries.²³ This proliferation reflects the socioeconomic crises of this period, as couples could pool their assets—whether cash, household goods, or rented plots of land—for greater sustainability. The work on rural France of such scholars as Jean Gaudement, Jean Yver, and Jean Hilaire denotes the increase in these types of marriage contracts during the latter half of the medieval period. It was not only married couples who increasingly chose a community-of-goods approach to govern their assets; evidence from these regions suggests that such types of property-holding agreements rose among people not related through marital or blood ties.²⁴

By the time the plague arrived in the kingdom of Valencia in May 1348, the territory had been in Christian hands for just over one hundred years. As elsewhere in Europe, the second half of the fourteenth century was extremely difficult for Valencia, in both rural and urban areas of the kingdom. Repeated waves of plague decimated the population, as did endemic warfare. For example, Valencia experienced civil strife in 1348, when King

Pere the Ceremonious faced and eventually defeated a union of rebels seeking to limit his authority in the kingdom. The harsh economic situation of the fourteenth century led to a reorganization of the kingdom, both economically and socially.²⁵ Over the first half of the fifteenth century, there were great shifts in population throughout Valencia, as the poor, journeyman artisans, and indebted peasants migrated in search of work.²⁶ The majority of these groups moved to the city, whose population exploded, while rural areas experienced severe demographic decline. The population of the city of Valencia almost doubled from 1355 to 1418, and grew again by one-third from 1418 to 1489, at which point 45,000 people lived within its walls.²⁷ More rural areas—such as Morella, Xativa, and Alzira—saw their populations drop dramatically. For example, Morella went from 2,898 people in 1418 to 254 in 1469; Xativa, from 2,809 to 881; and Alzira, from 1,652 to 675.²⁸ The escalating division of land discussed earlier in this chapter, which led to increasingly smaller plot sizes, was largely to blame for the massive immigration of *llauradors* to urban centers in order to survive. Given these problematic socioeconomic circumstances, it is not surprising that married couples and others in Valencia used whatever means possible to ensure the financial survival of their households.

In Valencia, it was precisely during the time that *germanía* contracts were at their peak that they made their first and only appearance in the *Furs*. In 1428, regulations regarding *germanía* contracts were added to two clauses. The first of these augmented the existing law, which stripped an adulterous wife of her dowry, and mandated that women who committed adultery lose their share of the conjugal fund.²⁹ The second clause expanded statutes written by Jaume I (1261), Pere II (1363), and Martí I (1403) regarding the devolution of property inherited by sons and daughters, which was then considered a marital asset. In the initial clause and three subsequent additions, the *Furs* stated that any assets given as dowry or countergift, which had been inherited by sons or daughters from their parents, were to be returned to the originally designated second heir if there were no offspring from the marriage. Alfons IV in 1428 extended this law to include children who marry under the *germanía* regime, and allowed second heirs to demand either the return of specific goods initially inherited or their estimated value.³⁰

The reasons for inserting these clauses at this point in Valencian history are difficult to determine. Because law in this period was reactive, it is possible that the clauses were added as a result of issues regarding *germanía* marriage contracts being raised in court. The case brought by Johana Nanyes before the court of the governor was presented in 1421; however, given the fact that notarial evidence demonstrates that these contracts had been used from the late 1280s, questions regarding them must have arisen prior to that date. Another possibility is that the clauses added by Alfons IV reflected concerns of elite families in Valencia. Earlier monarchs had amended previous laws to protect the familial inheritance rights of the

elite on numerous occasions. But as we have seen, *germanía* contracts were not used by those of patrician and noble status in Valencia, and it seems unlikely that they would place pressure on the king for these reasons.

The most plausible answer at this point is merely that Alfons IV was reacting to the growth in use of these contracts over the course of the fourteenth and fifteenth centuries. We may not have concrete evidence that questions regarding the impact that *germanía* marriage contracts had on certain issues, including inheritance, were brought before the courts, but this does not necessarily mean that they did not arise outside of the legal system. It is interesting that neither of the legal clauses amending *germanía* worked to protect the rights of the wife over her share of the conjugal property. Rather, they were concerned with heirs and ensuring the smooth transition of assets from one generation to the next.

This raises the question of whether or not marriage contracts based on the community of goods, such as the Valencian *germanía* ones, put forth “an idea of equality that ought to exist between husband and wife,” as some historians have argued.³¹ As evidence, these scholars cite that under such a system, the wife was equally entitled to any gains and increments made on the couple’s common property, as well as the fact that if she were the surviving spouse, she would automatically receive half of the marital property. According to this argument, community-of-goods marriage contracts created de facto equality between husband and wife, replacing the hierarchy of marriage created by the dotal system.

The language of *germanía* marriage contracts certainly inspires the concept of equality, as couples pledged “*fraternitatem et germaniam*” (fraternity and brotherhood). These words imply that an equal relationship was to exist between husband and wife, at least in terms of their marital assets. This concept, therefore, suggests that husband and wife not only had equal access to the profits accrued but also had equal rights in administering the property. And yet it is unknown whether or not couples who married under the *germanía* system in Valencia shared this task. Maria Belda Soler argues that since the couple together had the right of alienation, their conjugal assets were governed by agreement.³² Honorio García disagrees and asserts that, like the dotal regime, the husband administered the couple’s property for the duration of the marriage.³³ In Castile, it was the husband who managed the conjugal property; he was able to freely dispose of any movable goods but had to have his wife’s consent to alienate any immovable property.³⁴ Similarly, in Aragon, the husband had the role of administrator of these assets but was not allowed to alienate any goods without his wife’s express permission.³⁵

In Castile and Aragon, laws regulated the administration of the community of goods, providing clear mandates regarding the control of these assets throughout marriage. In Valencia, where the *germanía* regime was not legally recognized by the *Furs*, it is difficult to determine who acted in this capacity. *Germanía* contracts stated that both the husband and

the wife were to use the goods in common, but this does not necessarily translate into equal administrative rights, as the evidence from Castile and Aragon demonstrates. Only one contract examined for this chapter clearly stipulated who was to act as administrator, giving this role to the husband, as in the dotal regime.³⁶ Beyond this, one can speculate that administrative duties varied by couple. In some cases they controlled their assets jointly; in others, the husband retained administrative rights.

The *germanía* system was beneficial to women, as it clearly recognized the wife's economic contribution to the household. It gave her the right to benefit financially not only from the couple's combined production but also from her separately earned income. Both of these advantages were denied to women under the dotal regime, which gave all gains and income earned by wives to their husbands for sustaining the burdens of marriage. In this way, the *germanía* system can be seen as mitigating the dotal regime, which may be the reason why some couples used both forms of marriage contracts. Despite these positive aspects, however, there is one fundamental problem that makes the benefits of the *germanía* system for wives ambiguous: they were not legally recognized. As discussed earlier, the two clauses in the *Furs* that mention *germanía* protect the rights of the husband in the case of an adulterous wife, or the rights of heirs in regard to inheritance disputes. Neither, however, indicates protection for the wife, which was a fundamental part of the dotal regime. By Valencian law, a wife could sue her husband for mismanaging her dowry, but a woman who married under the *germanía* system had no means of protecting her share of the conjugal property. If her husband incurred debts or gambled away their assets, a woman had no legal recourse to ensure that she retained a measure of their jointly owned property.³⁷

Despite the exclusion of protective rights for women who married under the *germanía* system, Johana Nanyes's case indicates that some married women were trying to make use of the legal apparatus contained within the *Furs* that was designed to protect women's dowries. Johana was not the only woman who attempted to reshape the laws of dowry restitution to reflect *germanía* marriage contracts. In 1438, Francesca, the wife of the wool dresser Lop de Barbastre, brought a civil suit against her husband, asking for the return of her half of the conjugal fund due to her husband's "great cruelty" and refusal to provide her with the necessities of life (food, clothing, and shelter).³⁸ Francesca claimed that the couple had concluded a *germanía* contract at the time of their marriage, although this contract no longer existed because Lop had destroyed it. Francesca de Barbastre's civil suit is unusual for a number of reasons, not the least of which is the fact that husband and wife were the central witnesses (something that never happened in cases brought before the civil justice). Given the unique nature of this case, it is not surprising that in the end, the justice refused to rule in favor of Francesca or her husband. Again, the reasons for this are not given, but as in Johana Nanyes's case, the justice was limited by the dictates of Valencian law.

Although *germanía* marriage contracts more or less fell outside the jurisdiction of the *Furs de Valencia*, the great success of dowry restitution cases brought by married women against their still-living husbands in late medieval Valencia may have inspired some women who married under this alternative system to use the civil court to protect their share of the conjugal fund.³⁹ Women won their suits in all but three of the 221 dowry restitution cases I examined for the period 1420–1439. In the three cases, the justice asked for greater clarification. In essence, therefore, women who brought cases of dowry restitution against their still-living husbands in this period never lost. Yet this inspiration was short-lived, for as Johana Nanyes's case indicates, justices were unwilling to apply the laws of dowry restitution to *germanía* suits. Although in the early fifteenth century the *germanía* system of marital assigns became legally recognized by the *Furs de Valencia* in specific instances, expanding the scope of these laws to fully include protection for wives in all aspects of *germanía* was clearly not on the minds of the jurists.

NOTES

1. Arxiu del Regne de València [hereafter ARV], Protocolis 4842, Governació Litiu, m. 3, fol. 45r. I v. (April 12, 1421).
2. For the period 1420–1439, 221 dowry-restitution cases involving wives and their still-living husbands are extant for the city of Valencia.
3. For laws of dowry restitution, see Germà Colon and Arcadia Garcia, eds., *Furs de Valencia* (Barcelona, 1990), V-V-XVI; V-V-XIX; V-VI-XX; V-V-XVI.
4. Archivo de Protocolos del Patriarca de Valencia [hereafter APPV], Protocolos 26371, Tomàs Argent, s.f. (June 26, 1427).
5. APPV, Protocolos 23404, Joan Peres, s.f. (May 16, 1429).
6. ARV, Protocolos 789, Martí Doto, s.f. (August 24, 1421).
7. See ARV, Protocolos 420, Joan de Campos (Sr.), s.f. (February 12, 1427).
8. *Furs de Valencia* V-I-XVII.
9. ARV, Protocolos 416, Joan de Campos (Sr.), s.f. (January 29, 1419).
10. APPV, Protocolos 26341, Miquel Gali, s.f. (June 16, 1427).
11. Jacqueline Guiral-Hadzioussif, *Valence: Port Méditerranéen au XVe Siècle (1410–1525)* (Paris, 1986), 25.
12. Ferran Garcia-Oliver, *Terra de Feudals: El País Valencià en la tardor de L'Edat Mitjana* (Valencia, 1991), 97. Also Antoni Furió, "Tierra, familia y transmisión de la propiedad en el país valenciano durante la baja edad media," in *Relaciones de poder, de producción y parentesco en la edad media y moderna*, ed. Reyna Pastor (Madrid, 1990), 311.
13. Furió, *Camperols del País Valencià: Sueca, una communitat rural a la tardor de L'Edat Mitjana* (Valencia, 1982), 69–70.
14. *Ibid.*
15. See Jean Yver, *Égalité entre Héritiers et exclusions de enfants dotés* (Paris, 1966), 41, 52–54; Jean Gaudemet, *Les Communautés Familiales* (Paris, 1963); Emmanuel LeRoy Ladurie, *Les Paysans de Languedoc* (Paris, 1966), 162–167; Jean Hilaire, *Le Régime des Biens Entre Époux dans la Région de Montpellier du début du XIIIe siècle à la fin du XVIe siècle* (Montpellier, 1957), 217–367.

16. Teresa-Maria Vinyoles, *Les barcelonines a les darrerries de l'edat mitjana (1370–1410)* (Barcelona, 1976), 90; Rebecca Lynn Winer, "Silent Partners? Women, Commerce and Family in Medieval Perpignan, ca. 1250–1300" (PhD. diss., University of California at Los Angeles, 1996), 72; María del Carmen García Herrero, *Las mujeres en Zaragoza en el siglo XV* (Zaragoza, 1990), 266.
17. Vinyoles, *Les barcelonines*, 90.
18. Maria Francisca Gámez Montalvo, *Régimen jurídico de la mujer en la familia castellana medieval* (Granada, 1998), 88.
19. Martha Howell, *The Marriage Exchange: Property, Social Place, and Gender in the Cities of the Low Countries, 1300–1550* (Chicago, 1998), 32.
20. Robert Jacob, *Les époux, le seigneur et la cite: Coutume et pratiques matrimoniales des bourgeois et paysans de France du Nord au Moyen Age* (Brussels, 1990), 251–255, 281–290, 297–312.
21. Howell, *The Marriage Exchange*, 32.
22. APPV, Protocolos 22852, Joan Pérís, s.f. (March 18, 1425).
23. Rafael Gibert, *Historia general del derecho español* (Madrid, 1981), 128.
24. Yver, *Égalité entre Héritiers*, 52; Gaudemet, *Les Communautés Familiales*, 179; Hilaire, *Le Régime des Biens Entre Époux*, 250.
25. Paulino Iradiel, "L'Evolució Econòmica," in *Història del País Valencià Volum II: De la Conquesta a la Federació Hispània* (Barcelona, 1989), 268.
26. García-Oliver, *Terra de Feudals*, 64.
27. Furió, "La Baixa Edat Mitjana (Segles XIV I XV)," in *Història del País Valencià*, ed. Milagro Gil-Mascarell, Thomas F. Glick, Antoni Furió, Manuel Ardit, and Carme Gracia Moneris (Valencia, 1992), 101.
28. By the middle of the fifteenth century, the north and central part of the kingdom of Valencia lost 40–50 percent of its population. Iradiel, "L'Evolució Econòmica," 268.
29. Furs de Valencia V-II-IV.
30. Furs de Valencia VI-VI-X.
31. Vicente Castañeda y Alcover, "Organación familiar en el derecho valenciano," *Revista Archivos, Bibliotecas y Museos* (1908): 271. See also Honorio García y García, "La Germania," *Boletín de la Sociedad Castellonense de Cultura* 9 (1928): 171; M. Angeles Belda Soler, *El regimen matrimonial de bienes en los "Furs de València"* (Valencia, 1965), 111; García Herrero, *Las mujeres en Zaragoza*, 267.
32. Belda Soler, *El regimen matrimonial de bienes*, 111.
33. García y García, "La Germania," 171.
34. Montalvo, *Régimen jurídico de la mujer*, 88.
35. García Herrero, *Las mujeres en Zaragoza*, 267.
36. ARV, Notal 2525, Juan de Campos (Sr.), s.f. (February 18, 1425).
37. Heath Dillard and Martha Howell also assert that in terms of property acquisitions, the *germania* regime was not always positive for women. Dillard found that in Castile, indebtedness and fines could erode conjugal wealth. *Daughters of the Reconquest: Women in Castilian Town Society, 1100–1300* (Cambridge, 1984), 75. Similarly, Howell argues that describing the society of acquisitions as egalitarian in comparison to the dotal system is too simplistic and states that one needs to examine this marital property regime in conjunction with the social and gender implications of property law to fully understand how it functioned. *The Marriage Exchange*, 10.
38. ARV, Justicia Civil Peticiones 3731, M 10. fol. 5r. sig. ARV 3730, M. 13 fol. 25r. a 31v. (Saturday June 28, 1438).
39. See Dana Wessell Lightfoot, "Family Interests? Women's Power: The Absence of Family in Dowry Restitution Cases in Fifteenth-Century Valencia,"

Women's History Review 15 (2006): 511–520; Lightfoot, “The Right to Property: Dowry Restitution in Fifteenth-Century Valencia,” in “Negotiating Agency: Labouring-Status Wives and Their Dowries in Early Fifteenth-Century Valencia” (PhD diss., University of Toronto, 2005), 210–266; Julius Kirshner, “Wives’ Claims Against Insolvent Husbands,” in *Women of the Medieval World: Essays in Honor of John J. Mundy*, ed. Julius Kirshner and Suzanne F. Wemple (Oxford, 1985), 256–303; Joanne Ferraro, *Marriage Wars in Late Renaissance Venice* (Oxford, 2001).

8 In the Shadow of the Campo

Sieneſe Women and Their Families

(c. 1400–1600)

Elena Brizio

The history of women in medieval and early modern Italy has largely been dominated by a scholarly focus on Florence and Venice, despite the historical significance and rich archival holdings of other cities and regions on the peninsula. This chapter presents new information on the women of Siena and evaluates their position in their families and communities in regard to current trends in research on Italian women. Inquiry into the lives of Sieneſe women has been difficult due to a drastic restructuring of Sieneſe archives during the seventeenth and eighteenth centuries, in which enormous quantities of codices, parchments, and loose documents were discarded to make room for new material. Only documents reporting names of well-known families, such as Piccolomini and Tolomei, escaped destruction. As a result, research in the Sieneſe archives must be conducted in two ways: (1) by studying individual parchments and scattered documents that provide information about wealthy and high-born women; and (2) by examining the informative but as yet underused tax records and notarial acts that allow us to examine the experiences of women of the lower classes. Because early modern Siena was subject to the Florentine principate, information on prominent Sieneſe families can also be found in letters to the Medici dukes, detailing cases in the subject territory that often reveal the conflicting interests of women and their kin. This chapter makes use of all these varied sources—civic statutes, notarial acts, tax records of Siena, and the letters from Medici ducal archives—to examine elite and nonelite women from Siena and the surrounding countryside.

Several decades ago, historians developed two distinct models governing the lives of the women of Florence and Venice. The Florentine model—based on the studies of Christine Klapisch-Zuber—emphasizes the limits of women’s agency, minimizing, in most cases, their legal, economic, and social roles.¹ The Venetian model, pioneered by Stanley Chojnacki, strongly underlines women’s independence, in both economic and social realms.² More recently, Isabelle Chabot and Anna Bellavitis have contributed to this debate, discussing the perceived differences between Florentine and Venetian women’s legal status and property rights in greater detail.³ In particular, more recent investigations of gender issues in Renaissance

Florence—based on a greater variety of source material—have begun to soften the earlier image of Florentine women’s repression. Julius Kirshner’s and Anthony Molho’s studies on dowry exchange; Thomas Kuehn’s investigations of the legal system; Sharon Strocchia’s analyses of ritual, nunneries, and monasteries; and Ann Crabb’s writings on women of the Strozzi family have established grounds for a new and profitable discussion.⁴ This essay on Sieneese women engages with this discussion on Renaissance Florence. The various archival sources remaining for Siena demonstrate that rural women acted independently, with a strong determination to protect their families, while their elite counterparts—much like the patrician women of Renaissance Venice—engaged with and influenced urban and regional politics and culture.⁵

THE LEGAL EVIDENCE

The earliest surviving Sieneese statute is from 1262, with rubrics indicating the development of the legislation from 1179 onward. Subsequent revisions of these statutes date from 1309–1310, 1337–1339, and 1545.⁶ As was the case elsewhere in Italy, Siena’s statutes concerning intestate inheritance emphasized patrilineal succession. For example, a woman already dowered by her father or brother could not inherit her maternal inheritance if a male heir survived, but she could request a share of their paternal inheritance within thirty years of her marriage. The sworn renunciation of an inheritance was permitted to unmarried daughters only until 1262. The repeal of this law gave daughters, both married and unmarried, the chance to inherit after the *collatio dotis* (subtraction of their dowries), so that other heirs—mainly their brothers and sisters—would not be disadvantaged.⁷ Towers, castles, and urban strongholds were never permitted in a woman’s inheritance, so relatives were obliged to dower girls differently or risk losing their properties. The law over inheritance defended the rights of minor girls, while mothers were obliged to limit their personal choices in testaments to protect their own offspring. The *ius commune* (medieval Roman law) mitigated the restrictions on female inheritance, allowing married and unmarried women to gain a share of their paternal inheritance in the absence of male heirs. Further tempering the strict patrilinearity of the civic statutes was the fact that Sieneese men preferred to appoint their daughters as heirs in the absence of sons rather than distantly related male kin.

The statutes were also concerned with regulating the significant property passed to women as dowry and *donatio propter nuptias*—or reverse dowry, which was given by the future husband and his family to the bride. Even if there was no direct assignment of marital goods, the *donatio* gave a credit to the wife on the property of her husband and his kin. Under the city statutes, the husband’s family swore that they would guarantee not only the restitution of the dowry by mortgaging the family properties but also the

lucrum dotalis (profits from this property), according to the terms of the marriage contract. Unlike Florence and Genoa, Siena did not set statutory limitations on the *donatio propter nuptias*. The dowry, under Sienese law, had to be restored to the widow within one year of the death of her husband. In the meantime, the widow was legally entitled to financial support from the husband's family and was allowed to live with her children. Only if these requirements were not fulfilled would the widow become owner of the *donatio*. A married woman could also ask for the restoration of her dowry *constante matrimonio* (during marriage) if her husband's economic condition was so badly imperiled that he risked falling into poverty.⁸ A wife was her husband's first creditor; the statutes thus protected a woman's property for the sake of her heirs against the possible financial carelessness of her husband.

Despite many differences, there are also some similarities between the Sienese and the Florentine situation. For instance, a Sienese statute from 1309 prohibited the exchange of gifts between family members on the occasion of a marriage, including the brides' gifts to relatives and friends, as was the practice in Florence. Albeit without success, this law sought to limit the excessive ostentation of an old tradition. Husbands were forbidden to ask for the return of gifts to their brides, thus confirming not only that they made gifts in spite of the prohibition but also that they tried to recoup them whenever possible.

LAW VS. COMMON PRACTICE

Siene men demonstrated great concern over providing their daughters, sisters, and granddaughters with honorable dowries and an adequate flow of income that guaranteed the women's social status and livelihood. An adequate dowry, in fact, would give honor and profit to the bride's male lineage. Fathers, brothers, and grandfathers considered it befitting to give the women of their household on the occasion of their marriage "all and every ornaments as used in the city which are customarily given to women when they get married,"⁹ despite the limits imposed by sumptuary laws. They showed deep care and affection through gifts of shoes, foodstuffs, investment money, and life annuities. Furthermore, gifts such as dresses, jewels, houses, and land, which, unlike in Florence, Siene spouses held in common, were given as personal belongings beyond those brought by wives into the marriage.

While Siene statutes in the thirteenth and fourteenth centuries increasingly sought to limit the economic agency of women, the documentary evidence shows that women exploited all opportunities when drawing up their wills to benefit other women. Wills afford insight into the solidarity that existed between women, laywomen, and nuns, and between women belonging to different families. Women maintained contacts and friendships,

sustaining interfamilial relationships. Money, household effects, dresses, houses, and land were bequeathed by women in their testaments to friends, sisters, daughters, and mothers. Women had no difficulty using their wills as a means to bypass the statutes, as can be seen in the documents redacted by Ser Cristofano.

THE USE OF NOTARIAL ACTS BY WOMEN IN THE SIENESE COUNTRYSIDE

The notarial records redacted by Ser Cristofano di Gano Guidini, who worked in both the city and the countryside from approximately 1363 to 1400, provide an unparalleled glimpse into the lives of women of the Siene-
nese contado.¹⁰ Cristofano was a notary for the Ospedale di Santa Maria della Scala and left twenty-four books filled with short records of registered acts (*imbreviature*) as well as a folder containing loose, incomplete wills and testaments, for whom the universal heir was the *ospedale* (hospital). In Cristofano's notarial records—those redacted in the city as well as the countryside—women play a very important role. They act with determination, sometimes with the authorization of a male relative (usually a husband, father, or son) and, if they were widows, sometimes without. The use of the notary for the making of contracts and last wills was very widespread in the countryside. Women had recourse to notarial services on a regular basis in order to protect their interests more effectively; for example, all requests by widows for the return of a dowry refer to a dowry contract that had been drawn up by a notary. At the same time, women living in the countryside engaged in a great number of transactions in which they bought, sold, or defended their ownership of possessions.

Women living in the city but with interests in the countryside often exchanged their titles to land, houses, rents, and animals with women living in the countryside, as in a 1365 land sale between a woman of the country town of Armaiolo and the widow of the Ugurgieri family.¹¹ As was the case in law, the dowry was fundamental to women's control and exchange of property. In the city and the countryside, mothers frequently guaranteed the dowries of their daughters with their own property; one mother even guaranteed her son's *donatio propter nuptias*. In some cases, mothers overcommitted themselves and were unable to pay the dowry promised. In his will, Giacomo di Bartolomeo testified, with some degree of resignation, that his mother-in-law promised him 600 lire for Monica's dowry, but "the truth is that I did not get more than 400 lire . . . I did not get this money because Monna Giovanna says she could not find a way to give it."¹² In March 1383, Domina Lippa, widow of Ser Franciscus Geçcii, wrote her will, specifying that the house she lived in would pass to her daughter, and then, following the female line, to her granddaughter and to her great-granddaughter: "[she] left to domina Margarita her daughter or

Margarita's daughter or Margarita's grand-daughter . . . and she can come back and take the house and live there all her life."¹³ In June of the same year, a grandmother, appointed guardian of the underage children of her deceased son, gave precise indications to her *procurator* (legal advocate) regarding which lands could be sold. This measure prevented a division of family property should the daughter-in-law request that her dowry be returned.¹⁴ Gemma Petri, who lived in the countryside near Castelnuovo dell'Abate, gave a cottage and some household effects, together with twenty gold florins, to her second husband Pagno. Afterwards, however, she made him swear before the notary that he would raise her children from the previous marriage for the next six years.¹⁵ Women could also be important supporters of their families during economic crises, as in the case of Nanni di Francesco Bertini, who, in his 1390 testament, made sure that his aunt, Monna Bartolomea, would be reimbursed the money she had lent him during a difficult period.¹⁶

Sieneese widows usually served as guardians of minor children and were normally appointed to manage the family's possessions. Occasionally a certain degree of complicity and competition among women emerges from the details. For instance, if mothers were obliged to give up or renounce their children, grandmothers were quick to claim that guardianship for themselves. Such was the case with a maternal grandmother belonging to the Cinughi family who claimed to be "a good, suitable and useful guardian for those children and better than anyone else."¹⁷ This strategy, moreover, could be a way to keep within the family children who would otherwise be raised in some other household as unwanted children. Under the 1545 statute, the paternal grandmother—after the mother, of course—was clearly preferred over other potential guardians of minors; notably, the paternal grandmother was obliged either to live with the grandchildren or to bring them to live with her. Further evidence of the importance granted to women in their families is the fact that they were appointed as executors of their husbands' wills and were responsible for the execution of their husbands' testamentary bequests.

In sum, Cristofano's records reveal aspects of daily life that are absent from official acts and the wills of upper-class women. These acts demonstrate that women from all social classes could independently manage and dispose of their wealth. This evidence challenges the idea, drawn from statutes and other normative documentation, that women had limited access to funds.

TAX RECORDS—THE *LIRA*

The documents contained in the volumes of the *Lira*—the records of goods and properties provided by the head of every family to the *Alliratori* charged with assessing their value for taxation purposes—are also useful

in shedding light on the economic situation of women in the Quattrocento. After receiving the records, these officials would establish the amount of taxes to be paid according to the difference between the total amount of earnings and the basic living expenses that each family incurred. We can analyze the documents in the 1453 *Lira*, the oldest surviving record of this type, to study this economic and social situation in detail. There are striking differences between women belonging to the same middle-to-low social milieu. The records that I have examined are just a small sample of the 2,766 that have survived,¹⁸ yet they are nonetheless sufficient to illustrate a multifaceted social and economic reality.¹⁹

A perfunctory survey of the records reveals several important facts concerning women's situation. As one can imagine, the degree of their personal wealth varied greatly. Yet in upper and lower social levels alike, it is striking that the names of daughters are often missing from the documents. Their number and age, however, were never mistaken, and any mention of a future—or, worse, impending—wedding treated it as an incessant grievance. Even a brief analysis of the *Lira* records makes clear that complaints comprise the bulk of them. Recorded in them are not only credits, debts, properties, and expenses, but also, in the closing sections, pleas made by the heads of the families to the *Alliratori*, begging them to consider the number of daughters; the heavy cost of dowries; the number of old and sick mothers to maintain; and the overly fertile wives, and for these reasons to deal mercifully with the family.

Women at all social levels seem to have shared the same reduction of personal goods and *train de vie*. This must have been a consequence of the political and (especially) the economic situation of the Siense Republic in the Quattrocento, a subject still awaiting closer study. For instance, Nichola Venturi—widow of the famous jurist Mariano Sozzini—and her daughter-in-law Lodovica Orlandini—widow of the jurist Bartolomeo—filed a joint tax record, in which they informed the *Alliratori* that “we are women and we are used to spending money, we don't know how to earn it.”²⁰ For Antonia Benci, widow of Antonio, it was a great sacrifice to reduce her household help to just one slave and one maid,²¹ while other women had to look for a way just to survive, seeking help from neighbors if they lacked close kin.²²

Women belonging to the lower social classes usually described themselves as old,²³ with children to raise,²⁴ and in situations characterized by extreme precariousness or dire straits; there are no references to affection or sentiments, but the difficulty of day-to-day survival is strongly emphasized. And yet these women did not retreat from the challenge of work, hard times, or tending a sick child.²⁵ Also belonging to this disadvantaged group are a few cases of women belonging to branches of important old families that had fallen into decline or even poverty. The record by Costanza, widow of Guglielmino di Pietro di Salamone Piccolomini, tells a disheartening story, in which the Piccolomini daughters were obliged to look for a small dowry

in order for Giovanna, “who cannot wait any more” (*in età da non istare più*), to marry.²⁶ Some years before, in 1423, it was the turn of Marietta, wife of Cocco di Cione Salimbeni, to plead her case to the Signoria: “since she has daughters who have to be married, [the Signoria] should allow her to find the way and means to marry them.”²⁷

The *Lira* does not provide information about those women who were neither rich nor poor: we do not learn about married women and widows filing tax records with adult sons and/or daughters, who needed no guardianship. The tax records provide us with rich information only about the extremities of the social ladder, while the great central area remains in the dark. Nevertheless, these records combined with the notarial records so frequently used by rural women demonstrate their practical attitude and their interest in safeguarding their rights. Women’s use of notarial contracts and their recourse to petitions for tax relief confirm that they had a certain degree of autonomy in the management of their families and their goods within their own domain, whether large or small, in the city as well as in the countryside. Furthermore, women do not appear to have been economically isolated from men and civic political life. Indeed, women often furnished considerable help to their male kin in the political arena, which will be our next focus.

POLITICS AND CULTURE

Sieneese history in the second half of the fifteenth century is rife with political turmoil, exiles, and internecine aggressions among the governing factions—the so-called Monti.²⁸ Women were influential in this realm, as Christine Shaw has emphasized in her study of exile. Shaw argues that “active female relatives, alert to the protection of the family interests, ready to lobby officials and the politically influential . . . , could be an invaluable asset.”²⁹ Civic anxiety about women connected to exiles is a good measure of the important roles women could play in familial fortunes—even politically. The government saw the mothers and wives of exiles as possible sources of instability inside the city walls. For example, in 1483 the regime decided to expel all the mothers and wives of exiles, since they had been corresponding with their exiled menfolk on a regular basis; thus, the exiles “would have extra trouble and expense, giving them something to think about other than scheming against this regime.”³⁰ Again, in 1491, the government tried to control all the female kin of exiles, sending away “all the women and wives of exiles, and the mothers as well, so that they will not be sending and receiving letters from their husbands every day.”³¹

Indeed, some women, in addition to helping husbands and kin with money and through political connections, used their own resources to support their husbands’ political party. Lucrezia, the wife of Mino Pannilini, was punished in June 1489 with the confiscation of her dowry because she had given money

to the exiles against the interest of the city. Mino was a Novesco (member of the Monte dei Nove, or Group of Nine) and had been exiled since 1487 to the Sienese countryside, then to Pisa, and later to Città di Castello, where he died, leaving behind Lucrezia and their small children.³² Similarly, Onesta, the wife of the Novesco Placido Placidi, was accused soon after her husband's execution of having taken his goods out of the country. When ordered to pay a fine, she went to Rome and asked the help of Pope Innocent VIII, former Cardinal Cybo, because her dowry had been withheld from her. The Sienese ambassador explained to the pope that she was deprived of her dowry because "she had herself gathered infantry together, and attempted to do a number of things that imperiled the government."³³

Bartolomea di Pietrino Bellanti shows us another type of female behavior, completely different from Lucrezia and Onesta. Bartolomea had to delay her marriage for twenty years after the agreement was signed between her father and her future husband in 1418. Her marriage to Giovanni di Orlando Malavolti, whose family were important allies with the Florentines, had been organized to end a family feud. But Giovanni refused to marry Bartolomea, even when Duke Filippo Maria Visconti of Milan (on the Bellanti side) presented him with an ultimatum: to marry Bartolomea or go to jail. Giovanni chose jail. After a representative of the Bellanti family convinced Giovanni to agree to the marriage, Giovanni ran away while traveling to Siena, and a brother of Bartolomea, Mariano, killed himself out of shame. In 1437, proxy eventually arranged the marriage. In 1450, Spanish soldiers took both Bartolomea and Giovanni prisoner. Bartolomea was immediately released, since the Bellanti family was strongly allied to Ferdinando d'Aragona; nevertheless, she refused to leave her husband and remained in jail with him.³⁴

Intermarriage occurred between Sienese and Florentine families, and among the magnate clans, exogamy was practically a custom. The Salimbeni clan, for instance, frequently sought wives from powerful military or landowning families outside of Siena.³⁵ Biancina Salimbeni, wife of Agnolino "Bottone" Salimbeni (who tried to become lord of Siena in the mid-Trecento with the complicity of Emperor Charles IV), came from the Trinci family of Foligno, and her brother was the captain of the papal army. Earlier, the Salimbeni had made marriage alliances with, among others, the Farnese, the Alberti from Mangona, the Cavalcanti of Florence, and the Guidi. Later, some women of that family contracted marriages with the Pecora of Montepulciano, the Casali from Cortona, the Attendoli from Cotignola, the Varani lords of Camerino, the Chiavelli lords of Fabriano,³⁶ and—among the Florentine entourage—the Ricasoli.³⁷ Other families would, in later years, become linked with the Florentines, like the Tegliacci with the Medici in the Quattrocento, and the Pannilini with the Albizi in the late Cinquecento.³⁸

With regard to the many women who were important in the cultural life of Siena, we have only a few names whose biographies have yet to be

written: Filiziana Bichi, whose precious *Libro d'ore* is at the Pierpont Morgan Library in New York;³⁹ Bianca Saracini, whose portrait was included in an illumination by Francesco of Giorgio Martini at the Biblioteca Nazionale in Florence; and Bianca's mother, Onorata Orsini, whom Marilena Caciorgna has carefully studied.⁴⁰ These women were sophisticated art connoisseurs, though their patronage is difficult to reconstruct.⁴¹ This is indeed the case with Eleonora Bellanti, who inspired a painting featuring the suicide of Scipio Africanus, referencing the political misfortune of her father, Antonio Bellanti.⁴² Other women, like Lucrezia Pannilini and Onesta Placidi, were noted for their quasi-male behavior in their assistance to their exiled kin. Margherita Bichi, a Franciscan tertiary credited with initiating the cult of the Immaculate Conception, ordered the city to recite the prayer of the Immaculate Conception during the war against the Florentine. The result of her suggestions for prayer was the defeat, on July 25, 1526, of the papal troops of Clement VII, Giulio de' Medici, who were besieging the city. Later, however, many dismissed her political intuition by ascribing it to mere prophetic virtues.

During the first half of the Cinquecento, Florence attempted on many occasions to capture Siena; the city finally capitulated after a horrible war in 1555. At this time, some women seemed to be involved—although only secondarily—with academies and literary and cultural activities that had a distinctive political agenda, whether partisan to the Spanish cause (Florence) or the French one (Siena). The cases of Girolama Carli de Piccolomini and Eufrosia Marzi are important examples.⁴³ These women were involved in the development of the use of the vernacular as a cultural tool, at a time when Siena was seen as occupying an avant-garde position in the development of Italian. Other notable women were Virginia Salvi, who served a specific diplomatic position, as Florentine documents show,⁴⁴ and Laudomia Forteguerra, who is particularly famous for her poems dedicated to Margherita d'Austria.⁴⁵ The Salvi brothers, on the other hand, kidnapped their sister Agnese from her husband and gave her to the Spanish governor, the Duke of Amalfi, in order to secure more personal power in the city.⁴⁶

Other women took advantage of the political situation and the measure of freedom within which they could operate. The case of Maddalena della Gazzaia (or Agazzari) in 1557 is particularly intriguing, and shows that there were tricky situations, each completely unique, in the face of which even a talented politician like Agnolo Niccolini, the Florentine governor sent by Cosimo I, was hard-pressed to find a solution. Maddalena belonged to a prominent and rich family and was married to the scion of the Placidi family, who was the nephew on his mother's side of Ambrogio Spannocchi and Fausto Bellanti, both very famous and powerful men. According to the city's baptismal records, Maddalena was born in 1523 to Renaldo della Gazzaia. In 1539 she married Marcantonio di Aldello Placidi, her senior by two years, with a dowry of 5,000 florins.⁴⁷ Maddalena stirred

up scandal by later choosing to marry a Spanish soldier living in Siena with whom—as the governor himself noted to Cosimo I—the woman had already had an affair while still married to Marcantonio Placidi. We can deduce that the soldier was not of the lower classes from a letter written by the governor to Florence, in which this man’s last name, even if misspelled, was mentioned. Luigi Carovagial, in fact, surely belonged to the same Spanish family that also included the bishop of Sovana (Carvajal Simoncelli, 1535–1596); the Dominican preacher Gaspar, who traveled to Peru with Pizarro; and, at the beginning of the Quattrocento, the bishop Juan Carvajal, who served as *uditor* of the Sacred Rota and papal legate of Eugenius IV and Callixtus III. Niccolini wrote to Cosimo that this “family [was] messing up and all the city [was] worried and ashamed” and that Maddalena had no intention of leaving Luigi. He described her as “almost thirty and childless . . . ; they say that between legal assets and dowry she has about 15 to 20,000 ducats.” Maddalena was temporarily detained in a nunnery after confirming to the captain of justice and other representatives of the government that she wanted to stay married to the Spaniard. “She confessed everything proudly and even more than what she was asked,” added the governor. On the other hand, during his deposition, the Spanish soldier seemed quite shy and even denied some of the accusations. After enforcing all possible legal actions, Niccolini reported to Cosimo, “we will leave the whole thing to the spiritual court, if someone on Maddalena’s behalf wants to dispute it, being her determination to want the soldier for her husband.”⁴⁸

For every woman who was able to take advantage of her independence, many others faced great difficulties. In a case in 1560, the governor of Siena was informed that Count Nicola Orsini of Pitigliano, member of the Florentine army, had “sexually assaulted his own daughter-in-law, wife of the count’s son Alessandro,” and that the kin of the girl, whose name is not reported, had gone to Pitigliano to take the girl back home with them. Moreover, Count Nicola had just had a son, after three daughters, by his Jewish lover, “and has made a great feast of it, which was a big blow to Alessandro and his mother.”⁴⁹ In another case dated 1559, a rural widow was sexually assaulted by a man from the Usinini family, along with a priest who had already been involved in other sexual assaults. The letter reports:

On the night of the attempted rape, Terenzio [Usinini] was accompanied by a certain Santi di Lelo, a priest from Belforte, who, a few months earlier, had been seen throttling a local townsman because of some business involving the man’s wife, who was apparently having an affair. Terenzio, along with the priest, is believed to have murdered the poor man. It was decided to arrest the priest but the Lieutenant of the Bargello was not able to track him down; however, according to the Lieutenant, a peasant from the area, who has been promised a handsome reward, hopes to enable us to capture the priest with the

assistance of a woman who was formerly having an affair with the priest.⁵⁰

This continued to remain a rather normal situation, even after Duke Cosimo I in 1558 issued a law against anyone who committed violent crimes, especially those of a sexual nature, against either women or men.

All these examples illustrate events that occurred even after these statutes were introduced and enforced. They also bring to light how most women, whether living in urban or rustic settings, enjoyed a certain degree of personal freedom determined by wealth, intelligence, or age. On the other hand, women who belonged to a low social status, as in the case of the widow in Belforte, or lived in conservative or even retrograde communities, as in the case of the wife and daughter-in-law of the count of Pitigliano, had little autonomy and confirm the tendency of some academic literature to assign a submissive and dependent role to women. The Pitigliano incident serves as a case in point: it underscores the struggle between different women, the sharp contrast between wife and lover, the attempt to defend a mother's and family's honor, the difficult times a family incurred in trying to defend their daughter in violent situations, and the preference for a newborn son despite the presence of young daughters. The case of the widow of Belforte, in contrast, exemplifies how, in this historical period, one should not ignore the social and sexual connections that women had—or were forced to have—with clergy before restrictions were imposed following the Council of Trent.

CONCLUSIONS

Sieneese women seem to have been more independent than their Florentine neighbors during the Middle Ages and the Renaissance. Their kin counted on them and preferred them as heirs over distant male relatives, and women used their wealth and social power wisely to protect their families, especially their female relatives. Women were often appointed managers of their family estates and guardians of minors; they used the economic independence they had in order to help, if possible, the youngest or weakest members of their families. Even in difficult times, Sieneese women tried to protect and promote their kin without losing their own economic base.

The material presented here is preliminary to a wider work I am undertaking. Despite the rich archival sources on the history of Sieneese women and their property rights, many questions remain unanswered. Ideally, every study of Sieneese women should include detailed research on the economic and political circumstances of the fifteenth and sixteenth centuries—particularly Siena's loss of independence to Florence, and its incorporation into the Grand Duchy of Tuscany in 1555. In any case, I strongly believe that further comparative research will shed more light on Sieneese women

during the Renaissance, so that they come out of the shadows—not only of the Campo but of history.

NOTES

1. See especially Christiane Klapisch-Zuber and David Herlihy, *Tuscans and Their Families: A Study of the Florentine Catasto of 1427* (New Haven, CT, 1985); Klapisch-Zuber, *Women, Family, and Ritual in Renaissance Italy*, trans. Lydia G. Cochrane (Chicago, 1985); Klapisch-Zuber, *La maison et le nom: stratégies et rituels dans l'Italie de la Renaissance* (Paris, 1990).
2. Stanley Chojnacki, *Women and Men in Renaissance Venice: Twelve Essays on Patrician Society* (Baltimore, 2000).
3. Isabelle Chabot, "Risorse e diritti patrimoniali," *Il lavoro delle donne*, ed. Angela Groppi (Bari, 1996), 47–70; Chabot, "La loi du lignage. Notes sur le système successoral florentin (XIVe/XVe–XVIIe siècles)," *Clio* 7 (1998): 51–72; Chabot, "Lineage Strategies and the Control of Widows in Renaissance Florence," 127–144; Anna Bellavitis, "Dot et richesses des femmes à Venise au XVIe siècle," *Clio* 7 (1998): 91–100; Bellavitis, "Patrimoni e matrimoni a Venezia nel Cinquecento," *Le ricchezze delle donne: diritti patrimoniali e poteri familiari in Italia* (XIII–XIX secc.), ed. Isabelle Chabot and Giulia Calvi (Turin, 1998), 149–160; Isabelle Chabot and Anna Bellavitis, "A proposito di 'Men and Women in Renaissance Venice,' di Stanley Chojnacki: Ricchezze femminili e parentela nel Rinascimento. Riflessioni attorno ai contesti veneziani e fiorentini," *Quaderni Storici* 118, no. 1 (2005): 203–238; Chabot and Bellavitis, "People and Property in Florence and Venice," in *At Home in Renaissance Italy*, ed. Marta Ajmar-Wollheim and Flora Dennis (London, 2006), 76–85.
4. See, among others, Julius Kirshner, *Pursuing Honor While Avoiding Sin: The Monte delle Doti of Florence* (Milan, 1978); Julius Kirshner and Jacob Klerman, "The Seven Percent Fund of Renaissance Florence," in *Banchi pubblici, banchi privati e monti di pietà nell'Europa preindustriale: Amministrazione, tecniche operative e ruoli economici: Atti del convegno internazionale, Genova 1–6 ottobre 1990* (Genova, 1991), 271–298; Julius Kirshner, "Li emergenti bisogni matrimoniali in Renaissance Florence," in *Society & Individual in Renaissance Florence*, ed. William J. Connell (Los Angeles, 2002), 79–109; Anthony Molho, *Marriage Alliance in Late Medieval Florence* (Cambridge, 1994); Anthony Molho, Roberto Barducci, Gabriella Battista, and Francesco Donnini, "Genealogy and Marriage Alliance: Memories of Power in Late Medieval Florence," in *Portraits of Medieval and Renaissance Living: Essays in Memory of David Herlihy*, ed. Samuel Kline Cohn Jr. and Steven Epstein (Ann Arbor, 1999), 39–70; Thomas Kuehn, *Emancipation in Late Medieval Florence* (New Brunswick, 1982); Kuehn, *Law, Family and Women: Towards a Legal Anthropology of Renaissance Italy* (Chicago, 1991); Kuehn, *Illegitimacy in Renaissance Florence* (Ann Arbor, MI, 2002); Kuehn, *Heirs, Kin, and Creditors in Renaissance Florence* (Cambridge, 2008); Sharon Strocchia, *Death and Ritual in Renaissance Florence* (Baltimore, 1992); Strocchia, "Sisters in Spirit: The Nuns of Sant'Angrogio and their Consorority in Early Sixteenth-Century Florence," *Sixteenth Century Journal* 33 (2002): 735–767; Strocchia, "Remembering the Family: Women, Kin and Commemorative Masses in Renaissance Florence," *Renaissance Quarterly* 42 (1989): 635–654; Ann Crabb, *The Strozzi of Florence: Widowhood and Family in the Renaissance* (Ann Arbor, MI, 2000).

5. Elena Brizio, "La dote nella normativa statutaria e nella pratica testamentaria senese (fine sec. XII–metà sec. XIV)," *Bullettino senese di storia patria* 111 (2005): 9–39.
6. Ludovico Zdekauer, *Il Constituto del Comune di Siena dell'anno 1262* (Milan, 1897); Mahmoud Salem Elsheikh, ed., *Il Constituto del Comune di Siena volgarizzato nel MCCCIX–MCCCX, Fonti e memorie*, 1 (Siena, 2002); Mario Ascheri, ed., *L'ultimo statuto della Repubblica di Siena (1545)*, Monografie di storia e letteratura senese, 12 (Siena, 1993).
7. Zdekauer, *Il Constituto*, 216–217.
8. The Justinian Novel 97.6 *Illud quoque sancire* allowed women to get their dowries back if their husband was in danger of wasting the money; the woman could not alienate the dowry, however, which had to be used to support the family. Kirshner, "Wives' Claims against Insolvent Husbands in Late Medieval Italy," in *Women of the Medieval World: Essays in Honor of John H. Mundy*, ed. Julius Kirshner and Suzanne F. Wemple (New York, 1985), 260.
9. Archivio di Stato di Firenze [hereafter ASF], Diplomatico Reale Acquisti Ricci, 1340 giu 28. Unless otherwise indicated, all translations are mine.
10. On Cristofano, see Gianni Bonelli, "Ser Cristofano di Gano Guidini: Biografia di un notaio senese del Basso Medioevo (1342–1410)," Tesi di laurea, Facoltà di Lettere e Filosofia, *Università degli Studi di Siena*, a.a. 2004–2005; F. Thomas Luongo, *The Sainly Politics of Catherine of Siena* (Ithaca, NY, 2006), 136–139.
11. The seller is *domina Mea filia olim ser Guillielmi Nerii de Armaiolo*, and the buyer is *domina Tessa filia olim Ruggerotti Çani de Ugorgeriis et relicta Nerii Fuccii de Orlandinis*. Archivio di Stato di Siena [ASS], Notarile Antecosimiano 103, cc. 36v–38v (April 16, 1365).
12. ASS, Notarile Antecosimiano 99 (1397). Monica's dowry was paid by her mother and three other women, one of whom was a nun.
13. ASS, Notarile Antecosimiano 116, cc. 2r–4r (March 28, 1383).
14. ASS, Notarile Antecosimiano 116, cc. 26r–27r (June 23, 1383).
15. ASS, Notarile Antecosimiano 105, cc. 5v–7v (January 28, 1365[6]).
16. ASS, Notarile Antecosimiano 99 (November 18, 1390).
17. ASS, Notarile Antecosimiano 127, c. 43r (June 3, 1378).
18. The information is from Giuliano Catoni and Gabriella Piccinni, "Alliramento e ceto dirigente nella Siena del Quattrocento," in *I ceti dirigenti nella Toscana del Quattrocento* (Florence, 1987), 451–461.
19. The analysis of the records and the "autonomous" writing by all the citizens is studied, with interesting results, by Duccio Balestracci, *Cilastro che sapeva leggere: Alfabetizzazione e istruzione nelle campagne toscane alla fine del Medioevo (XIV–XVI secolo)*, Dentro il Medioevo: Temi e ricerche di storia economica e sociale, 1 (Pisa, 2004), 52–86.
20. Quoted in Roberta Bargagli, "Documenti senesi per la biografia di Bartolomeo Sozzini," *Bullettino senese di storia patria* 99 (1992): 266–323, esp. 283–284. The document is in ASS, Lira 192.
21. ASS, Lira 148, c. 110. Reported by Catoni and Piccinni, "Alliramento," 453.
22. ASS, Lira 137, c. 154. Cristofano d'Antonio, wool worker, says in his record, "And besides I must help and support monna Lorença, widow of Urbano of Lapo, who is old and sick since already four years; and she has no help except my poverty and that I do not want to abandon her." In his record Cristofano reports to having two daughters, six and four years old, and a pregnant wife.
23. ASS, Lira 137, c. 36. ". . . old, taking care of an old mother and out of need I am a servant in the neighbors' homes."

24. ASS, Lira 137, c. 75. “. . . I am widow since last year, with a little child so I have to spin all night at the spinning wheel to maintain me and him.”
25. ASS, Lira 137, c. 144. “. . . it is said by me Daniela widow of Pavolo di Francesco flax dresser . . . that I live in a little house with few home tools, I am a widow with a son insane and palsied, whom I took care of for almost 15 years, and most of the time he lays in a little bed and that is a terrible strain on the soul and on the body, which is a pity even to think of it and to see it, and if it wasn't for friends, kin and nice people, it would not be possible to raise him. I have sold little by little the household goods, but now I have no more to sell. I tried to find a job with the burden of this son, but I have found no one interested.”
26. The story is in Roberta Mucciarelli, *Piccolomini a Siena, XIII–XIV secolo: Ritratti possibili* (Pisa, 1995), 439–440. The tax record is in ASS, Lira 57, c. 73v.
27. Assuntina Pannilunghi, *Lettere di gentildonne senesi del secolo XV, pubbl. per nozze Soldaini-De Gori* (Siena, 1897), 8.
28. First analysis in Petra Pertici, “Una ‘coniuratio’ del reggimento di Siena nel 1450,” *Bullettino senese di storia patria* 99 (1992): 9–38; Mario Ascheri and Petra Pertici, “La situazione politica senese del secondo Quattrocento (1456–1479),” in *La Toscana al tempo di Lorenzo il Magnifico: Politica Economia Cultura Arte* (Pisa, 1996), 3:995–1012.
29. Christine Shaw, *Politics of Exile in Renaissance Italy* (Cambridge, 2000), 115.
30. *Ibid.*, 120.
31. *Ibid.*, 152.
32. *Ibid.*, 129.
33. *Ibid.*, 153.
34. Petra Pertici, “Il matrimonio tra Bartolomea Bellanti e Giovanni Malavolti: un affare di stato,” *Accademia dei Rozzi* 11 (1995): 29–30.
35. Alessandra Carniani, *I Salimbeni quasi una signoria: Tentativi di affermazione politica nella Siena del '300* (Pisa, 1995), 208–209.
36. *Ibid.*, 201–202.
37. *Ibid.*, 208.
38. ASF, Mediceo del Principato 1873.
39. Petra Pertici, “Per la datazione del Libro d'ore di Filiziana Bichi,” in *Siena e il suo territorio nel Rinascimento*, ed. Mario Ascheri, vol. 3, Documenti di storia, 36 (Siena, 2000), 164–165.
40. Marilena Caciorgna, “‘Mortalis aemulor arte deos’: Umanisti e arti figurative a Siena tra Pio II e Pio III,” in *Pio II e le arti. La riscoperta dell'antico da Federighi a Michelangelo*, ed. Alessandro Angelini (Siena, 2005), 151–181.
41. Pertici, “Per la datazione,” 162.
42. Caciorgna, “‘Biografia dipinta’: Storie di Scipione e di Camillo,” in *Il Palazzo Chigi alla Postierla a Siena/The Palazzo Chigi alla Postierla in Siena*, ed. Ilaria Bichi Ruspoli, Marlena Caciorgna, Narcisca Fargnoli, Fabrizio Nevola, and Quaderni della Soprintendenza per il patrimonio storico, artistico e demotnoantropologico di Siena e Grosseto (Siena, 2007), 28–57, esp. 38.
43. Among others, Rita Belladonna, “Gli Intronati, le donne, Aonio Paleario e Agostino Museo in un dialogo inedito di Marcantonio Piccolomini, il Sodo Intronato (1538),” *Bullettino senese di storia patria* 99 (1992): 48–90.
44. ASF, Mediceo del Principato, 1860. I thank Dr. Maurizio Arfaioi for sharing this document with me.
45. Konrad Eisenbichler, “Laudomia Forteguerra Loves Margaret of Austria,” in *Same Sex, Love and Desire among Women in the Middle Ages*, ed. Francesca

- Canadé Sautman and Pamela Sheingorn (New York, 2001), 277–304; Eisenbichler, “‘Un chant à l’honneur de la France’: Women’s Voices at the End of the Republic of Siena,” *Renaissance and Reformation* 27 (2003): 87–99; Eisenbichler, “Poetesse senesi a metà Cinquecento: tra politica e passione,” *Studi Rinascimentali* 1 (2003): 95–102.
46. Giugurta Tommasi, *Dell’historie di Siena. Deca seconda, vol. III, libri VIII–X (1512–1553)*, trans. Mario De Gregorio (Siena, 2006), 241.
 47. ASS, Biccherna 1135, c. 59r.
 48. ASS, Biccherna 1135, c. 21r.
 49. ASF, Mediceo del Principato 1864 (February 24, 1559[60])
 50. ASF, Mediceo del Principato 1869, 1559 apr 6.

9 Women, Marriage, and Family in Istrian Communes in the Fifteenth and Sixteenth Centuries

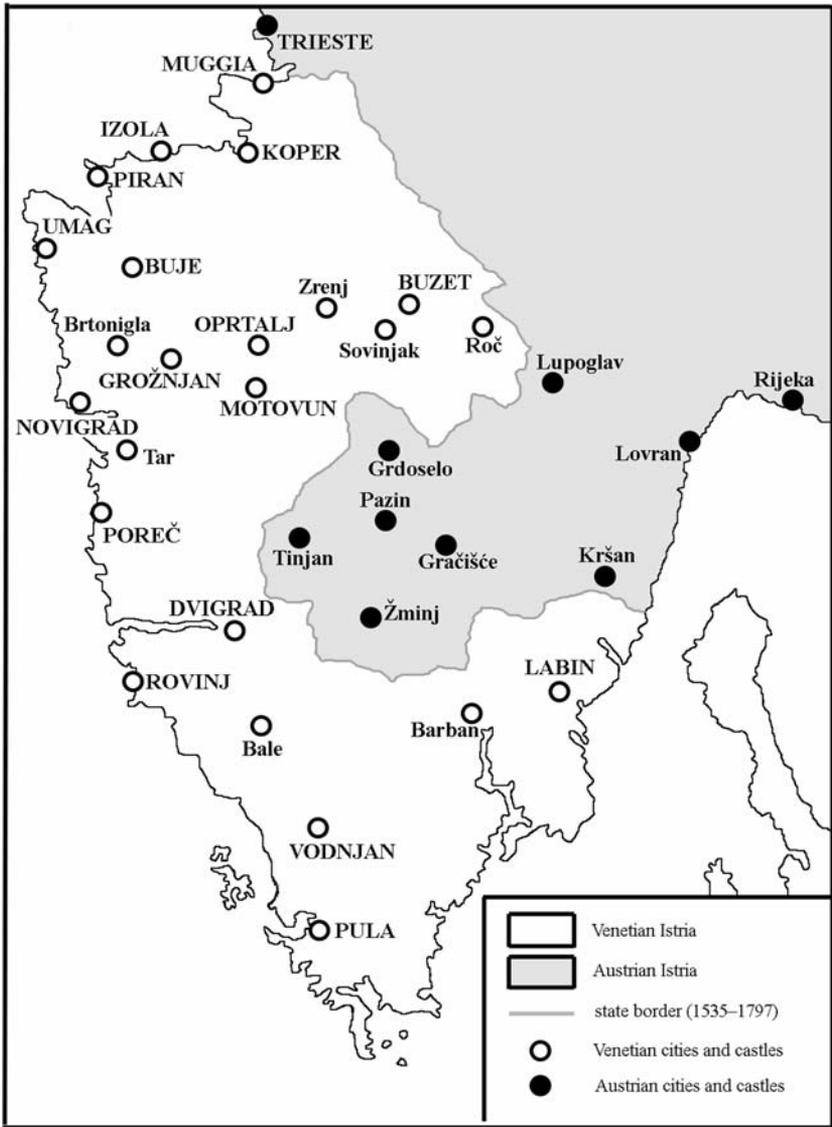
Marija Mogorović Crljenko

This chapter analyzes the position of married women in Istria from the end of the fifteenth century and throughout the sixteenth in terms of property rights, legal competence, and ability to divide goods by testament, as well as their role as guardians (*tutor*) of their children. Special attention is paid to the “Istrian marriage pattern”—also referred to as “marriage like brother and sister”—which was specific to and very widespread in Istria. This was a system of communal governing of marital property, in which the surviving spouse had the right to half of the deceased spouse’s patrimony. I will demonstrate that in this type of marriage, husband and wife were almost equal economic partners.

Most of medieval Istria was part of modern Croatia, the peninsula situated today in the northern section of the Adriatic Sea, while the northern parts of Istria made up areas of modern Slovenia and Italy. During the fourteenth century, Istria was divided under Venetian and Austrian rule (see Map 9.1).¹ This essay focuses only on the part of Istria under Venetian control and is based on the unpublished sources of the commune of Novigrad (1492–1600)—stored in the State Archives in Pazin—and the published register of the notary Martin Sotolić (1492–1517) of Buzet. My analysis rests primarily on data from civil and criminal cases, wills, and contracts of sale and donations from Buzet and Novigrad, with additional normative material—namely statutes—from the other Istrian communes under Venetian rule.² During the fifteenth and sixteenth centuries, there were many small towns, or communes, in Istria. For example, Novigrad, the center of the diocese, had only about two hundred inhabitants, while its surrounding area (in the district of Brtonigla and Tar) contained just over eight hundred inhabitants.³ Despite their small size, almost all of these communes had their own statutes concerning civil and penal law, for which there were many regulations regarding personal and family relationships—especially marital arrangements.

MARRIAGE PATTERNS

In general, people married according to the Istrian marriage pattern, unless they explicitly designated a different arrangement in their marriage



Map 9.1 Iстриa.

contract.⁴ This pattern was regulated by Iстриan statutes. Thus, for example, the statute of Novigrad prescribed that all marriages contracted in Novigrad “se intenda fra e suor,” i.e., conceived of the married couple as if they were brother and sister with respect to their property arrangements.⁵ In the examined documents, the type of marriage is rarely mentioned, thus confirming compliance with the statute.

Table 9.1 *Istrian Communes and Settlements (in translation)*

Istrian Communes		
Croatian	Latin	Italian
Buje	Buleae	Buie
Buzet	Pinguentum	Pingente
Dvigrad	Duo Castra	Duecastelli, Docastelli
Grožnjan	Graeciniana, Grixignana	Grisignana, Grixignana
Izola	Insula	Isola
Labin	Albona	Albona
Motovun	Montona	Montona
Novigrad	Emonia, Castrum Novum	Cittanova
Oprtalj	Portule, Portulle	Portole
Piran	Pyranus, Piranus	Pirano
Poreč	Parentium	Parenzo
Pula	Pola	Pola
Rovinj	Rubinum	Rovigno
Umag	Humagus, Vmagus	Umago
Vodnjan	Adignanum, Attinianum	Dignano
Bale	Castrum Vallis	Valle
Settlements:		
Zrenj	Sprinia	Sregna
Roč	Rotium, Rocium	Rozzo
Tar	Turris	Torre
Brtonigla	Vertenelium	Verteneglio, Verteneggio

There were also Venetian and Slavic patterns of marriage, in which women were less protected and did not have control over property. Istrian historian Miroslav Bertoša emphasizes that both Istrian and Venetian marriage

patterns belonged to the native Istro-Romanian culture. He states that poor Istrian families found the Venetian marriage pattern unsuitable because the woman was just a housewife and owned only her dowry. Moreover, after her husband's death, the widow had to leave his house. In the Istrian marriage pattern, on the other hand, spouses had equal economic rights, and the woman was protected after her husband's death as the owner of half of the house and half of all the goods, thus guaranteeing at least her bare existence. In the Slavic-Croatian cultural milieu, a Slavic marriage pattern also existed, but the Istrian marriage pattern was accepted by Croatian settlers who increasingly moved into the area in the fifteenth and sixteenth centuries.⁶ Marriages, however, could be contracted in other ways—that is, the bride and groom or, more realistically, their parents could make contracts arranging property relations that did not belong to any of the previously mentioned types. Nevertheless, the Istrian marriage pattern was the most widespread. For instance, in seventeenth-century Bale—a small town in western Istria situated between Rovinj and Pula—almost 80 percent of marriages followed the Istrian pattern, 16 percent the Slavic pattern, and only 0.6 percent the Venetian pattern, with the rest being made under special contract or following marriage patterns of other areas.⁷ In the civil and criminal cases of the Novigrad office between 1492 and 1600, not a single marriage in the Slavic pattern was mentioned, and the Venetian pattern was very rare, while the Istrian pattern is mentioned several times, even though its mention was not necessary, as marriages were considered to be made in the Istrian pattern unless otherwise stated.⁸ The Istrian marriage pattern was not specific to the lower social stratum and was often used by patricians, as stated in marriage contracts from the seventeenth and eighteenth centuries.⁹

Before contracting a marriage in the Istrian pattern, the future spouses or their parents ascertained the value of the property with which they would enter marriage (*dotes, bona dotalicia*) and determined which would belong to both partners.¹⁰ In the Istrian marriage pattern, the property that was not held in common by the spouses would gradually become detached from the couple. This property belonged exclusively to the wife, except that she could not dispose of it without her husband's consent. This referred primarily to the dowry (*dote, dos*) and what can be called “the wedding present,” composed of the *contradote*, or *contrados*, and *basadego*. These presents made the wife secure during and after the marriage and, to a certain degree, protected the children. The bride's parents gave the dowry, while the groom provided *contradote* and *basadego*.¹¹ In the Istrian pattern, the dowry was generally in cash, while in the Slavic pattern, it was in kind (fur, blouse, shoes, socks, etc.).¹²

In all three marriage patterns (Istrian, Venetian, and Slavic), women were given a dowry as well as *contradote* and *basadego*. In the Istrian marriage pattern, a woman had authority over the half of the joint property to which she would become entitled after her husband's death. In the Venetian marriage pattern, the dowry and wedding present provided her security in

widowhood. In the Slavic marriage pattern, the marital couple had common administration of acquired goods. The three mentioned gifts belonged exclusively to the wife. However, the dowry was only in movable property, while real property was given only to male members of the family. Still, women could become owners of real estate if they bought it or acquired it in some other way.¹³

The Istrian marriage pattern has been widely discussed in Croatian and Italian literature. Almost all the authors define it as a system of common ownership of property of the spouses. However, prominent Croatian legal historian Lujo Margetić offered a new explanation of how this institution functioned.¹⁴ Through an in-depth analysis of Istrian statutes, he proved that it was not common ownership of all property owned by the spouses but only property that was brought into the marriage or acquired during the marriage by the spouses jointly. He also ascertained the main features of such a marriage, showing that at marriage, the spouses united all the goods and debts they had at the moment and became co-owners of the property. The goods and debts that occurred during the marriage remained separate unless they were acquired or contracted by both spouses.

Thus, the ownership of the spouses' property was separate, but the management of that property was joint. This can be confirmed in the statutes of Istrian towns.¹⁵ In one of its regulations, the statute of Novigrad explicitly stated the separateness of the property, prescribing that "the husband can neither oblige his goods at the expense of the wife nor can he manage them in such a way that the wife becomes deprived of her *contradote*, i.e., her part. This refers to real estate, while the husband can dispose of the movable property as he wishes."¹⁶

The debts made before marrying did not become part of the communal goods. Furthermore, if a spouse made a debt in gambling or at an inn, or if he or she gave a guarantee or made a debt without the consent of the other, it would not become part of the communal goods. The goods that a spouse acquired during the marriage as well as those with specific conditions did not become part of the joint property. The property brought by the spouses into the marriage remained separate during the marriage. When a spouse died, the remaining husband or wife had a hereditary right to half of the property that the deceased spouse brought into the marriage.¹⁷

The main consequence of this system of marital community property was the inability to alienate the real estate of one spouse without the consent of the other. In the Istrian marriage pattern, everything a husband acquired during the marriage he acquired for himself. But after acquiring a certain thing, he could not alienate it without his wife's consent because of the communal system governing everything that the spouses possessed.¹⁸ The statute of Novigrad additionally prescribed that the husband could not commit his own real estate at the expense of his wife, though he could manage the movables freely, without his wife's consent.¹⁹ There is evidence in the case of Domenica, the widow of Martin Sapador, who, in 1594, claimed

everything that she had brought into the marriage. She also claimed the annulment of all the sales that her husband had made without her consent, which was the reason why she and her children found themselves in poverty. Domenica and Martin were married according to the Istrian marriage pattern. In 1581, Martin sold a vineyard in Brtonigla, and in 1583, he sold a house in Brtonigla—both times without her consent. Witnesses confirmed which property Domenica brought into the marriage, and the court then decided what belonged to her.²⁰

In some towns in Istria, after the death of a spouse, the other could break off communal management of the acquired goods, but not that of goods brought into the marriage. Therefore, Lujo Margetić surmises that there were two types of Istrian marriage patterns: marriage with the right to abandon joint administration of goods, and marriage without that right.²¹ After the death of one spouse, the other had to declare whether he or she wanted the marriage to be regarded as following the Istrian pattern. If that was desired, the surviving spouse had rights to half of the inheritance, but he or she also had to take over half of the debts of the deceased spouse. The possibility of abandoning common management is mentioned only by some Istrian statutes: those of Milje/Muggia, Kopar, Isola, Piran, and Novigrad. These statutes give specific regulations in regard to this, stating that within eight to thirty days after the husband's death, the woman had to make a decision about whether she considered the marriage to be of the Istrian pattern, so that she would inherit half of the inheritance but also half of the debts of the deceased spouse.²² The property the spouses brought into the marriage remained the property of the spouse who brought it in, although in practice it was often considered to be common because both spouses were managing it.²³

In Novigrad, a spouse had eight days to decide whether he or she wanted to end common governing of the marital property.²⁴ The sources show that it was not always easy—especially for women—to retrieve the owed property. One such example is the case of Zuane Zarderaz and Zuane Jurmanich. Jurmanich owed Antonia her dowry and other goods. Antonia had been married to Jurmanich's son Micco, and after his death, she married Zarderaz. The first marriage followed the Istrian pattern, and she did not give up communal governing, which was her legal right within eight days.²⁵ Her second husband, therefore, filed a property lawsuit against her former father-in-law, who had at his disposal the goods that belonged to Antonia as well. After her remarriage, Jurmanich promised Antonia that he would return all the goods that belonged to her—that is, those she brought into the marriage when she married his son. Jurmanich said that he had already returned most but not all of the goods that she was entitled to.²⁶ If the surviving spouse did not break off communal management of the acquired goods, the property of both spouses became united, so that one spouse had the right to only half of the acquired property—that is, the spouse did not inherit from the deceased spouse but took his or her own part.²⁷

The first indications of the Istrian marriage pattern can be traced to the beginning of the thirteenth century in towns in northern Istria.²⁸ According to Margetić, the Istrian marriage pattern originated under the influence of Ekloga law,²⁹ although Frankish and Slavic law could have also been influential.³⁰ Margetić points out the striking similarity between the Istrian system of marital community property and the marriage with *medietas*.³¹ It seems that the Istrian system began in northwest Istria. In the statutes of northern Istrian towns, it is called by the name of the town,³² while in the statutes of southern Istrian towns, it is called either marriage like brother and sister or the Istrian marriage pattern.³³

In the Istrian pattern, husband and wife were, therefore, almost equal economic partners. Still, the husband governed the property with more rights than the wife.³⁴ Such a marriage provided security for a woman after her husband's death; because she had the right of ownership over half the house, his relatives could not have her evicted. In that sense, widows were more protected under the Istrian pattern than those who had been married according to the Venetian pattern and those in other east-Adriatic communes.

In the Venetian pattern, the wife had neither the advantage over her husband's creditors nor the guaranteed right to use the property, not even the house or food. Her husband's relatives could have her evicted a year after her husband's death; most often it was a year and a day after paying her dowry. The wife was acknowledged with a share of the husband's patrimony, valued at 10 percent of her dowry. Margetić states that husbands often devolved property on their wives who stayed permanently in the house, but with the condition they take a widow's vow and remain chaste.³⁵ Thus, while widowhood brought additional freedom and greater independence in decisions related to business and family, it also meant greater insecurity due to a frugal existence. Court cases of widows and remarried women fighting for their rights and property abound.

Although Istrian legislators tried to protect women, in practice one can see many breaches of the law, in which cases women used the court to get what was legally theirs. An interesting example is the case from Brtonigla between Maria/Mare, widow of Martin Barnaba, and her stepson Iuan/Zuan, which began on August 2, 1599, and ended on March 12, 1601.³⁶ They had a legal dispute because Maria had taken a few things from the house (new clothes, linen shirts, kerchiefs, tablecloths) that Iuan considered his. According to the trial and from the testament of Martin (Iuan's father), it is clear that the deceased explicitly stated that after his death, Maria could continue living in the house till the end of her life. He let his son build a new house next to the old one. If, however, Iuan would prefer that his stepmother did not live with him, Martin stated that she was allowed to live in the new house, and that after her death, two-thirds of the house would belong to Iuan, and the other third, to someone of her choice. Furthermore, Martin obliged his son to take care of Maria: in his will he noted how much flour, oil, meat, and so on, Iuan should give her annually. He also stated

that she could continue to use the bedclothes (blankets, mattress, pillows), and that after her death, all that should belong to his son. The fact that Martin specifically stated how many things Iuan should give to his stepmother indicates Martin's fear that Iuan might withhold his stepmother's share. This example shows that in reality, after the husband's death, the wife was not protected. Although the husband demanded that his son take care of his stepmother, we cannot be sure that he actually did it, nor do we know whether the wife took things from his house as a matter of survival. This example vividly illustrates the unfavorable position of a woman who, after her husband's death, must contend with her grown-up stepson.³⁷

Problems could also arise if the deceased husband had a grown-up daughter. According to a case in Brtonigla in 1558, after the death of Bernard de Grano, his daughter from his first marriage, Pasqua, and his second wife, Gnesina Smergo, who was pregnant at the time, litigated. Gnesina acknowledged that part of the property should belong to Bernard's heir, Pasqua, but also believed that her unborn child, as the second heir to Bernard, deserved a part of his father's goods, which was, after all, prescribed by statute.³⁸ Unfortunately, the verdict in this case is not preserved.³⁹ Thus, even in marriages following the Istrian pattern, which presumed the widow would inherit half of the property, husbands sometimes felt it necessary to offer further protection by explicitly stating what should belong to their wives after their deaths.⁴⁰

It is interesting to compare the situation in Istria with the situation in other east-Adriatic communes. Istria and Dalmatia, as well as the entire Apennine Peninsula, were part of the same Mediterranean cultural milieu, sharing a similar social system, economic situation, religion, and to a certain point language (see Map 9.2). Legal protection of the dowry in Dalmatian communes demonstrates that men and women were not equal. Women could not protect their own property because they had almost no right over it, nor did they have full legal competence. Legislators protected the heirs of the property more than they did the widow, which is characteristic for dowry property.⁴¹ Things were a bit different in Istria, since after the death of one spouse the other would inherit half of the patrimony of the deceased, while the children inherited the other half. In Dalmatian communes, widowers and widows could most often use the goods of the late spouse while remaining unmarried, but in Istria, the surviving spouse had the right to his or her half of the goods even in the case of remarriage. If a woman did remarry, she would, however, lose the right to be her children's *tutor*.⁴²

In Dalmatia, the wife had the right to be supported from her husband's property even after his death, except in the case of remarriage. Whether the wife would get money or real estate after her husband's death was entirely up to him. In other words, the widow would get certain goods to use and could manage property and even be protected from claims of grown-up sons, but she did not inherit from the husband.⁴³ The situation was different



Map 9.2 Istria and Dalmatia.

in lower social strata, where the survival of the family depended on women's work as well as men's. The fact that the wife earned and contributed materially to the family put her in a more equal position. Croatian historian Zdenka Janeković Römer, who studied family relations in medieval Dalmatian communes—especially in Dubrovnik—states that in such cases, the spouses often made a contract under which they joined their property and pledged to undertake all business together. In Dubrovnik, such spouses were called *schepati*, and they were usually poor commoners, small craftsmen, and land cultivators, who lived in simple households. In other Dalmatian towns, spouses made contracts similar to those of the *schepati* in Dubrovnik; however, those contracts could refer to just a part of the property or to just the property acquired in the marriage. In these contracts, formulations characteristic of those involving communal property arrangements between brothers were used, reminiscent of the Istrian marital formulation as brother and sister.⁴⁴

THE LEGAL COMPETENCE OF WOMEN

The Istrian marriage pattern influenced women's legal competence, because for any action or business deal—that is, the selling, giving, or taking of certain property—the wife needed her husband's consent. However, the husband needed his wife's consent for such actions as well.⁴⁵ The statute of Novigrad states that the wife, as subordinate to the husband, could not run

up debts but was not liable for her husband's debts either.⁴⁶ Furthermore, any kind of sale or donation that the husband made without his wife's consent was not valid, and if the wife did give her consent, a document had to be made to that effect.⁴⁷ The statutes of other Istrian towns had the same regulations.⁴⁸ There is evidence for this in some trials and contracts of sale and donation. For example, in 1492, Ioannes Dedacz from Buzet sold a piece of land to Laurentio Cernich with the consent of his wife, Chaterina.⁴⁹ Precisely because of these regulations, women could contest sales made by their husbands without their consent.⁵⁰

In Dalmatian communes, property relations in marriage were largely defined by the social status of the spouse. Women from the higher strata were most fettered. In Dubrovnik, for instance, their position became increasingly worse with the revival of the late medieval economy. They could do business only if their husbands made them proxies (*procurator*) in their absence. This was due to family structure and property relations: husbands needed their wives' dowry for doing business, which resulted in displacing women from business life. The law obliged the wife to obey her husband, while the husband had to take care of his wife and provide for her, even if he had thrown her out. This custom was also valid in Split and Rab, while in Zadar the wife would be provided for from her husband's property if he had left town and her.⁵¹

In Istria, as well as in many other European areas,⁵² women did business related to the household, such as washing textiles and vegetables,⁵³ working in the fields and in the vineyard, supplying food and drink, buying wine, taking care of the poultry, and carrying corn to the mill.⁵⁴ Besides household chores, women did craft and retail trades. Istrian statutes and other sources registered women working as bakers; selling flour, bread, milk, butter, oil, fruit and vegetables, wine, corn, salt, and linen; keeping taverns; and fishing. In addition, women were often employed as maids.⁵⁵ The legal competence of women, especially widows, can also be witnessed by the list of buyers of fodder, corn, and other products in Novigrad, Brtonigla, and Tar from 1596.⁵⁶ According to the list, women were buyers, although they were in the minority. Most of these women were widows, but some married women are noted as buying corn.⁵⁷

According to the sources, women also practiced gynecology and obstetrics. One of the regularly represented female occupations in Istria is that of midwife.⁵⁸ Midwives had extremely important roles in helping women through childbirth. When the child's life was in danger, it was the midwife's duty to baptize the child immediately after birth. Midwives were especially important as witnesses in cases of infanticide, in which they had to intervene and report such cases to the authorities.⁵⁹ Furthermore, women did charitable work and took part in caring for the poor, orphans, unmarried girls, and nuns.⁶⁰ In a hospital in Barban, for example, there was a female superintendent (*priora*) who supposedly lived in the hospital, took care of the sick, and looked after their clothes.⁶¹

WOMEN AND WILLS

Istrian statutes prescribed the mode and conditions for making a will. A woman had to make a will in the presence of her husband and one or two of her cousins. If any were absent, the commune would send a representative.⁶² Wills were made in the presence of five witnesses and a notary, or in the presence of a judge, four or five witnesses, and a notary.⁶³ The statute of Motovun also prescribed that if a man or woman wanted to leave something to his or her children or someone else, it had to be announced publicly in the square three Sundays earlier to make the legacy valid.⁶⁴ The statute of Novigrad determined that a woman who was under the authority of her husband could freely distribute her goods in her will.⁶⁵

Wives with children would often name their husbands and children as universal heirs, leaving them most of the goods, which their husbands managed as executor. For example, Iagoda, who was the wife (*consortis*) of Crixe Cervavcich from Buzet, named her husband and her son, Nicholaus, as heirs, thereby leaving most of the goods to them. She obliged her son to be obedient to her husband as a father and to live with him. She named her husband Crixe the executor of the will. She distributed the rest of the goods: a part for masses for her soul; a vineyard to the confraternity of St. Sebastian and Fabian; another vineyard to the church of St. Just in Buzet; and some clothing to Barbara, widow of Ivan Barba, and to her sisters, Chaterina and Marina.⁶⁶ When a testatrix was remarried and had children from her first marriage, she would normally specify which goods she wanted to leave to them. For example, Chaterina, daughter of the deceased Coruaue, left all her goods to her husband and the children she had with him, except for a piece of cultivable land and a plow field, which she left to her daughter from her first marriage. She designated her husband as the universal heir, manager of her property, and *tutor* of the children until they came of age; at the same time, she instructed the children to be obedient to their father.⁶⁷

If a widowed testatrix had no children, she would leave much of her goods to nieces and nephews. That was the case with Lutia, widow of Mathie Petacz from Buzet, who left most of her goods to her nieces and nephews, the daughters and sons of her late brother Martinus. She left one vineyard to be divided, and for her nieces, Eufemia and Ellena, she bequeathed clothes and bedclothes, as well as ten *libras denariis* in cash for marriage, with the condition that they lead honorable and honest lives. To her nephews she left a plow field to be divided into two equal parts. She bequeathed a vineyard to Luce Lazarich, the nephew of her late husband. She named the children of her late brother Martinus—Michael, Luca, Eufemia, and Ellena—as her universal heirs and stated specifically that all goods must be divided equally.⁶⁸

Husbands would often name their wives as executors of their will, principal heirs, and managers of the goods.⁶⁹ If their children were still minors,

they named their wives as guardians, but this was often done with the condition that they remain widows. The statutes of Novigrad stated that a woman who was named the executor of her husband's will could not manage the goods if she remarried, and the same applied to the husband who remarried.⁷⁰ In spite of this regulation, many husbands specifically noted in their wills that their wives could be guardians of the children and use their goods only while they lived as chaste widows.⁷¹

The difficulty of leaving a loving spouse is sometimes evident in preparations for death. Some men would ask their father, brother, or son to take care of their wife; there are also cases in which women asked their children to care for and be obedient to their father or even stepfather.⁷² As mentioned previously, Martin Barnaba stated in his will that his son Iuan should provide for his stepmother, Maria, Martin's second wife.⁷³ Fathers often instructed children to be obedient to their mothers; otherwise, they would be disinherited. This, among other things, shows the men's trust in their wives. Thus, on September 16, 1504, Blasius Bobach de Pinguento left by testament all his real and movable property to his wife, Michaela, to use as long as she lived, and named her guardian of their sons, Michael, Thomas, and Ioannes, as well as user and manager of the goods. He told his sons to be obedient to their mother and live honorably. He made them universal heirs, specifying that they divide the goods equally or else he would leave only four *soldos paruorum* among them, and their mother would be able to use all the other goods. He named Michaela and a certain Georgius Sotolich as executors.⁷⁴ A shoemaker named Quirinus from Buzet also left his goods to his children and named his wife, Eufemia, as heir, as well as manager of his goods, guardian of the children until they came of age, and executor of the will. He left forty *libras in denariis* to his daughters, Ursula and Gera, so that they could marry properly, but he emphasized that their mother, Eufemia, should approve of the marriage. If they were married without her approval, they would not receive the mentioned money.⁷⁵

Along with their wives, husbands would sometimes name their grown-up sons as universal heir, executors of the will, and guardians to their minor children. Gregorius Salchovich de Sregna named his wife, Elena, guardian of the children and manager of the goods. He told his children to obey their mother; otherwise, she had the right to disinherit them by giving them only four *soldos* and keeping the rest for herself. He stated that, with Elena's consent, he wanted his son Georgius to be the main guardian of the goods and the children. Furthermore, he stated that at the end of her life, Elena could freely designate her heir.⁷⁶

Many wills testify that husbands had great concern for their wives. Thus, Gaspar Laurecich from Buzet bequeathed a large part of his goods to his wife, Marina, but she was to benefit from them only during her life and under the condition that she cultivate the vineyards and fields. If not, he designated that the goods be taken by others who were supposed to inherit them after her death. Still, if she were not able to cultivate the

land and the vineyard by herself, he explicitly obliged the others to give her half of the fruits.⁷⁷ Although some testators did not expressly ask that someone take care of their wife, they showed their desire to protect her by stating precisely what belonged to her. Such was the case of Zuanne Chert from Brtonigla, who stressed what his second wife, Mare—who was pregnant at the time—should receive. Although the Istrian marriage pattern implies that the living spouse inherit half of the goods of the deceased spouse, Zuanne made it a point to emphasize what should belong to his wife. This was probably done to protect her and to secure the property she was entitled to, as well as to avoid possible conflict between her and his children from his first marriage. Besides this, Zuanne explicitly stated that she could use her goods however she saw fit.⁷⁸

Some testators designated that their spouses have usufruct of goods and guardianship of the children without any special conditions. For instance, in his will of 1498, Marinus de Sovignacho of Buzet left all of his goods, both immovable and movable (not mentioning what they specifically were), to his wife, Fumia, who was to be executor. There is no mention of children in the will.⁷⁹

In Istria, women could freely bequeath their goods; however, they could do so only in the presence of their husband or some other male relative. This implies both protection for wives as well as concern that they might make irrational declarations in their will. On the other hand, the wills previously discussed show that, in general, husbands trusted their wives and acknowledged their participation in running the household. If married in the Istrian way, half of the goods automatically belonged to the wives. Moreover, as we have seen, husbands would often name their wives as heirs, guardians, and executors. Some husbands did, however, put specific restrictions on their wives, such as living in widowhood, or named their grown-up sons or other trustworthy men as executors of the will along with their wives. Nevertheless, many husbands gave their wives gifts with no conditions attached. Although women were often considered weaker and less thoughtful than men, the evidence shows that Istrian husbands appreciated their wives.⁸⁰

THE MOTHER AS GUARDIAN OF THE CHILDREN

When a father died, the mother would generally become guardian of the children and manage the goods until she remarried. Despite assuming this important role, she could not make decisions about some important matters without the consent of male cousins.⁸¹ This can be witnessed in the Istrian statutes: Vodnjan and Umag required chastity and widowhood for mothers as guardians; the statutes of Buje prescribed that the mother should be guardian unless the father had designated another; the statutes of Grožnjan, Buzet, Piran, and Izola followed both of these provisions,

while Oprtalj added the rule that the mother could not use the children's goods unreasonably.⁸² According to the statutes of Motovun, the mother would become guardian of the children after the father's death with the specification that she could not decide on the children's marriages without the approval of two relatives.⁸³

According to the statute of Novigrad, the mother was guardian as long as she lived as a chaste widow, and if the father had not specified differently in the will, she would manage their goods. If the mother was deemed unsuitable, the legislators of Novigrad decreed that the *potestat* (the leading magistrate of the commune) should name another guardian. The mother who was foreign or who wanted to live outside Novigrad could not take care of either the children or the property. Furthermore, the mother who remarried after her husband's death could not decide on her children's marriages without the consent of her husband's relatives.⁸⁴ There is evidence in the sources that the regulations of the statute were applied—that is, that mothers became guardians and had control of their deceased husbands' property. For example, Zuan Batista Anzelini, a nobleman from Novigrad, declared in his testament that his wife, Catherina, be guardian and manager, but only while living chastely as a widow (*vidualmente et castamente*).⁸⁵ In a civil case in 1599 between Martin Spagnol from Tar and Donca Serblina concerning a land sale, it is evident that after her husband's death, Donca became guardian and had usufruct of the land.⁸⁶ In the case of the arranged kidnapping of a girl named Marica, whose father was deceased, it is clear that she had her mother's approval to marry her intended. However, her uncle was against it, since he wanted her to marry another man.⁸⁷

Husbands, therefore, most often named their wives as guardians of their children and manager of their goods, yet they sometimes also named their grown-up sons. For example, Simacz de Sansiego named his wife Fumia/Eufemia to be guardian of her son Paulo. Along with her, he named Georgium, son of said Eufemia, to be Paulo's guardian as well. The shoemaker Georg named both his wife, Gera, and his grown-up son, John, as guardians. Martinus Cramar of Buzet named his wife, Iagoda, as guardian and manager; however, after four years, he changed his will and reallocated his goods. Once again he named his wife as guardian and beneficial owner, but this time he added his son Paulus, who had meanwhile come of age.⁸⁸

When a woman remarried, she lost custody of the children and property. Mothers would generally have to leave their underage children from their previous marriage, who would then be in the custody of the first husband's relatives.⁸⁹ This is illustrated by a case from 1595 between Paula, wife of Biasio Parenzan, and Andrea Fachinetti, who were fighting over the custody of underage Massimo Busin Pupillo, son of Paula and her late husband, Giacomo Busin. After the death of her first husband, Paula became Massimo's guardian. After remarrying, however, her first husband's relatives denied her the right to be his guardian. It was decided that Andrea Fachinetti and Anzolo Cucon should be the guardians. The trial mentioned

the civic statute that the remarried mother loses custody of her children. Despite the fact that the mother was the one who could best take care of the child, as stated in the trial, custody was given to the husband's relatives.⁹⁰

The statutes obliged guardians to list the property of underage children for their protection, and special permits, usually issued by the *potestat*, were required to alienate their property.⁹¹ The statutes of Novigrad also prescribed that it was the guardians' duty to make the inventory within a month after assuming guardianship.⁹² When awarding custody, the statutes did not distinguish between female and male children. Guardians were usually from the father's family, perhaps because many mothers remarried. Although mothers who remarried lost custody, remarried fathers did not. It sometimes happened that the mother's family would get custody of the children.⁹³ However, it is hard to determine the frequency of this, as there are few examples in the analyzed material.⁹⁴ It was more likely that the adult brother would become the guardian of his underage sisters and brothers.⁹⁵

In an economic sense, the Istrian marriage pattern held between equal partners, and this equality contributed to a better position for women in relations outside of the marriage as well. A wife could not do business without her husband's consent, but a husband could not squander money or make deals without hers. After her husband's death, a woman did not depend on the goodwill of his relatives, nor did she fear eviction. She could distribute her goods freely by testament, but had to declare it in the presence of her husband and one or two cousins, with substitutes provided by the local authorities. In addition, the statutes prescribed that after her husband's death, the mother became guardian of the children, as long as she remained a widow. If she remarried, a widow still had the right to her half of the goods, which belonged to her from the former marriage contracted in the Istrian fashion. Certain cases show that Istrian women knew their rights and were ready to fight for them even in court. All of this affected their personal relations in the marriage as well. The sources, especially the wills, testify that women not only were legally protected but also earned the trust and respect of their husbands, who made them guardians and managers, both with and without the condition of widowhood. The Istrian marriage pattern ensured the well-being of women after their husbands' death and allowed them to do business. Although Istria was poor, it appreciated women's work and their contributions to the household, putting Istrian women in a better position than women in Dalmatian communes.

NOTES

1. I would like to thank Assistant Professor Ivan Jurković (Juraj Dobrila University, Pula), who drew maps for this essay.
2. Mirko Zjačić, "Sačuvani fragment starog statuta općine Buje iz 1412. godine" [hereafter Statute of Buje], *Jadranski zbornik* 7 (1969): 365–416; Zjačić, "Statut buzetske općine" [hereafter Statute of Buzet], *Vjesnik*

- historijskih arhiva u Rijeci i Pazinu* [hereafter VHARIP] 8–9 (1963–1964): 71–137; 10 (1965): 118–199; Zjačić, “Dvigradski statut” [hereafter Statute of Dvigrad], *VHARIP* 6–7 (1961–1962): 233–294; Danilo Klen, “Statut Grožnjana” [hereafter Statute of Grožnjan], *VHARIP* 8–9 (1963–1964): 205–256; 10 (1965): 201–243; Luigi Morteani, “Isola ed i suoi statuti” [hereafter Statute of Izola], *Atti e memorie della società istriana di archeologia e storia patria* 4, nos. 3–4 (1888): 349–421; 5, nos. 1–2 (1889): 155–222; *Statuto municipale della città di Albona dell’a. 1341* [hereafter Statute of Labin], ed. Società del gabinetto di Minerva in Trieste (Trieste, 1870); Morteani, *Storia di Montona con Appendice e documenti* [hereafter Statute of Motovun] (Trieste, 1895), 249–400; Luigi Parentin, “Statuti di Cittanova” [hereafter Statute of Novigrad], *Atti e memorie della società istriana di archeologia e storia patria* 14 (1966): 105–220; Giovanni Vesnaver, “Statuto municipale di Portole” [hereafter Statute of Oprtalj], *Archeografo Triestino* 11 (1884): 133–180; Miroslav Pahor and Janez Šumrada, *Statut Piranskega komuna od 13. do 17. stoletja* [hereafter Statute of Piran] (Ljubljana, 1987); Mirko Zjačić, “Statut grada Poreča (Statutum comunis Parentii) iz 1363. godine” [hereafter Statute of Poreč], *Monumenta historico-juridica slavorum meridionalium* 18 (1979): 5–203; *Statuta Communis Polae. Statut pulske općine* [hereafter Statute of Pula], ed. Mate Križman (Pula, 2000); Pietro Kandler, *Statuti municipali di Rovigno* [hereafter Statute of Rovinj] (Trieste, 1851); Bernardo Benussi, “Lo statuto del comune di Umago” [hereafter Statute of Umag], *Atti e memorie della società istriana di archeologia e storia patria* 8, nos. 3–4 (1892): 227–313; Giovanni Radossi, “Statuto di Dignano” [hereafter Statute of Vodnjan], *Atti del Centro di Ricerche storiche-Rovigno* 1 (1970): 49–151.
3. Marija Mogorović Crljenko, *Nepoznati svijet istarskih žena. Položaj i uloga žene u istarskim komunalnim društvima: primjer Novigrada u 15. i 16. stoljeću* [The Unknown World of Istrian Women: Women’s Position and Role in Istrian Commune Societies: Example of Novigrad in the 15th and 16th Century] (Zagreb, 2006), 88.
 4. Lujo Margetić, *Hrvatsko srednjovjekovno obiteljsko i nasljedno pravo* [Croatian medieval law on family and succession] (Zagreb, 1996), 96; Miroslav Bertoša, “Valle d’Istria durante la dominazione veneziana,” *Atti del Centro di Ricerche storiche-Rovigno* 3 (1972): 132–137, 200–206; Miroslav Bertoša, *Istria: Doba Venecije (XVI.–XVIII. stoljeće)* [Istria: The Venetian Period (16th–18th Century)] (Pula, 1995), 704–706; *Slaven Bertoša, Život i smrt u Puli: starosjeditelji i doseljenici od XVII. do XIX. stoljeća* [Life and Death in Pula: Locals and Immigrants from the 17th to the 19th Century] (Pazin, 2002), 55.
 5. Statute of Novigrad: II, 24: “Che tutij matrimoni fati in Zidanuova over in lo destreto se intenda fra e suor”; compare with Statute of Buje: 77; Statute of Buzet: 86; Statute of Dvigrad: 71; Statute of Grožnjan: II, 34; Statute of Izola: II, 2; Statute of Motovun: 210; Statute of Oprtalj: 91; Statute of Piran: VII, 9; Statute of Poreč: II, 68; Statute of Pula: V, 4; Statute of Rovinj: II, 77; Statute of Umag: III, 45; Statute of Vodnjan: I, 14.
 6. Slavs/Croats had been present in Istria since the seventh century. However, due to the Ottoman invasion, there was a new wave of settlement of Croats in Istria that was encouraged by the Venetian government, since Istria was devastated during that period and there was no one to cultivate the land, especially after the war of the League of Cambrai (1508–1523). See Maurizio Levak, *Slaveni vojvode Ivana. Kolonizacija Slavena u Istri u početnom razdoblju franačke uprave* [The Slavs of Count Iohannes] (Zagreb, 2007); Miroslav Bertoša, *Istria: Doba Venecije*.

7. Miroslav Bertoša, "Valle d'Istria," 132–137, 200–206; Miroslav Bertoša, *Istra: Doba Venecije*, 704; see also Margetić, *Hrvatsko srednjovjekovno*, 95–99.
8. State Archives in Pazin [hereafter HR-DAPA-4], book [hereafter b.] 40, fol. 230; b.45, fol. 505; b.44, fol. 309; b.40, fol. 246: Venetian pattern: *uso et osservante Venetiana*, Istrian pattern: "in matrimonio cum fratri et sorore jux ordine alla provincia; osser a fra et suor juxo la consuetudine et usanza del'Istria . . . ; io mi ho maridato a fra et sor con Mare mia consorte."
9. I would like to thank Elena Uljančić-Vekić, director of the Regional Museum of Poreč, for information about marriage contracts and testaments of patri-cians in Poreč in the seventeenth and eighteenth centuries.
10. Margetić, *Hrvatsko srednjovjekovno*, 65.
11. Margetić, "Bračno imovinsko pravo prema Krčkom statutu na latinskom jeziku" [Marital Property Law—Statute of Krk in the Latin Language], *Krčki zbornik* 2 (1971), 169; Margetić, *Hrvatsko srednjovjekovno*, 94–95; Miroslav Bertoša, "Valle d'Istria," 136; Zdenka Janeković Römer, *Rod i grad: Dubrovačka obitelj od 13. do 15. stoljeća* [The Lineage and the City: The Family in Dubrovnik from 13th to 15th Century] (Dubrovnik, 1994), 77; Mogorović Crljenko, *Nepoznati svijet*, 19–20.
12. Miroslav Bertoša, "Valle d'Istria," 135.
13. Margetić, *Hrvatsko srednjovjekovno*, 95–99; Mogorović Crljenko, *Nepoznati svijet*, 20.
14. See Margetić, "Brak na istarski način" [Istrian Marriage Pattern], *VHARIP* 15 (1970): 279–308; Margetić, "Neoporučno nasljedno pravo u srednjovjekovnoj Istri" [Law of Succession without Testaments in Medieval Istria], *VHARIP* 17 (1972): 157–176; Margetić, *Hrvatsko srednjovjekovno*, and literature quoted there.
15. Statute of Izola: II, 6; Statute of Piran: V, 18; Statute of Motovun: 211; Statute of Buzet: 86; Statute of Novigrad: II, 26. See also Margetić, "Brak na istarski način," 294–295.
16. Statute of Novigrad: II, 26: "Per chaxion che impromesse de le done sia conservade, comandemo che el marido non possa obligar li so beni in pregiudizio de soa muijer nij queli destrubuir per si fato muodo che la muijer sia privada de la soa promessa, zoe de la soa parte. E questo se intenda de li benij stabeli, de li beni mobeli possa far la se voluntade. Se veramente el marido fesse vendenda de li beni stabeli, non sia de algun valor. Salvo de consentimento de la muijer, la qual contenta sia de la dita vendenda, e questo apara per publico instrumento"; Margetić, "Brak na istarski način," 295.
17. Margetić, "Brak na istarski način," 300–301; Margetić, *Hrvatsko srednjovjekovno*, 77.
18. Statute of Novigrad: II, 26; Statute of Izola: II, 35; Statute of Piran: VII, 3; Statute of Motovun: 211. See also Margetić, "Brak na istarski način," 298; Margetić, *Hrvatsko srednjovjekovno*, 75–77.
19. Statute of Novigrad: II, 26. See also Margetić, *Hrvatsko srednjovjekovno*, 70.
20. HR-DAPA-4: b.40, fols. 614–627.
21. Margetić, *Hrvatsko srednjovjekovno*, 70.
22. Statute of Novigrad: V, 18; Statute of Izola: II, 8; Statute of Piran: VII, 12; Margetić, "Brak na istarski način," 297–298; Margetić, *Hrvatsko srednjovjekovno*, 69–70.
23. Margetić, "Brak na istarski način," 296.
24. Statute of Novigrad: V, 18.
25. HR-DAPA-4: b.45, fol. 511v.
26. HR-DAPA-4: b. 45, fols. 502–521, 511.

27. Margetić, *Hrvatsko srednjovjekovno*, 77; see also Darja Mihelič, “Žena v piranskem območju do srede 14. stoletja” [Woman in Piran Till the Mid-14th Century], *Zgodovinski časopis* 32 (1978): 27; Mogorović Crljenko, *Nepoznati svijet*, 17–18.
28. Margetić, “Brak na istarski način,” 283–284, 306–308; Margetić, *Hrvatsko srednjovjekovno*, 84–99.
29. Leo III Codex, published in 726, which gave special attention to the law of family and succession. See G. Ostrogorski, *Povijest Bizanta: 324–1453* [The History of Byzantium: 324–1453], (Zagreb, 2002), 81.
30. Margetić, “Brak na istarski način,” 306–308; Margetić, “Brak na istarski način,” *Istra*, 15 (1977): 32; Margetić, *Hrvatsko srednjovjekovno*, 84–99.
31. Marriage with *medietas* is mentioned in the twelfth century in Ravenna, Padova, Reggio, Cremona, and Bologna. It refers to the right that the groom promises to his bride—the right to half of his present and future goods. See Margetić, *Hrvatsko srednjovjekovno*, 88–90.
32. Statute of Umag; III, 45. e.g., marriage pattern of Umag (*secundum consuetudinem terae Humagi*).
33. E.g., Istrian marriage pattern, like brother and sister (*secundum consuetudinem provintie Histriae, que appellatur frater et soror*): Statute of Poreč: II, 68. See Margetić, *Hrvatsko srednjovjekovno*, 91; Mogorović Crljenko, *Nepoznati svijet*, 18–19.
34. Margetić, *Hrvatsko srednjovjekovno*, 96; Miroslav Bertosa, *Istra: Doba Venecije*, 706.
35. Margetić, *Hrvatsko srednjovjekovno*, 96, 176; see also Janeković Römer, *Rod i grad*, 78; Miroslav Bertosa, *Istra: Doba Venecije*, 706; Mogorović Crljenko, *Nepoznati svijet*, 25.
36. HR-DAPA-4: b. 45, fols. 344–73, 1002–15.
37. Mogorović Crljenko, *Nepoznati svijet*, 26–27.
38. Statute of Novigrad: V, 13.
39. HR-DAPA-4: b. 20, fols. 569–577, 712–730. See also Mogorović Crljenko, *Nepoznati svijet*, 27.
40. HR-DAPA-4: b. 40, fols. 244–246; b. 44, fols. 438–450. See Mogorović Crljenko, *Nepoznati svijet*, 27–29.
41. Janeković Römer, *Rod i grad*, 87. A woman could dispose of only one-quarter of her dowry, or a half if she had no children. The rest of the dowry was intended for the children.
42. Mogorović Crljenko, *Nepoznati svijet*, 34–38.
43. Janeković Römer, *Rod i grad*, 89–90, 132.
44. *Ibid.*, 91–93; Mogorović Crljenko, *Nepoznati svijet*, 37–38.
45. Statute of Poreč: II, 67; Statute of Buje: 79; Statute of Buzet: 86; Statute of Vodnjan: I, 17; Statute of Umag: II, 40; Statute of Izola: II, 3, 6, 16; Mihelič, “Ženska čast v istarskih mestih (Trst, Koper, Izola, Piran, 14.–15. stoletje)” [Woman’s honor in the towns of Istra (Trieste, Koper, Izola, Piran, 15th–16th centuries)], *Acta histriae* IX, 8 (2000): 32; Mihelič, “Žena v piranskem,” 26–27; Mihelič, “Srednjeveška Tržačanka v ogledalu mestnega statuta” [The Women of Medieval Trieste in the Mirror of the Town’s Statute], *Etnolog. Glasnik Slovenskega etnografskega muzeja* 7 (1997): 91–93; Mogorović Crljenko, *Nepoznati svijet*, 100.
46. Statute of Novigrad: II, 25.
47. Statute of Novigrad: II, 26; Statute of Motovun: 84.
48. Statute of Dvigrad: 73; Statute of Izola: II, 3, 12, 13, 16; Statute of Umag: II, 40; Statute of Oprtalj: 91. See Mogorović Crljenko, *Nepoznati svijet*, 100.

49. Mirko Zjačić, "Notarska knjiga buzetskog notara Martina Sotolića (Registrum imbreviaturarum Martini Sotolich notarii Pinquentini), 1492–1517. Godine," *Monumenta historico-juridica slavorum meridionalium* 18 (1979): 313–314 (February 12, 1492).
50. HR-DAPA-4: b. 40, fols. 614–627 [1594]; Mogorović Crljenko, *Nepoznati svijet*, 100–101.
51. Janeković Römer, *Rod i grad*, 89–90, 132.
52. See Claudia Opitz, "La vita quotidiana delle donne nel Tardo Medioevo (1250–1500)" and Françoise Piponnier, "L'universo femminile: Spazi e oggetti," in *Storia delle donne: Il Medioevo*, ed. Christiane Klapisch-Zuber (Roma-Bari, 1999), 362–364, 412–416.
53. Statute of Buzet: 82.
54. HR-DAPA-4: b.17, fols. 508–553; b. 43, fols. 225–230; b. 41, fols. 820–822; b. 45, fols. 640–641; Mihelič, "Udeležba žena v kazenskih procesih (Piran, 1302–1325)" [Women in Criminal Proceedings (Piran, 1302–1325)], *Etnolog. Glasnik Slovenskega etnografskega muzeja* 11 (2001): 42.
55. Statute of Poreč: II, 115; Statute of Buzet: 77; Statute of Oprtalj: 87; Statute of Izola: III, 21, 108; Statute of Umag: IV, 46; Statute of Labin: II, 18; Statute of Pula: IV, 16, 41; Statute of Izola: III, 21, 108; Statute of Motovun: 217; HR-DAPA-4: b.190, fols. 363–371; b. 27, fols. 630–645; b. 40, fols. 1653–1658; b. 41, fols. 1089–1091; Mihelič, "Žena v piranskem," 29; Mihelič, "Udeležba žena," 47–52; Mogorović Crljenko, *Nepoznati svijet*, 102.
56. HR-DAPA-4: b. 41, fols. 727–742: "Nota di tutte le biade, formenti et altre sorti di Verteneggio et Torre insieme con Cittanoua con la nota di quelli che hanno comprato biade l'anno MDLXXXVI."
57. Mogorović Crljenko, *Nepoznati svijet*, 103–104.
58. HR-DAPA-429, collection of parish registers, b. 114, e.g.: fol. 2: obstetrix Manda Pertiza, obstetrix Orsa Terzaliza; fol. 53: obstetrix Ursula de Dubasniza; fol. 5v: obstetrix Rosa Morlacha de Vetua; fol. 8v: obstetrix Agnia Michuglianiza; fol. 66: obstetrix Antonia mulier quondam Simonis Jurjicich, obstetrix Catherina vedova quondam Philippi Pagorich; Mogorović Crljenko, Branka Poropat, Tajana Ujčić, "Suficit Tibi Scriber: Matična knjiga krštenih župe Labin (1536.–1583.)" [Surplus Tibi Scriber: Parish Baptismal Register in Labin (1536–1583)], in *Raukarov zbornik*, ed. N. Budak (Zagreb, 2005), 450; Baptismal Register of Novigrad Parish (1591–1632), Parish office of Novigrad, fols. 1–14.
59. Miroslav Bertoša, "Etnička struktura Pule od 1613. do 1797. s posebnim osvrtnom na smjer doseljivanja njezina stanovništva" [Ethnic Structure in Pula with Special Attention to the Direction of Immigration from 1613 to 1797] *VHARIP* 15 (1970): 64–65; see also Slaven Bertoša, *Život i smrt u Puli*, 260–263.
60. Janeković Römer, *Okvir slobode: Dubrovačka vlastela između srednjovjekovlja i humanizma* [The Frame of Freedom: The Patriciate of Ragusa (Dubrovnik) between the Middle Ages and Humanism] (Zagreb-Dubrovnik, 1999), 208; Janeković Römer, "Noble Women in Fifteenth-Century Ragusa," in *Women and Power in East Central Europe: Medieval and Modern*, ed. Marianne Sághy, *East Central Europe* 20–23 (1993–1996), 141–170, accessed from www.bib.irb.hr: 13; Zjačić, "Notarska knjiga," 452 (March 30, 1506).
61. Bernardo Schiavuzzi, "Le istituzioni sanitarie nei tempi passati," *Atti e memorie della Società istriana di archeologia e storia patria* 8 (1892): 388; Mogorović Crljenko, "Hospitali u Istri u srednjem i ranom novom vijeku" [Charitable Institutions in Istria during the Medieval and the Early Modern

- Ages] *Povijesni prilozi* 23 (2002): 112; Mogorović Crljenko, *Nepoznati svijet*, 105–106.
62. Statute of Buzet: 88, 89; Statute of Dvigrad: 76; Statute of Izola: II, 17; Statute of Motovun: 58; Statute of Oprtalj: 93, 94.
 63. Statute of Buzets: 90; Statute of Dvigrad: 77; Statute of Grožnjan: III, 102, 103, 104; Statute of Vodnjan: II, 17; Statute of Izola: II, 17; Statute of Umag: III, 28; Statute of Rovinj: II, 59; Statute of Novigrad: V, 1, 11; HR-DAPA-4: b. 40, fols. 590–613; Statute of Motovun: 83; See Mogorović Crljenko, *Nepoznati svijet*, 101.
 64. Statute of Motovun: 83.
 65. Statute of Novigrad: V, 1, 11; HR-DAPA-4: b. 40, fols. 590–613.
 66. Zjačić, “Notarska knjiga,” 383 (October 14, 1504).
 67. *Ibid.*, 501–502 (March 1518).
 68. *Ibid.*, 478–479 (October 24, 1511). See also Mogorović Crljenko, *Nepoznati svijet*, 94.
 69. See also Arnaldo Sousa Melo, “Women and Work in the Household Economy: The Social and Linguistic Evidence from Porto, c. 1340–1450,” in *The Medieval Household in Christian Europe, c. 850–c. 1550: Managing Power, Wealth, and the Body*, ed. Cordelia Beattie, Anna Maslakovic, and Sarah Rees Jones (Turnhout, 2003), 267–268.
 70. Statute of Novigrad: V, 8.
 71. Mogorović Crljenko, *Nepoznati svijet*, 54.
 72. Janeković Römer, “Na razmeđu ovog i onog svijeta Prožimanje pojavnog i transcendentnog u dubrovačkim oporukama kasnoga srednjeg vijeka” [Between the Earthly and Eternal Life: The Permeation of Material and Transcendental Images in the Testaments of the Citizens of Dubrovnik in the Late Middle Ages], *Otium* 2/3–4 (1994): 14; Janeković Römer, “Pro anima mea et predecessorum meorum,” *Otium* 3/1–2 (1995): 26.
 73. HR-DAPA-4: b. 45, fols. 346–347, 1002–1015.
 74. Zjačić, “Notarska knjiga,” 382.
 75. *Ibid.*, 498 (January 20, 1518).
 76. *Ibid.*, 471–472 (January 11, 1511).
 77. *Ibid.*, 454–455 (April 10, 1506).
 78. HR-DAPA-4: b. 40, fols. 244–246.
 79. Zjačić, “Notarska knjiga,” 348 (March 15, 1498) and 474 (May 6, 1511).
 80. On the public attitude toward women, see Mogorović Crljenko, *Nepoznati svijet*, 52–58, 112–118.
 81. *Ibid.*, 82. See also Janeković Römer, “Noble Women,” 9; Zrinka Nikolić, “Rejection of Marriage in Medieval Dubrovnik,” *Otium* 7–8 (1999–2000): 87; Mihelić, “Ženska čast,” 32; Mihelić, “Žena v piranskem,” 28; Mihelić, “Srednjeveška Tržačanka,” 93. See also Melo, “Women and Work,” 267–268.
 82. Statute of Vodnjan: II, 20; Statute of Umag: III, 39; Statute of Buje: 91 (preserved only in the chapter titles in *index rubricarum*); Statute of Grožnjan: III, 114; Statute of Buzet: 98; Statute of Piran: VII, 23; Statute of Izola: II, 25; Statute of Oprtalj: 103.
 83. Statute of Motovun: 34, 213; Morteani, *Storia di Montona* (Trieste, 1963), 116.
 84. Statute of Novigrad: II, 18; V, 24.
 85. HR-DAPA-4: b. 40, fols. 237–239.
 86. HR-DAPA-4: b. 44, fols. 627–652.
 87. HR-DAPA-4: b. 40, fols. 1495–1502. See also Mogorović Crljenko, *Nepoznati svijet*, 43.

88. Zjačić, "Notarska knjiga," 326–327 (October 13, 1493); 377–379 (August 16, 1504); 382 (September 16, 1504); 451–452 (June 23, 1506); 464–465 (February 1510); 470 (October 31, 1510); 471–472 (January 11, 1511); 474 (May 6, 1511); 498 (January 20, 1518). See also Mogorović Crljenko, *Nepoznati svijet*, 83.
89. Georges Duby, *Il potere delle donne nel Medioevo* (Roma-Bari, 1996), 214; Charles de La Roncière, "La vita privata dei notabili toscani alle soglie del Rinascimento," in *La vita privata dal feudalismo al Rinascimento*, ed. Georges Duby (Roma-Bari, 2001), 215; Janeković Römer, *Rod i grad*, 106; Janeković Römer, "Noble Women," 9; Mogorović Crljenko, *Nepoznati svijet*, 83–84.
90. HR-DAPA-4: b. 40, fols. 562–589.
91. Statute of Buzet: 100, 101, 102; Statute of Dvigrad: 85, 87–91; Statute of Grožnjan: III, 114; Statute of Izola: II, 26, 27; Statute of Novigrad: II, 19; Statute of Oprtalj: 103, 105; Statute of Piran: VII, 24, 25; Statute of Rovinj: II, 53, 54; Statute of Umag: III, 40; Statute of Vodnjan: II, 20. See also Janeković Römer, "Sve opsade Dubrovnika: obitelj kao faktor društvene sigurnosti" [All the Sieges of Dubrovnik: Family as a Factor of Social Security], *Dubrovnik* 4/2 (1993): 235–240, accessed from www.bib.irb.hr: 5; Janeković Römer, "Noble Women," 9; Nikolić, "Rejection of Marriage," 87; Mihelič, "Ženska čast," 32; Mihelič, "Žena v piranskem," 24–25; Mihelič, "Srednjeveška Tržačanka," 90; Melo, "Women and Work," 267–268.
92. Statute of Novigrad: II, 18, 19. See also Mogorović Crljenko, *Nepoznati svijet*, 97–98.
93. See also Janeković Römer, *Rod i grad*, 106.
94. HR-DAPA-4: b. 44, fols. 438–450.
95. HR-DAPA-4: b. 44, fols. 325–330, 558; b. 45, fols. 344–373; Zjačić, "Notarska knjiga," 377–379 (August 16, 1504); 471–472 (January 11, 1511); Mogorović Crljenko, *Nepoznati svijet*, 98.

10 Marriage, Kinship, and Property in Portuguese Testaments (1649–1650)

Jutta Gisela Sperling

“All marriages in our reign and dominions are concluded according to the rule of halves, except when other arrangements and contracts have been made. And if husband and wife were married by pronouncing the words of present consent—either at the portal of the church, or, with permission of the parish priest, outside of it—and if the marriage was consummated, they are joint owners [*meeiros*] of their estate. . . . They are also joint owners, if they share a household, or if they live in their father’s house, or anybody else’s, and are publicly recognized as spouses . . . if they cannot prove having expressed the words of present consent.”¹

Such was the definition of Portuguese marriage according to the *Ordenações Filipinas* (Ordinances of Philip), a compilation of law published under Spanish rule in 1595 and reconfirmed half a century later by Dom João IV (1640–1656); it would remain valid well into the nineteenth century. The *Ordenações Filipinas* were based on former compilations of Portuguese royal legislation dating back to the thirteenth century. Dom Manuel (1469–1521) had sought to abolish informal or “clandestine” marriages in his *Ordenações* (1514), but Philip I reinstated the medieval definition of marriage as a de facto partnership characterized by property sharing.² By stressing joint ownership as both the result and the defining feature of a marital relationship, and by actively disregarding the new marriage rules of the Council of Trent (1545–1563)—which declared clandestine marriages invalid and required in-church celebration—Portuguese marriage practices retained their earlier private, egalitarian, and profoundly secular character throughout the early modern period.³ Acknowledging that aristocrats preferred the Roman style separation of goods, the *Ordenações Filipinas* legitimized marriages by dowry and *arras* (the husband’s counter gift), but not without mentioning that such unions were against the custom and laws of the reign (tit. 47).

In other European countries, marriage practices were much more tightly controlled and gender inflected. The construction of what Sarah Hanley termed the “family-state-law-compact” in sixteenth- and seventeenth-century France not only implied the widespread adoption of primogeniture but also required the prosecution of all premarital intercourse as rape and

imposed limitations on widows planning to remarry.⁴ In central and northern Italy, medieval statutory law had prohibited elopements since the thirteenth century. In addition, it had fostered daughters' dependence on their fathers for access to a dowry, and widows' dependence on their in-laws or the courts for retrieving it.⁵ Only in early modern Spain did marriage and inheritance rules remain as flexible as the ones in Portugal, even though sexual mores were increasingly being policed by the Inquisition.⁶

With respect to civil law, Portuguese gender relations thus appear to have been exceptionally well balanced. In their introduction to "Women in the Lusophone World in the Middle Ages and the Early Modern Period," Darlene Abreu-Ferreira and Ivana Elbl suggest that the fairly strong position of Portuguese women deviated considerably from that of women in northern Europe, notably England.⁷ While a comparison with England yields interesting insights into the role of gender in different slave-owning, colonial societies of the Atlantic—as has been shown by Muriel Nazzari⁸—my essay compares women's property rights and kinship relations in Portugal with those in other Mediterranean regions, notably central and northern Italy. Portugal and Italy were commensurate with each other due to their shared legacy of Roman law and subsequent Germanic influences (Visigothic and Lombardian, respectively), even though the two countries' legal systems started to diverge drastically in the medieval period. Portugal's explicit rejection of the Roman tradition of dowry exchange for commoners, coupled with the monarchy's immediate support of the Catholic definition of marriage as based on consent alone, stood in stark contrast to medieval Italian lawmakers' strictly secular and patrilineal revision of the *ius commune* in matters of family formation.⁹ Both the church and Portugal's monarchs Dom Afonso II (1185–1223) and Dom Afonso III (1210–1279) insisted on the voluntary and private character of marriage, while Italian communes anchored marriage firmly within a system of agnatic inheritance, which eliminated a daughter's religious right and duty to freely choose her partner.¹⁰

While dowry exchange and disinheritance laws had since Roman times conditioned a daughter's property rights—she got a share of her father's patrimony only insofar as she agreed to an arranged marriage—Italian medieval communes effectively reduced her inheritance rights. By introducing the concept of *exclusio propter dotem* (the exclusion from inheritance rights after and because of the receipt of a dowry), Italian statutory laws uncoupled the dowry from a daughter's right to her *legittima* (each child's equal share to his or her father's inheritance), thus abolishing the principle of equal inheritance affirmed in the *Codex Justinianus* (529). In the late seventeenth century, Cardinal Giambattista de Luca, an influential member of the papacy's Supreme Court (*Rota*), defended the statutory exclusion of daughters from equal inheritance as a proper Italian response to the egalitarian bent of Justinian's reform project—in his eyes an effeminate oriental distortion of an authentically patriarchal Roman legal tradition.¹¹ In

Portugal, by contrast, the ancient Roman provision that a married daughter could demand a recalculation of her *legítima* upon her father's death by bringing her dowry back *a colação* (to be recollected and redistributed) was never abolished (tit. 97).¹²

In reconfirming medieval Portuguese kings' marriage regulations,¹³ the *Ordenações Filipinas* (1595) presented the spouses' rights to each other's properties as mutual and symmetrical in all marriages among *meeiros* (literally "halfies," i.e., those who own halves); they also acknowledged that marriages could be contracted on the basis of dowry exchange, whereby the groom's gift to the bride (*arras*) was limited to one-third of the dowry amount (tit. 47). The text then specified how wives' properties were to be protected within an existing marriage: sales contracts were invalid without the wife's signature or explicit permission (tit. 48); all donations to a husband's concubine could be revoked (tit. 56). A widow would automatically become the head of the household, and all of her husband's properties, with the exception of privately entailed estates (*morgadios*) and royal grants, belonged to her if the marriage was concluded according to the "rule of halves" (*carta da metade*) (tit. 95). The husband's children, including those from a prior marriage, would receive their shares (*legítimas*) out of the widow's hands (tit. 96).

While the spouses' joint ownership of assets directly contradicted the Roman, lineage-conscious separation of goods that dowry-exchange facilitated,¹⁴ the commitment to protecting children's inheritance rights against neglectful, abusive parents found its analogy in the *ius commune*, even if the freedom to testate—another maxim in Roman law—seems to have been greatly reduced in the process of guaranteeing all children equal access to their parents' patrimonies. As in Islamic law, strict succession rules influenced testamentary practice.¹⁵ Portuguese law mandated that two-thirds of each parent's property was to be equally divided among all children, with only one-third to be freely willed away (tit. 96)—the latter an interesting analogy to the *Qur'an*. This legal provision did not in all cases apply to aristocrats, whose dotal marriages led to more lineage-conscious inheritance patterns. Members of the nobility could expect to receive their *legítima*, i.e., a fixed portion of their father's estate, but had to obey the rule of primogeniture in the transfer of *morgadios*, which were private but royally protected entailments of core lineage properties and family chapels.¹⁶ This strategy of partial disinheritance in favor of a preferred heir found its precedent in *Maliki* family endowments common in Muslim Iberia and Maghreb since the tenth century, and loosely corresponds to Roman testamentary practice aimed above all at naming a universal heir.¹⁷

A similarly flexible approach to the legacy of Roman civil law can be detected in Portugal's laws regarding disinheritance. As the *Codex Justinianus* (529) and its many medieval Italian commentators stated, any reasons for the testamentary exclusion of a child needed to be clearly stated,¹⁸ a provision echoed in the *Ordenações Filipinas*. Legitimate causes for

disinheritance ranged from attempted murder to charges of incest, witchcraft, heresy, and defamation (tit. 88).¹⁹ Always keen on observing gender symmetry, a son's sexual relationship with his father's spouse as well as a daughter's involvement with her mother's husband were given as examples of incestuous acts warranting disinheritance.

Just as the rights of spouses to each other's properties were defined as mutual and symmetrical in marriages based on joint ownership, so were the inheritance rights of parents and children (tit. 91)—an unheard-of novelty from the point of view of Roman law. Portugal's explicit protection of the inheritance rights of mothers stood in open contrast to Italian statutory law and the ancient tradition.²⁰ If a person died childless, both parents qualified as "forced heirs"—to the detriment of siblings (tit. 90)—just as children were mandatory successors to a father's or mother's estate (tit. 88). And just as parents could choose to disinherit a child under certain circumstances—for example, when the child neglected to care for his or her old and infirm parents—children could exclude their parents on the basis of the same criteria (tit. 89). These included a daughter's right to disinherit her mother if she committed incest with her husband. Court cases suggest that such affairs between mothers- and sons-in-law were not entirely uncommon in late medieval Portugal.²¹

Another deviation from both ancient and contemporary Italian disinheritance laws can be found in a clause that granted sexually active daughters an exemption from automatic disinheritance. As the *Ordenações Filipinas* stated, any girl's premarital intercourse before the age of twenty-five resulted in automatic disinheritance (tit. 88) unless her elopement led to an upwardly mobile marriage; in this case, the retroactive consent of her parents was assumed. Also, if the sexually active daughter was an only child, her parents could choose not to disinherit her. Less forgiving rules for the disinheritance of daughters were characteristic of ancient Roman law, the *Lex Visigothorum* (653)²², and Italian statutory law; the loopholes in favor of "unruly" daughters in the *Ordenações Filipinas* point to a lack of consensus on this point. In fact, three centuries earlier, Dom Afonso II (1185-1223) broke with all preceding legislation in this matter—Roman as well as Visigothic—by pronouncing a daughter's right to her inheritance incontestable:

If a young, marriageable woman, who is in the power of her parents etc., wishes to marry without the consent of her guardians somebody who is not their enemy, or who did not do anything dishonorable, her parents cannot for that reason disinherit her. Even if her future husband did something to dishonor the family of her father or mother, the daughter cannot be disinherited. Also, if a widow wishes not to remarry, and squanders her goods with somebody else against the wishes of her father or other relatives, she cannot be disinherited. If any woman or man marries someone else than their fiancés, they cannot be punished, and their marriage is valid.²³

Despite the fact that later kings sought to undo Afonso II's proto-feminist proclamations in favor of women's sexual freedom, the de facto nature of marriage and the constructions of marital property relationships as symmetrical were never contested.²⁴ The lack of clear ritual and public markers celebrating the onset of marriage led to fuzzy boundaries surrounding the question of "legitimate" descent. For one, the fine Roman distinction between "natural" and "legitimate" children was collapsed in Portuguese law, as all children born of a woman whom the father could theoretically have married—because both partners were single, had not professed any holy vows, and were not related to each other in the fourth degree—were assumed to be born within wedlock for all legal purposes (tit. 92). This included any children a man might have had with his slave. Such "natural" children had a right to their *legítima*, and could also be instituted as universal heirs if no legitimate siblings existed. Only the natural children of *cavalleiros* (noblemen) could not automatically lay claim to an inheritance; in an intestate succession, they would receive nothing. Their aristocratic father could, however, choose to testate and bequeath to them either his *terça* (his free third) or, if he did not have any legitimate forced heirs, his entire estate. Such liberal provisions concerning the inheritance rights of illegitimate children proved dangerous to maintain in the colonial situation, which is why, in 1551, Charles V explicitly prohibited Spanish conquistadors from bequeathing their encomiendas to mixed-race offspring in Peru and elsewhere.²⁵ "Spurious" children (those whose fathers were unknown) as well as children "born of damned coitus" (i.e., children of clerics, adulterers, and persons related to each other) could only lay claim to their mothers' estate (tit. 93) because in those cases, no marriage-like partnership could be assumed to have existed. However, a royal privilege could retroactively confer legitimate status in inheritance rights, even to children of clerics. Among the chancellery acts of Dom João I (1385–1433), 68.5 percent of all royal grants consisted of legitimizations, of which two-thirds were awarded to sons and daughters of clerics.²⁶

The topic of illegitimate children's inheritance rights—especially among the nobility—was of great interest to João Carvalho, professor of jurisprudence at Coimbra University and author of *Novus et Methodicus Tractatus de una et altera quarta deducenda, vel non Legitima, Falcidia, et Trebellianica* . . . (first ed. 1631; Lyon 1677). Discussing the ramifications of illegitimate children's inheritance rights for the maintenance of aristocratic lineages in an age when the purity of blood had become a quintessential marker of nobility, he declared the *Ordenações Filipinas* to be expanding on the *ius commune*, which granted "natural" children not quite two-thirds but up to one-sixth of their aristocratic fathers' patrimonies. Supporting a rather open definition of nobility, he even proclaimed persons of Jewish ancestry in the maternal line to be capable of nobility (I, §229). Juxtaposing the opinions of Italian legal commentators to royal legislation in matters of gender, he pointed to the unique fact that in Portugal, persons

could trace their noble name, heraldic sign, honors, and titles *ex sanguine materno* (I, §235). Carvalho then discusses the next logical question: Can a woman's "natural" children lay claim to her nobility and title? Admitting that this would be a "hateful" supposition from the point of view of Roman law, he confirms the legality of this possibility according to the *Ordenações Filipinas* (I, §246). This position leads him to discuss whether *spurios* (spurious children) might also trace their nobility through their mother—a question he answers negatively, because an "ignominious birth" in his eyes contradicts the very principle of "noble" filiation. He mentions, though, that *spurios* could be elevated to the rank of nobility per royal privilege (I, §250), and that they enjoyed the *ius cognationis*—that is, inheritance rights on their mother's side (I, §252). Carvalho then engages in a wider debate concerning the consequences of a mother's "luxurious" lifestyle, pointing out that some Italian glossators to Roman law considered it impossible for a noblewoman's illegitimate offspring to inherit from her. The majority, however, followed Bartolo da Sassoferrato's (1314–1357) opinion that natural children should succeed only to their mother; in addition, illegitimate children's claims to their father's patrimonies were seen as contradictory to the principles of Roman law, which, after all, were based on the concept of agnatic devolution (I, §§483, 487).

The legal situation of all varieties of illegitimate offspring, be they natural, spurious, or born of damned coitus, was much more restricted in Renaissance Italy—hub of Roman jurisprudence since the eleventh century—than in early modern Portugal. As Thomas Kuehn has shown, many legal commentators doubted that a retroactive legitimization could ever fully eliminate the stain of a person's illegitimate birth; in the eyes of Angelo degli Ubaldi, a person's illegitimate non-uterine half sibling did not count as a blood relative.²⁷ In Portugal, all natural children would automatically inherit their legitimate shares of both parents' estates, but in Italy, a retroactive dowry exchange was required for any appeal to legitimization.²⁸ Furthermore, all the legitimization cases Kuehn discusses benefited sons, while one-third of Dom João I's legitimizations went to daughters born of damned coitus. Finally, because in Italy women possessed less to begin with, an illegitimate child's maternal inheritance was in most cases insignificant, in contrast to Portugal, where mothers could confer noble titles to their out-of-wedlock children.

My sample of fifty testaments from Lisbon (1649–1650)²⁹ illustrates some of the distinguishing features of Portuguese family law: joint ownership among spouses, rigid but egalitarian succession laws, and the acceptance of informal domestic partnerships. Most research on Portuguese testaments has so far focused on patterns of pious donations, with the exception of Amândio Jorge Morais Barros's recent study on women's fifty-four testaments from sixteenth-century Porto.³⁰ In his article, Barros argues that while women in sixteenth-century northern Europe suffered a "progressive marginalization," women in Porto were "protagonists" of economic

development. He points out that married women drew up contracts almost as frequently as widows did (395 and 470, respectively), but gives no comparative data for male testators or notarial agents.³¹

My sample of testaments from Lisbon does not contain evidence of women engaged in long-distance trade, as does Barros's, but it does show women as prominent landowners, who could afford to give away large amounts of cash and other revenues to relatives, friends, confraternities, and the church. Of these testaments, thirty were written by men, seventeen by women, and three by married couples jointly. This ratio deviates from the occasionally higher percentage of women testators in Italy. For twelfth- and thirteenth-century Genoa, Steven Epstein has found a ratio of 50 percent, a figure corroborated by Linda Guzzetti for fourteenth-century Venice (55%).³² In early modern Siena, women testators ranked between one-third (1450–1600) and close to a half (1600–1700)—ratios comparable to those in other Tuscan cities.³³ In fourteenth-century Köln, the percentage was similarly high (52.5%), while in most other German cities, it lay well below one-third.³⁴

Historians continue to debate whether high or low rates of female testaments are an indicator of relatively generous or restricted property rights among women. In Renaissance Florence, the scarcity of women's testaments seems to reflect the fact that they had little personal property to begin with; intestate succession laws ruled that wives' dowries would fall to their husbands, a principle few women dared to abrogate.³⁵ In Renaissance Venice, however, most testaments were written by women, a fact that Stanley Chojnacki interpreted as a clear sign of the beneficial effects of the dowry system in granting women individual property rights.³⁶ By contrast, Isabelle Chabot has argued that women in Renaissance Venice testated so frequently—often before giving birth—because their husbands wanted them to condition their bequests to daughters as dowries; also, women were pressured to contribute to their daughters' dowries, thus accelerating the spiral of dowry inflation.³⁷ In Chabot's opinion, maternal properties, which according to intestate succession laws would have passed to daughters and sons equally as unconditioned properties, were channeled toward sons-in-law as dowries. Clear indications of fourteenth-century Venetian husbands' influence—sometimes violent and illegal—on their wives' testamentary choices have been documented by Linda Guzzetti.³⁸

Portuguese testamentary practices are not commensurable with Italian ones because of the unequivocal rule that all children inherit two-thirds of their parents' properties at equal shares. This meant that most parents did not testate, least of all mothers. Fathers were more likely to testate in order to institute their wives as universal heirs. While the *Ordenações Filipinas* states that widows would automatically become heads of household (tit. 95), it also contains the contradictory law that wives would not inherit their husbands' properties in the presence of agnatic relatives up to the tenth degree, as was the rule in Roman civil law. This provision did not correspond to Portuguese testamentary practice.

Among my testators from Lisbon, most men were married (78%), while most women were widowed (53%), not counting the three couples filing jointly. Only 28 percent of all testators had children, and 22 percent were single. An additional 10 percent had parents as forced heirs. Only a minority of married men (4% or 17% of those filing separately) did not institute their wives as universal heirs: one husband preferred his son and daughter; one his mother; one his confraternity; and one his son, a cleric.³⁹ Thus, Portuguese testaments mainly contain information about childless married men, widows, and single women. Three-quarters of all testators were chiefly concerned with choosing an heir in the absence of any surviving children, while those who had offspring wanted to “discharge their conscience” by listing creditors and making a host of well-differentiated pious donations on the occasion of their burial.

Of course, the fairly low rate of women’s testaments needs to be explained. Why would women, whose property rights were comparable to those of men, choose to testate less often? On the one hand, the data indicate that childless widows cared less about appointing universal heirs—their spouses having predeceased them—than childless married men, leaving the remainder of the couple’s estate to “the nearest surviving relatives” indiscriminately, as stated by the law (tit. 96). On the other hand, the rare presence of mothers in Portuguese testaments suggests that more women than men relied on intestate succession rules to devolve property to their children. Also, men without legitimate offspring who had out-of-wedlock children they never acknowledged might have been more likely to testate than single mothers. The assumption of widespread single motherhood and the poverty that came with it would also explain the urgency of debates surrounding spurious offspring. As research on foundling homes suggests, illegitimacy rates were very high.⁴⁰

Apart from the fact that mothers and childless wives testated less often than fathers and childless husbands, women’s testamentary practices were comparable to men’s in all other regards: they were as eager to orchestrate their funerals, had just as many debts to settle, and displayed a similar preference for nieces as men did for nephews in the absence of children.

Italian testaments, by contrast, focus on parents’ differentiated, gender-inflected choices concerning the devolution of their properties to their children and also testify to weak property relations between spouses. Steven Epstein has shown that in medieval Genoa (1150–1250), only 40 percent of all testators were childless; among those testators who did list offspring, 91 percent chose their children as universal heirs, with daughters being under-represented.⁴¹ Only 50 percent of all married men in medieval Genoa chose their wives as heirs, a ratio that decreased even further in later centuries in other Italian cities. In early fourteenth-century Venice, 25 percent or less of all married men appointed their wives as *domna et domina* under the condition that she not remarry—a rate that declined toward the end of the century. A reversal of this trend has been observed only for seventeenth-century Siena:

both Samuel Kline Cohn Jr. and Gianna Lumia have shown that between 1600 and 1700, 50–60 percent of all married men appointed their wives as universal heirs, as opposed to one-third between 1450 and 1600.⁴² Cohn also states that in the seventeenth century, joint testaments of spouses became slightly more common in Siena, where some women even chose to break with the agnatic principle enshrined in intestate succession law.

A model testament from the point of view of Portuguese joint properties and equal inheritance is that of Anrique Grande, who appointed his “legitimate” wife, Maria de Pavia, as his universal heir and executor, granting her his half of their common goods as well as his *terça* (free third), and confirmed his children’s rights to their *legítima*. He also instituted his wife as their guardian and tutor. Since he did not leave any pious bequests or separate legacies from his *terça*, his testament seems redundant in its exact application of intestate succession laws, had it not been for his listing of creditors.⁴³ In addition, Sebastião Domingues and Maria Alvarez, a couple filing jointly, left all of their possessions to their six children at equal shares. In addition to a few minor pious bequests, the testament also enumerates the couple’s many debts, the settlement of which might have been the main reason for drawing up the will.⁴⁴

Manuel Ioao de Navais’s testament shows that even in partnerships contracted by dowry and *arras*, joint ownership was established for properties acquired during the marriage: Manuel left his wife his half of a carpenter’s workshop, which he bought during their marriage, “for her maintenance,” but named his confraternity, the *Irmandade de Nosa Senhora das Angustias*, as his sole universal heir and executor in the absence of any children. Despite the fact that he did care for his wife, as shown by his leaving her the usufruct of the houses they lived in in addition to all the furniture it contained and some precious objects, it also seems that his main commitment was to the three confraternities of which he was a member. Compared with a paltry legacy to his sister’s daughter (he left his niece some bedroom furniture for her wedding and forgave his sister eight thousand *reis* in debts), his funeral plans were elaborate and costly, amounting to the thirty thousand *reis* he was owed by Ioao Alves Tanoeiro.⁴⁵

Dom Ioao Afonso de Albuquerque, member of the high aristocracy and Knight of the Order of Christ, left significant properties to his second wife, Dona Violante de Tavora. Not mentioning that he had married her by dowry and *arras*, the marriage might well have been a de facto partnership, which would explain why he amended the succession rules for his *morgadio* in her favor. On October 6, 1649, he appointed her universal heir and coexecutor (together with his cousin and brother); he also left sizable legacies to three female friends for their marriages and to a remote male relative, Francesco Luis, nephew of his cousin Ioao de Bairos Castelo Branco (for a total of two hundred thousand *reis*). Childless, he instituted Antonio de Albuquerque as heir of his entailment, and spent two hundred *cruzados* (eighty thousand *reis*) for the publication of a lawsuit he was engaged in

against the Countess of Sobugal. Two weeks later, however, he declared in a codicil that “because his wife . . . [was] so very poor,” he wished to bequeath her his royal pension of forty thousand *reis*, which he earned for his services as son of the great Afonso de Albuquerque, “so that she can eat.” Only after her death was this pension to become part of the *morgadio* that he had left to Antonio de Albuquerque, to which he added a few more complicating conditions: his heirs would forfeit the *morgadio* not only by committing an act of *lèse majesté* or intermarrying with castes of “Jews, Moors, Mulattos, and Gentiles,” but also by marrying any descendants of Paolo Baveto or Dom Iorge Manuel.⁴⁶

Another marriage contracted according to the rule of halves among wealthy aristocrats can be traced in Dona Felisia Anna de Faria’s testament. Appointing both her husband, Grigorio Mendes da Silva, and her daughter, Dona Maria, as universal heirs at equal shares, she specified: “I leave half of the remainder of my royal pension as payment of my half to my husband . . . which he can enjoy during his lifetime, and which will go to my daughter after his death.” In addition, her clothes and jewels were destined for her daughter, but not without letting her husband take first pick. She also left considerable legacies to the church, chiefly for the construction of her burial chapel, and bequests to three nieces amounting to over six hundred thousand *reis*.⁴⁷

Evidence of informal domestic partnerships can be found in two testaments from my sample. Luis de Medanha, for example—a childless, wealthy landowner of possibly noble descent—named Dona Isabel de Sousa as his universal heir and executor “for the gratitude he owed her.” He left her in charge of organizing the 120 masses for the dead he wanted to be sung for him as well as for his predeceased parents and brothers, in addition to spending two thousand *reis* in masses “for a certain person to whom I am indebted.” The care for a deceased person’s soul was usually the task of a widow, Dona Isabel knew the identity of the unnamed person whose masses he paid for, and the registrar entitled the testament as if they were a couple filing jointly—all clues that Dona Isabel might have been Luis de Medanha’s partner in life.⁴⁸

More explicit was P.e Bertolameu U.te, a wealthy wine merchant. Acknowledging “[I have no] forced heir to whom I owe anything except Iusta Freire, whom I owe so much [gratitude] for many legal reasons, and because she served me well throughout my entire life in all my illnesses and needs” (a phrase usually reserved for spouses), he left her his lands, urban real estate, and wine cellar with all of its vats, in addition to his fur coats and other clothes. He also hoped that “my heiress and executor will take care of my soul as I would for hers.”⁴⁹

Evidence of illegitimate heirs cannot be found in my sample—only a veiled reference regarding the son of a domestic in the testament of Domingos Correa, Knight of the Order of Christ and former colonial administrator in Rio de Janeiro. Even before appointing his children as his universal

heirs, he gave detailed orders concerning the young son of his servant Anna Antunes, to whom he left an annual twelve thousand *reis* for him to be raised and prepared for his future career as a priest. Was this contribution to a religious vocation supposed to alleviate a guilty conscience? All of Correa's additional provisions regarded women: his daughter was to receive her share only insofar as she would marry and have children; his "beloved wife," Dona Britis, was to become the guardian and tutor of their son and daughter, as well as of her son from a previous relationship; should she die, her own mother was to take care of their offspring. Another servant, Ana Nunes, who took care of him in his illness, was to be assisted in her passage to Rio de Janeiro; his black slave, Juliana, and her son were to accompany Ana on the journey. His wife was not named as executor; this task fell to a certain Doctor Ioao del Gado, who probably had more influence in bringing Correa's various litigations to a positive end. In order for these suits to be settled, however, he gave full power of attorney to his wife.

Distrust between spouses can be found in my sample as well. Maria Andre, for example, left nothing to her husband, Romao Francesco—not even a token dress. Everything went to her brother, Miguel Gonçalez, in addition to a few legacies to confraternities, friends, other relatives, and slaves.⁵⁰ Bernardo Caldeira da Silva, married on the island of Madeira and childless, did not leave anything to his wife but appointed his mother as his universal heir and executor "of all goods that he owned and would acquire . . . since she [was] . . . his legitimate mother, and did many good things for him, as he did for her."⁵¹

Other disinheritance strategies were aimed at parents and in-laws. Royal architect Diogo Vas and his wife, Maria em Grasia—a childless couple filing jointly—specified that Maria's mother should not be allowed to claim her legal share, since she still owed them 450,000 *reis*. Maria left her entire *terça* to her husband.⁵² Brites de Faria, wife of Balthazar Perreira, named her husband as universal heir and coexecutor "with the condition that if at the time of the death of my husband . . . his father should still be alive, my half should under no circumstance go to his father." As her husband left his half to his brothers after her death, so should her half go to Francesco da Costa.⁵³

Lionor da Costa's testament, which went through two revisions, gives insight into how women's properties became entailed as *morgadios*—that is, lineage properties destined for firstborn sons and other male agnatic relatives only. Ironically, it was often women who entailed their properties for the use of men.⁵⁴ Lionor, the childless widow of Manuel Moreno de Chavez, created an entailed estate for her nephew Luis Dias Franco, though not without bequeathing considerable portions in cash to many other male and female relatives, friends, and servants. Among others, she left eighty thousand *reis* each as spiritual dowries for the two daughters of her cousin Maria da Costa, in addition to the two daughters of her slave Ioana, whom she "manumitted" so that they could become the servants of the two prospective nuns in the Convent of Our Lady of the Rosary.⁵⁵

Another testament in which the bequest of lineage properties to males was counterbalanced—however symbolically—by minor legacies to female recipients is that of Manuel Alves de Castro. In 1645, the year in which he drafted his last will, he proudly declared himself to be eighty-one years old; he would live on for another five years. His wife of forty-eight years, Francesca Carlos, was co-heir of his huge estate, to be shared with their son Nuno Dias de Castro. Other surviving children included Francesco Carlos and Fernão Dias de Castro, who had received dowries consisting of landed properties and ten thousand *cruzados* each. The custom of giving sons rather than daughters dowries upon marriage goes back to Visigothic law⁵⁶ and shows that in Portugal, the legal institutions of *dote* and *legítima* could be interchangeable. Explaining to his principal heir how his brothers' dowries were paid from real estate in Lisbon that he and his wife "improved," Manuel Alves de Castro also mentions his family's wide-ranging business interests in Brazil and lists creditors and debtors. In addition to sizable legacies to various churches and confraternities (among others, for five hundred masses to be sung in his private chapel), he left small pensions of 2,500 *reis* to both of his nieces.⁵⁷

Nieces figured prominently in a host of other testaments, especially those drawn up by women. Of thirteen testators who left legacies to nieces, seven were women (i.e., 41% of all women's testaments contained bequests to nieces, as opposed to 20% of men's testaments). Nephews inherited from women much less often: eight of nine bequests to nephews were made by male testators. Women's legacies to nieces were often part of a wider strategy to foster ties between women. Maria de Siqueira, for example—a single woman without forced heirs—left ten thousand *reis* to her niece Mariana de Siqueira, plus annual revenues in wheat from four *alqueires* (approximately twenty hectares of land), a chest from India, a dress, a skirt, a coat, and various other items of clothing and accessories (*vestido de cata-sol, arqua emcourada, dois meios traviseiros, lansol de cobriracama e ou tropiqueno*). Maria and Mariana might have been members of the same lay religious confraternity; the testator calls her niece *comadre* and *afilhada* (affiliated). She also left four thousand *reis* and a bed to her sister Ambrosia de Siqueira; another niece, Ana de Fig.do, was supposed to receive certain objects (*alambres a lamina*) in addition to a precious coat (*manteo de cochoilha*) and the money Ana's father owed her. A third niece, Maria Francesca, received "the little [money?] bag that was inside the chest from India." A desk (*escritorinho*), a *capinha* [?], and wheat from twelve *alqueires* (approximately sixty hectares) went to a certain Senhora Maria de Siqueira. Domingas Ribeira was to receive an old suit (*fato*) of hers. There was no universal heir; the executor was P.e Ioao Nunes da Silva.⁵⁸ Instead of spreading her possessions far and wide among a host of female friends and relatives, Ines de Oliur.a, childless widow of P.o Afonso de Surar de Santarem, gave her entire estate to her niece: "Not having surviving children or forced heirs, I institute as my universal heir my niece Dona Anna Maria,

legitimate daughter of my brother Ioao Serao Moreno and his wife Dona Irma de Sousa so that she may inherit my properties . . . because of my love for her . . . and for my brother.” Other than that, Ines left money for five hundred masses—an extraordinary bequest worthy of a noblewoman—and a small legacy to a male cousin.⁵⁹

In Portugal, women’s—as well as men’s—property rights were embedded in a concept of ownership characterized by a relative lack of individual choice with respect to succession, especially when compared with Italian testamentary practice. While Italian testaments routinely referred to women’s dowries and the ways in which women disposed of them, Portuguese daughters and widows (as well as sons and widowers) inherited automatically. In return, they were expected to pass on their properties in the same indiscriminate manner in which they had received them. Only if they lacked forced heirs or were capable of establishing *morgadios* as a sign of their nobility could women make distinct bequests, of which my sample of testaments from seventeenth-century Lisbon gives ample evidence. It also shows how wives would be routinely named as their husbands’ universal heirs and executors.

In the early modern period, equal inheritance was rare in Italy, but evidence to this effect can be detected beginning in the seventeenth century. Erminia Bellanti, a Sienese noblewoman, was among the first testators in her city to deviate from the male-inflected, lineage-conscious inheritance practices that for centuries had remained uncontested: she made the extraordinary request that her eight sons and daughters inherit her estate at equal shares.⁶⁰ While Bellanti might not have known that equal inheritance was widely practiced in Portugal, Sarah Kirkham Chapone, an eighteenth-century British feminist, openly praised the Portuguese principle of joint ownership among spouses, juxtaposing it to the English concept of *coverture*: “a [Portuguese] Wife . . . if she brought never a Farthing [into marriage], has [the] Power to dispose of half her Husband’s Estate by Will; whereas a Woman by our Laws alienates all her own Property so entirely by Marriage, that if she brought an hundred thousand Pounds in Money, she cannot bequeath one single Penny.”⁶¹ In her polemic against English marriage laws, the traditional Portuguese preference for undifferentiated and reciprocal devolution emerges as uniquely progressive.

NOTES

1. *Ordenações e Leys do reyno de Portugal, confirmadas, e estabelecidas pelo Senhor rey D. Joaõ IV. Novamente impressas . . .* vol. 4 (Lisbon, 1747), tit. 46, pp. 35–36.
2. Jutta Sperling, “Women’s Property Rights in Portugal under D. João I (1385–1433): A Comparison with Renaissance Italy,” *Portuguese Studies Review* 13 (2005): 27–59; Sperling, “Dowry or Inheritance? Kinship, Property, and Women’s Agency in Lisbon, Venice, and Florence (1572),” *Journal of Early Modern History* 11 (2007): 197–238.

3. Sperling, "Marriage at the Time of the Council of Trent (1560–70): Clandestine Marriages, Kinship Prohibitions, and Dowry Exchange in European Comparison," *Journal of Early Modern History* 8 (2004): 67–108.
4. Hanley, "Engendering the State: Family Formation and State Building in Early Modern France," *French Historical Studies* 16 (1989): 4–27.
5. Daniela Lombardi, *Matrimoni di antico regime*, Annali dell'istituto storico italo-germanico in Trento, Monografie 34 (Bologna, 2001); Christiane Klapisch-Zuber, *Women, Family, and Ritual in Renaissance Italy* (Chicago, 1985); Isabelle Chabot, "La loi du lignage. Notes sur le système successoral florentin (XIVe/XVe–XVIIe siècles)," *Clio* 7 (1998): 51–72; Chabot, "Lineage Strategies and the Control of Widows in Renaissance Florence," in *Widowhood in Medieval and Early Modern Europe*, ed. Sandra Cavallo and Lyndan Warner (Harlow, UK, 1999), 127–144; Anna Bellavitis, "Patrimoni e matrimoni a Venezia nel Cinquecento," in *Le ricchezze delle donne: diritti patrimoniali e poteri familiari in Italia (XIII–XIX secc.)*, ed. Giulia Calvi and Isabelle Chabot (Turin, 1998), 149–160; Linda Guzzetti, *Venezianische Vermächtnisse: Die soziale und wirtschaftliche Situation von Frauen im Spiegel spätmittelalterlicher Testamente* (Stuttgart, 1998); Guzzetti, "Dowries in Fourteenth-Century Venice," *Renaissance Studies* 16 (2002): 429–473.
6. Aurelio Espinosa, "Early Modern State Formation, Patriarchal Families, and Marriage in Absolutist Spain: The Elopement of Manrique De Lara and Luisa de Acunã y Portugal," *Journal of Family History* 32 (2007): 3–20; Georgina Dopico Black, *Perfect Wives, Other Women: Adultery and Inquisition in Early Modern Spain* (Durham, NC, 2001); Mary Elizabeth Perry, "From Convent to Battlefield: Cross-Dressing and Gendering the Self in the New World of Imperial Spain," in *Queer Iberia: Sexualities, Cultures, and Crossings from the Middle Ages to the Renaissance*, ed. J. Blackmore and G. S. Hutcheson (Durham, NC, 1999), 394–419; Israel Burshatin, "Written on the Body: Slave or Hermaphrodite in Sixteenth-Century Spain," in Blackmore and Hutcheson, *Queer Iberia*, 420–456.
7. Abreu-Ferreira and Elbl, "Women in the Late Medieval and Early Modern Lusophone World: An Introduction," in "Women in the Lusophone World in the Middle Ages and the Early Modern Period," special issue, *Portuguese Studies Review* 13 (2005): xxii.
8. Nazzari, *The Disappearance of the Dowry: Women, Families, and Social Change in São Paulo, Brazil (1600–1900)* (Palo Alto, CA, 1991); Nazzari, "Parents and Daughters: Change in the Practice of the Dowry in São Paulo (1600–1770)," *Hispanic American Historical Review* 70 (1990): 639–665; Nazzari, "Women as Obstacles to Business: British Objections to Brazilian Marriage and Inheritance Laws," *Comparative Studies in Society and History* 37 (1995): 781–802.
9. James A. Brundage, *Law, Sex, and Christian Society in Medieval Europe* (Chicago, 1987), 361–364.
10. According to the canons decreed by the Fourth Lateran Council, the marital sacrament was valid only insofar as the sacrifice it entailed was voluntary; in expressing the words of present consent to each other, the partners administered the sacrament to each other. No witness or priest was necessary for the sacrament to take effect. The voluntary nature of marriage changed drastically with the Council of Trent. Under pressure from France and Spain to abolish clandestine marriages in order to enhance parents' power in influencing their children's choice of partners, the delegates agreed on a compromise solution, whereby clandestine marriages were no longer recognized, and voluntary consent had to be expressed publicly. See Sperling, "Marriage at the Time of the Council of Trent."

11. Giambattista de Luca, *Theatrum Veritatis et Justitiae, sive Decisivi discursus, ad veritatem editi in forensibus controversiis . . .* (Cologne, 1690), 2:3. See also Gianna Pomata, "Family and Gender," in *Early Modern Italy 1550–1796*, ed. John Marino (Oxford, 2002), 71.
12. On the principle of *collatio dotis*—the recalculation of a married daughter's inheritance portion—see *Kalliopi Papakonstantinou, Die collatio dotis: Mitgift- und Miterben-Auseinandersetzung im römischen Recht* (Köln, 1998), 68–71.
13. *Portugaliae Monumenta Historica (PMH); Leges et Consuetudines* (Lisbon, 1856; facsimile ed. Liechtenstein, 1967), 1:175, 329; Martim de Albuquerque and Eduardo Borges Nunes, eds., *Ordenações del-Rei Dom Duarte* (Lisbon, 1988), 216.
14. Diane O. Hughes, "From Brideprice to Dowry in Mediterranean Europe," *Journal of Family History* 3 (1978): 262–295.
15. David S. Powers, "The Maliki Family Endowment: Legal Norms and Social Practices," *International Journal of Middle Eastern Studies* 25 (1993): 379–406.
16. Maria de Lurdes Rosa, *O Morgadio em Portugal (sécs. XIV–XV): Modelos e Práticas de comportamento linbagístico* (Lisbon, 1995).
17. Shona Kelly Wray, *Communities and Crisis: Bologna During the Black Death* (Leiden, 2009).
18. Julius Kirshner, "Baldus de Ubaldis on Disinheritance: Context, Controversies, Consilia," *Ius commune. Zeitschrift für Europäische Rechtsgeschichte* 27 (2000): 119–214.
19. In this respect, the *Ordinações Filipinas echo the Codex Justinianus*. See Kirshner, "Baldus de Ubaldis on Disinheritance," 125.
20. *Ibid.*, 170.
21. Amélia Andrade, Teresa Teixeira, and Olga Magalhães, "Subsídios para o estudo do adultério em Portugal no século XV," *Revista de história* 5 (1983–84): 93–129.
22. "Lex Visigothorum," *PMH*, III.I.1,3.
23. *PMH*, Leis Geraes, Afonso III, LXXI.
24. An exception is, of course, Dom Manuel's attempt at reforming Catholic marriage according to principles that half a century later would become enshrined by the Council of Trent. There is no indication, though, that Dom Manuel's laws were ever enforced. *Livro primeiro das ordenações cõ sua tavoada . . . Novamente corregido . . . lider especial mãdado do muy alto: r muy poderoso senhor Rey Dõ Manuel nosso senhor foy empremido* (Lisbon, 1514), bk. 5, p. 19r.
25. Kathryn Burns, *Colonial Habits: Convents and Spiritual Economy of Cuzco, Peru* (Durham, NC, 1999), 25.
26. Sperling, "Women's Property Rights," 49.
27. Kuehn, *Illegitimacy in Renaissance Florence* (Ann Arbor, MI, 2002), 62, 92.
28. *Ibid.*, 50.
29. This sample was randomly selected based on legibility. I chose a run of fifty-six consecutive testaments, fifty of which were readable, from the third register of testaments preserved in the *Arquivo Nacional da Torre do Tombo* (hereafter ANTT), *Registro geral dos testamentos, livro 3*, fols. 29r–127r. Registers 1, 2, and 4 could not be consulted because of their poor state of preservation; according to the inventory, the first preserved testament in this series dates back to 1560, but most are from the end of the sixteenth century. In 1604, it became mandatory to register a copy of each testament with a new office especially created for this purpose. The testaments I analyzed

were registered chronologically in the order in which they were opened upon the death of the testator.

30. See, among others, Elsa Maria Carvalho, "A fortuna ao serviço da salvação da alma, da família e da memória, através dos testamentos dos arcebispos e dignitários de Braga na Idade Média (séculos XII–XV)," *Lusitania Sacra*, 2a serie, 13–14 (2001–2002): 15–40; Maria Ângela Beirante, "Para a história da morte em Portugal (sécs. XII–XIV)," in *Estudos de História de Portugal*. Volume I (sécs. X–XV). Homenagem a A. H. de Oliveria Marques (Lisbon, 1982), 359–383; Hermínia V. Vilar, *A vivência da morte no Portugal medieval: A Estremadura portuguesa (1300–1500)* (Redondo, 1995); Beirante, "Rituais da morte em testamentos dos séculos XIV e XV," in *O reino dos mortos ne Idade Média peninsular*, ed. José Mattoso (Lisbon, 1995), 165–176; Manuela Santos Silva, "Contribuição para o estudo das oligarquias urbanas medievais: a instituição de capelas funerárias em Óbidos na Baixa Idade Média," in *A cidade. Jornadas inter e pluridisciplinares* (Lisbon, 1993), 2:115–127; H. V. Vilar and Maria João Marques da Silva, "Morrer e testar na Idade Média," *Lusitania Sacra*, 2a serie, 4 (1992): 39–59; Isabel Castro Pina, "Ritos e imaginário da morte em testamentos dos séculos XIV e XV," in *O reino dos mortos*, 125–164. I would like to thank Maria de Lurdes Rosa for these references. For a good overview of existing studies on testaments in Europe (excluding Portugal), see Guzzetti, "Testamentsforschung in Europa seit den 1970er Jahren: Bibliographischer Überblick," in *Seelenheil und irdischer Besitz: Testamente als Quellen für den Umgang mit den "letzten Dingen,"* ed. Markwart Herzog and Celilie Hollberg (Konstanz, 2007), 17–33.
31. Barros, "Mulheres e comércio: Linhas de intervenção da mulher portuense no negócio durante o século XVI," in "Women in the Lusophone World in the Middle Ages and the Early Modern Period," special issue, *Portuguese Studies Review* 13 (2005): 229–268.
32. Steven Epstein, *Wills and Wealth in Medieval Genoa, 1150–1250* (Cambridge, MA, 1984); Guzzetti, *Venezianische Vermächtnisse*.
33. Florence and Assisi (1300–1425): 30%; Pisa (1300–1425): 48%; Bologna (1350): 47%. Guzzetti, *Venezianische Vermächtnisse*, 21.
34. Konstanz: 29%; Lübeck: 20%; Hamburg: 14%. *Ibid.*
35. Klapisch-Zuber, *Women, Family, and Ritual in Renaissance Italy*; Chabot, "La loi du lignage"; Chabot, "Lineage Strategies."
36. Chojnacki, *Women and Men in Renaissance Venice: Twelve Essays on Patriarchal Society*, part 2, *Women, Marriage, and Motherhood* (Baltimore, 2000), 115–182.
37. Chabot, "A proposito di 'Men and Women in Renaissance Venice' di Stanley Chojnacki: Ricchezza femminile e parentela nel Rinascimento. Riflessioni attorno ai contesti veneziani e fiorentini," *Quaderni storici* 118 (2005), especially p. 214.
38. Guzzetti, *Venezianische Vermächtnisse*, 15–16.
39. ANTT, *Registro geral dos testamentos*, livro 3, fols. 36v, 43r, 61v, 117r.
40. See, among others, Maria de Fátima Reis, *Os expostos em Santarém: a acção social da misericórdia (1691–1710)* (Lisbon, 2001).
41. Epstein, *Wills and Wealth*, 74, 98.
42. Cohn Jr., *Death and Property in Siena, 1205–1800: Strategies for the Afterlife* (Baltimore, 1988), 199; Lumia, "Morire a Siena: Devoluzione testamentaria, legami parentali e vincoli affettivi in età moderna," *Bullettino Senese di Storia Patria* 103 (1997): 189.
43. ANTT, *Registro dos testamentos*, livro 3, fol. 67r (May 12, 1650). Anrique, who seems to have been of German descent, appears to have been born in Kobe, Japan.

44. *Ibid.*, fols. 47v–48r (October 12, 1649). The testaments of Ioaο Pinto Ribeiro, Leonardo P.o Setāo Ferreira, and Francesco Teixeira give similar evidence of joint ownership among spouses. *Ibid.*, fols. 57v–58r (August 10, 1649); fols. 98v–99r (October 11, 1650); fol. 100v (December 15, 1650). Joao de Freitas split his possessions between his wife and two sisters. *Ibid.*, fol. 96v (November 4, 1650). Domingos Miguel, royal servant, appointed his wife, daughter, and son-in-law as heirs and executors. *Ibid.*, fols. 97r–v (August 18, 1650).
45. *Ibid.*, fols. 47v–48r (October 12, 1649). The testaments of Ioaο Pinto Ribeiro, Leonardo P.o Setāo Ferreira, and Francesco Teixeira give similar evidence of joint ownership among spouses. *Ibid.*, fols. 57v–58r (August 10, 1649); fols. 98v–99r (October 11, 1650); fol. 100v (December 15, 1650). Joao de Freitas split his possessions between his wife and two sisters. *Ibid.*, fol. 96v (November 4, 1650). Domingos Miguel, royal servant, appointed his wife, daughter, and son-in-law as heirs and executors. *Ibid.*, fols. 97r–v (August 18, 1650).
46. *Ibid.*, fols. 64v–66v (October 6, 1649; October 20, 1649).
47. *Ibid.*, fols. 35v–35v (July 17, 1649).
48. *Ibid.*, fols. 45v–46v (September 12, 1640; January 24, 1650).
49. *Ibid.*, fols. 71r–72r (July 17, 1649).
50. *Ibid.*, fols. 39r–40r (July 12, 1645).
51. *Ibid.*, fol. 43r (January 20, 1650).
52. *Ibid.*, fols. 83r–84v (August 2, 1650).
53. *Ibid.*, fols. 85v–86v (August 27, 1650).
54. De Lurdes Rosa, *O Morgadio*.
55. ANTT, *Registro dos testamentos*, livro 3, fols. 101r–104v (April 16, 1639; July 21, 1646; April 12, 1650).
56. Hughes, “From Brideprice to Dowry.”
57. ANTT, *Registro dos testamentos*, livro 3, fols. 88v–89v (February 28, 1645).
58. *Ibid.*, fols. 69v–70v (August 23, 1649).
59. *Ibid.*, fol. 91r (August 18, 1650). Other women testators who left money to nieces were Domingas Perreira molher donzella criada de M.a da Abbe; fols. 32r–v (September 12, 1648); Anna Luis; fols. 33v–34r (November 8, 1649); Dona Filisia Anna de Faria; fols. 34v–35v (July 17, 1649); Lianor da Costa; fols. 101r–104v (April 12, 1650); Maria Perreira; fols. 107r–v (October 11, 1649).
60. Cohn Jr., *Death and Property in Siena*, 207.
61. Chapone, *Hardships of the English Laws in Relation to Wives* (London, 1735), 29–30; quoted from the facsimile edition by Lynne A. Greenberg, *Essential Works for the Study of Early Modern Women*, part 1, vol. 2, *Legal Treatises* (Aldershot, UK, 2005), 2.

11 Women, Family, and Property in Early Modern Venice

Anna Bellavitis

The roles of family members, their rights and duties, and how they can demand and claim those rights are structured and organized by law. In medieval and early modern Europe, these laws gave different property rights to men and women, and people knew them and used them for their own purposes. In the following paragraphs, I will analyze the laws on intestate succession, the restitution of dowry to widows, and the attribution of guardians to children based on sentences pronounced by judges in the everyday exercise of their functions rather than on unique or exceptional judiciary cases. In these cases, the intervention of a judge was required due to either the absence of a last will (i.e., intestate succession) or the absence of instructions in a father's or husband's last will concerning a child's guardian or a wife's dowry. As I will demonstrate in the final paragraph of this chapter, common people were equipped with much knowledge of laws on succession and inheritance.

LAWS ON INHERITANCE AND DOWRY

In 1242, when Doge Jacopo Tiepolo promulgated his *Statuti* (statutes), Venice was a mercantile republic founded on family companies, where fathers, sons, and brothers gathered in the *fraterna*, working together.¹ Some of these families were gaining dominance in the city and the republic and, in the last years of the thirteenth century, started the reformation of the political elite known as the “closing” of the Great Council in 1297.² The promulgation of Jacopo Tiepolo's statutes was part of this process and expressed the intention to be free of the influence of another group of elites—the university jurists.³ The political elite in Venice—the patriciate—not only made the law but enforced it; lawyers and judges were patricians who did not need a university degree. The prologue to the statutes acknowledged as legal sources only “similarities” between cases and judges' decisions, deliberately omitting Roman law.⁴ In fact, Roman law was the basis for urban statutes in Venice, as everywhere else in Italy, and because of its links to the Byzantine Empire, Venice's statutes were sometimes much more faithful to

the Roman tradition than those of other Italian cities more influenced by Germanic law.⁵

Reading the thirteenth-century Venetian statutes, one gets the impression that the right to both inherit and leave an inheritance were male rights.⁶ Almost all the chapters on intestate succession dealt with fathers and sons, and only a few paragraphs gave women rights to leave or receive an inheritance. When a father died, his sons inherited his immovable property, and his unmarried daughters, his movables; if he had only daughters, his inheritance was shared among them. When a mother died, all her children, male and female, shared her goods equally, both movable and immovable. If a man or a woman died without children, his or her estate was shared equally among the male relatives. Women's rights to inheritance always came after men's rights: when a man and a woman were related to an intestate in the same degree of kinship, the man inherited the immovable property and the woman inherited the movable goods; when a woman preceded a man by one degree of kinship, they shared the inheritance equally.⁷

Despite the possible impression of male chauvinism, Venetian statutes actually held women's property rights in higher regard than did many other Italian urban statutes. For example, in Genoa, Florence, Pisa, and Arezzo, girls never inherited from their mothers, and in Arezzo, Pistoia, and Florence, they did not inherit from their grandmothers, either.⁸ The distinction between movable and immovable goods is also relevant, not only because in medieval Venice's mercantile economy, wealth consisted more of movable (cash and merchandise) than immovable goods (land or houses), but also because movable and immovable goods do not have the same meaning that they do today. In Venice, as in medieval Flanders and Normandy, what we consider today to be movable, such as cows or cereal, could be considered immovable; likewise, some kinds of real estate could be considered movable.⁹ In Venice, as we shall see, land on the *terraferma*—that is, outside the city—could be considered movable, which is an amusing paradox, as *terraferma* means “immobile land.” Houses and palaces in the city center, surrounded by canals and the lagoon, were, on the other hand, considered immovable.¹⁰ In fact, real estate outside Venice was movable *because* it could be inherited by women, and real estate in town was immovable *because* it could not be given to women. The reality, however, is that women did inherit immovable goods—houses and land right in the city. The paragraph of the *Statuti* explaining that women could inherit immovable goods from their female relatives tells us that in spite of other chapters of the same statutes, women could possess and bequeath immovable goods.¹¹

If only unmarried daughters inherited at their father's death, it is because married daughters had already received a dowry, which was the only portion of their father's inheritance they had the right to receive. The dowry usually consisted of movable goods, but according to the *Statuti*, if such goods did not furnish an “adequate” dowry, brothers still had to share with

their unmarried sisters immovable property they had inherited from their father.¹² The dowry was a daughter's right and a father's duty; only if she had received a dowry from her father and she had brothers was a married woman excluded from his inheritance.¹³

A dowry had to be "adequate" to the family status, but not proportional to family wealth or to the sons' inheritance. Even if we cannot know what share of the family patrimony was used for the dowry, we can be sure that the right to inherit was not just a male one. The dowry, however, was a peculiar object, as it was the wife's property during the entire marriage, but the husband managed and possessed it.¹⁴ Thus it was an unusable property, but one that a wife could bequeath, even during her marriage. In fact, only when she was a widow could a woman have both the property and the possession of her dowry—providing she managed to get it back from her in-laws.

The widow's right to get her dowry back is an example of the Venetian statutes' fidelity to Roman law, whereas in other European regions, like France, or even in other Italian cities more influenced by Germanic law, a widow received a portion of her husband's inheritance.¹⁵ In the *Codex Justinianus*, spouses could not inherit from each other, because it would have been "blameworthy" to join a man to a woman from whom he could inherit.¹⁶ In fact, in the Venetian statutes, husbands did not inherit their wives' dowry, which had to be given back to her family at her death. Protection of dowry was a fundamental principle, and to be sure that the widower or his family would return it, its value was insured on immovable goods belonging to the husband or to his family. The consequence was that when a widow got her dowry back, she had many chances to receive immovable goods. According to the *Statuti*, the restitution of the dowry had to be done starting from property *beni de foris* (from outside). It can be argued that the strange definition of lands in terraferma as movable goods comes from the juridical debates about dowries and women's rights to property. A contemporary comment added to the *Statuti* by a Venetian jurist explains that the expression *beni de foris* means "*in quibus vir vel socer non habitat*" (where the husband or the father-in-law does not live). A widow did not have the right to expel her husband's relatives from their house, or more precisely, she could not inherit from her husband the family house—that is, the place where her husband's family had its roots, the *casa da stazio* or palace.¹⁷

Because the dowry represented a dangerous flow of capital from one family to another, special sumptuary laws existed to avoid dowry inflation.¹⁸ These laws also aimed to protect the right of widows—and their families—to get the dowry back. The act of returning a dowry to a widow, however, was not done at the cost of ruining a family or causing them to lose the family house, the symbol of the family's continuity and genealogy. In this reciprocity lay the key to the dowry system, which was, in my opinion, one of the keys to the entire political system of the Venetian republic: the obligation to keep a balance in marriage exchange between patrician families who traded and governed together.

COURT RECORDS ON INTESTATE INHERITANCE AND GUARDIANSHIP

Doge Tiepolo's *Statuti* gave women some significant rights, but these rights had to be enforced in civil courts. This represents a major gender difference: men's rights were implicit because they were "natural"; women's rights were neither implicit nor natural. This difference is clear in the case of intestate inheritance and guardianship.

The records of the *Giudici del Proprio* preserve inheritance claims by relatives of Venetians who died intestate.¹⁹ These records show us the enforcement of the *Statuti*: when women sued for claim on an inheritance, they acted on their own, without guardians or intermediaries; they only needed to bring witnesses. A woman inherited from her mother and from her mother's sisters, but very rarely did she inherit from the men of her mother's line, because the succession was interrupted at her mother's generation; she also inherited from her father, but very rarely from her father's line. A man inherited from his mother, from both the men and the women of his father's line, but much less often from the men of his mother's line, because his mother did not inherit from that side of the family. Men inherited from their fathers, but this seldom appears in the *Giudici del Proprio* records. In fact, one should expect to find claims from any type of relative for any kind of inheritance, but one scenario never appears: a son demanding something from his father. The whole system was founded on the father-and-son relationship, so this was the only one that did not need to be proved. Sons automatically inherited from their intestate father; they needed a court decision only if they had to share their father's inheritance with their sisters.²⁰ In contrast, daughters had to prove their relationship with their fathers; sons and daughters, with their mothers. Even a woman's right to leave an inheritance had to be proved in courts. We could almost say that in some cases the Latin expression *mater certa* should be substituted with *pater certus*.

Men had the *patria potestas* over their children, so they did not have to ask for guardianship when their wife (and mother of their children) died. Women, however, did. Guardianship could be *testamentaria*, when the father in his will had named the guardians, or *legitima*, when guardians were chosen by judges.²¹ In medieval and early modern Italian cities, urban magistrates could also be the guardians of orphans.²² In Venice, this task belonged to the Procurators of St. Mark, the republic's highest office after the doge.²³

In Roman law, women could not be guardians for their children because they could be legally responsible only for themselves.²⁴ In fact, most of the time children lived with their widowed mothers, but male relatives managed their patrimony. Another reason why women could not be guardians was that they could remarry. During the Augustan Empire, widows, widowers, and divorced people who did not remarry were fined.²⁵ Things changed with the rise of Christianity, which forbade divorce and discouraged remarriage

for widows. According to Christian morals, a widowed mother who did not remarry could be a guardian; however, there still remained the problem of women's legal responsibility. Gradually, medieval jurists built a moral justification for maternal guardianship: mothers could be guardians *ratio pietatis et presumptae affectionis*—because they loved their children. Moreover, as they could not inherit from them, they had no reason to wish for their death.²⁶ As a result, women were deemed able to be legally responsible for other people—as long as those other people were their own children.

In the Venetian *Statuti*, the two functions of *cura* (to take care) and *tutela* (to manage the inheritance) of children were mixed in the *commis-saria*—that is, the persons to whom the inheritance and children were entrusted.²⁷ Thus, when a man designated the members of his *commissaria*, he also designated the guardians of his minor children. When a father did not provide for guardians in his last will, or when he died intestate, the mother (or another relative, such as the uncle) asked the Giudici di Petizion for the guardianship of the children. When the mother died, however, the father did not need to follow the same procedure. There was only one case in which a father had to ask for the guardianship of his children: when he wanted to sell a property that his children had inherited from their mother. Separation of the property of husband and wife is a fundamental principle in Roman and Venetian law. Theoretically, mothers—who did not have the *patria potestas*—did not have the right to choose the guardians of their children in their last wills; Venetian law, however, gave them this right, which was exceptional in Italy.²⁸ According to that law, mothers could choose the guardians of their children, but their decision had to be confirmed by the Giudici del Mobile.²⁹ Three offices, at least, were involved in guardianship in Venice: those of the Procurators of St. Mark, the Giudici di Petizion, and the Giudici del Mobile. Here I will examine the records of the Giudici di Petizion.

Most of the time it was the mother who asked for, and obtained, the guardianship of her children. Between 1554 and 1556, in twenty-two out of forty-nine cases guardianship was granted to mothers, and in thirteen cases to (paternal) uncles.³⁰ Between 1591 and 1593, in seventy-eight out of 130 cases guardianship was granted to mothers, and in twenty-one cases to (paternal) uncles.³¹ It is impossible to say whether anyone else had presented a petition for the same guardianships, because the records of the Giudici di Petizion preserve only the final sentence. But what can be said is that even when the father's brothers were still alive and had formed a commercial company with the father, a widowed mother could be the guardian of her children and share the inheritance of the commercial company with her brothers-in-law.³² A widowed mother asking for the guardianship of her children was actually asking for the right to manage their whole inheritance and the business, as one can read in the sentence granting the widow of a dyer the right “to continue the dyeing craft, to trade, to buy and sell by bills of exchange and to send merchandise by land and by sea, on boats

and galleys.”³³ Even a widow who did remarry could have the guardianship of the children of her first marriage “to receive payments and pay debts, in Venice and anywhere else.”³⁴ Fathers-in-law did not automatically have the guardianship of their stepchildren, and some of them asked to be exempted from it, to avoid “conflicts and troubles.”³⁵ No doubt these widows had full property rights and full responsibility for their children’s inheritance.

According to Doge Tiepolo’s *Statuti*, girls and boys had to be under a guardian’s responsibility until the age of twelve; in 1586, this age was raised to fourteen for girls and sixteen for boys—still very young when compared to other European states, where young people reached majority at twenty-five or even thirty.³⁶ When they reached the required age, boys and girls could ask to be free from guardianship, “to manage their goods,” and to “do all that free men can do” (*homines liberi et non subiecti*). In 1591–1593, thirty-nine boys and nineteen girls were declared *homines liberi et non subiecti* by the Giudici di Petizion.³⁷ Some of these children were represented by other relatives, usually uncles or brothers, but some were alone.

COURT RECORDS ON GETTING BACK THE DOWRY

In contrast to men, women had to go to court to receive their intestate father’s inheritance and to acquire guardianship of their children. In addition, women had to ask the courts to return their dowry if their husbands had not mentioned it in their last will or had died intestate. Sons received their father’s inheritance after their father’s death; daughters received it at their marriage. In most cases, in fact, fathers had died before their sons married. Among marriage contracts of sixteenth-century Venetian middle-class families, half of the husbands’ fathers had already died, and a third of the wives’ fathers had died.³⁸ In any case, the dowry system is based on the gap in time between sons’ and daughters’ access to inheritance. In actuality, the husband managed the inheritance that his wife received from her father. At the husband’s death, the widow got back her dowry, actually composed of goods coming from her in-laws. Thus, a married woman actually received the inheritance of her father as an inheritance of her husband. Of course, one could say that to survive one’s father is a probability, but to survive one’s husband is only a possibility, which depends a great deal on ages at marriage. In the patriciate, age differences between husband and wife could be important. In his treatise on marriage, written in 1415–1416, the patrician Francesco Barbaro recommended that men of his social class marry young girls in order to better mold their personality.³⁹ In the sixteenth century, mothers and fathers of the “bourgeoisie” (merchants, state employees, and members of professions) recommended in their last wills that their daughters marry at eighteen or older, while ordering their sons to stay at home until at least twenty-five. For the rest of the population, most

young people of artisan families finished their apprenticeship at eighteen or twenty and could then think of marrying.⁴⁰ The age gap at marriage was actually larger in those social groups with higher dowries, because the dowry was a symbol of social status; this also explains why there was a particular problem involving the restitution of the dowry for the elite.

As noted previously, dowries had to be insured on goods belonging to the husband's family. Immovable property was the best insurance, so widows often received immovables at the restitution of the dowry. Actually, such immovable goods could belong to the mother-in-law, as the property she had received at the restitution of her dowry. Marriage contracts and last wills give evidence of this reality.⁴¹ In 1586, for example, Marietta Cavazza, widow of Dolce, wrote in her last will that her daughter-in-law, Annetta Vellutello, widow of her son Daniel, could have, as restitution of her dowry, her house in San Vidal, as it was on that house that Annetta's dowry had been insured.⁴² The same juridical system—which theoretically excluded women from inheritance of immovable property from their fathers—pre-supposed, in fact, the circulation of immovables between women of different generations and those of different families. This paradox made it even more difficult for a widow to get her dowry back and can perhaps explain why in the fourteenth and fifteenth centuries among the patriciate, “in an indeterminate but undoubtedly large number” of cases the widow “had chosen not to claim her dowry but instead to live in her late husband's house.”⁴³ It is difficult to say if it was a choice, when one considers that those patrician widows who did not ask that their dowry be returned were not a danger for the lineage patrimony, whereas a widow demanding her dowry was probably going to remarry. After the sentence of the *Giudici del Proprio*, a widow could still live in her husband's house until the dowry was actually returned,⁴⁴ but if her in-laws gave her the dowry and the mourning dress (*vestis vidualis*) before she had time to ask for a court sentence, she had to leave the house in two months.⁴⁵ It can of course be said that this law proves that some husbands in their last wills “facilitated their widows' recovery of their dowries, enabling them to dispense with courts,” but one must consider that the last lines of the law concerned punishments for widows who did not want to leave their husbands' house.⁴⁶

In fact, many women had to deal with the court of the *Giudici del Proprio*: to prove, by marriage contract or by testimony, the amount of their dowries (*vadimonium*) and wait for a sentence (*dejudicatum*).⁴⁷ In the sixteenth century, in nearly three-quarters of the cases, widows asked for their dowry back in the year following their husbands' death.⁴⁸ In the rest of the cases, both husband and wife were dead, and the heirs asked for the dowry (15% of cases by the children, and 10% by other relatives). Patricians are overrepresented in these records—constituting 15 percent of cases even though they represented no more than 2 to 3 percent of Venice's population—for reasons stated previously: the larger age difference between husband and wife, higher dowries, and the political importance

of respecting reciprocity in the marriage exchange. Patrician and bourgeois women provided marriage contracts as evidence, while artisan women more often brought witnesses. In 1553, for example, Faustina de Alberi asked a female neighbor to confirm her dowry amount: "I don't know exactly," she answered, "but everybody said she had a beautiful dowry and beautiful dresses." Another witness said: "Just after she got married, I settled in her house as a weaver apprentice and I saw all the wonderful things she had in her dowry: a beautiful bed, dresses, linen sheets, and many other expensive things, which I'm not able to evaluate."⁴⁹ These testimonies were not very precise, but in this particular case, the judges had other information. Faustina's brother-in-law had been fined fifty ducats because he had not left his wife's room when she was dictating her last will. A law of 1474 forbade husbands to assist in their wives' last wills, in order to protect the freedom and property rights of women as well as those of their lineages.⁵⁰ This sum represented half of the amount of Faustina's sister's dowry, and he had paid it to Faustina herself. Putting all information together, the judges estimated her dowry at 150 ducats.⁵¹ Marieta Da Balao, widow of a fisherman, presented the testimony of two women, who were apprentices of her mother-in-law when she got married. They gave a similar description of her trousseau, including fur coats and a silver belt, but, once again, they declared they were unable to evaluate it (perhaps on purpose?). Nevertheless, in this case the judges followed a different trail. The Scuola Grande della Misericordia, one of the most important Venetian confraternities, had given thirty ducats for Marieta's dowry. Thus, the judges decided that the dowry was worth forty ducats.⁵²

When the dowry's amount was proved, the judges gave their sentences (*dejudicatum*) quite rapidly—in three-quarters of the cases, within six months following the petition. Sumptuary laws limited dowry amounts, but in some cases the dowries that patrician widows declared to the Giudici del Proprio in their deposition (*vadimonium*) and that the judges agreed to return to them in the sentence (*dejudicatum*) exceeded all limits.⁵³ In 1591, for example, Paulina de Ponte, widow of Gabriele Corner, had a sentence (*dejudicatum*) for a dowry of 7,693 ducats, but the limit authorized by sumptuary law since 1575 was 6,000 ducats.⁵⁴ In the majority of cases, the dowry value declared in the sentence (*dejudicatum*) was less than the value that the widows had declared in their petitions (*vadimonia*).⁵⁵ According to sumptuary laws, the widow was to lose one-third of the dowry—corresponding to the trousseau—but if the dowry was worth more than three thousand ducats, this "third" was evaluated at one thousand ducats.⁵⁶ This rule was applied only when there were children,⁵⁷ but it does not explain why, according to judges' sentences, Camilla Cavaneis' heirs could claim 633.80 ducats for a declared dowry of 2,000; Agnesina Vallaresso could claim 2,354.18 ducats for a declared dowry of 3,150; and Cornelia Misani could claim 2,586 ducats for a declared dowry of 3,000 ducats.⁵⁸ An

explanation could be the difference between the dowry promised and the dowry actually paid, or that a portion of the dowry had already been paid; indeed, some sentences contain the expression *pro resto eius dotis* (for the rest of her dowry).

Widows actually received a portion of their husbands' patrimony—for example, the children of an apothecary received, from their deceased mother's dowry, a large amount of medicines and medical substances; and the widow of a haberdasher received a large amount of haberdashery.⁵⁹ Court records confirm the transfer of immovable goods to widows: a comparison between the dowries declared in the demands for restitution and the sentences of the Giudici del Proprio confirms that women received movable goods at their marriage, but when they were widows, they received immovable goods at the restitution of those same dowries. In 1592, for example, the dowries declared by widows to the Giudici del Proprio were composed of 93 percent movable goods, but the goods that the widows received as restitution were 87 percent immovable.⁶⁰

TRANSMISSION OF GOODS AND RESPONSIBILITIES IN THE LAST WILLS OF LOWER- AND MIDDLE-CLASS MEN AND WOMEN

Rules on inheritance and civil court records give us an institutional point of view on family and the transmission of goods and responsibilities. Last wills and testaments show us how people dealt with rules, how they reproduced and respected them, and how the medieval statutes were adapted to sixteenth-century practices.⁶¹ In fact, both women and men made several wills over their lifetimes, such as before they left on a long trip (especially by sea) and during pregnancies (mostly women, but sometimes men during their wives' pregnancies).

It was the fathers' responsibility to dower their daughters, which is what they did in their wills, leaving what was left to their sons. But it was sometimes impossible to dower all of them, and some fathers chose which of their young daughters would marry and which would become nuns. The son of a doctor who had five daughters, aged one to twenty years, wrote in his will that the first was to be married, the second was to become a nun, the third was to be married, and so on.⁶² Without an explicit will like this, all the daughters could have expected to be dowered and married, and the statutes would have protected their right to receive a dowry from their father.

Women of bourgeois families often had rich dowries, which were very important not only as status symbols but also as a means to help their sons' careers, finance their studies, and contribute to their daughters' dowries. In their last wills, mothers from these social groups organized their sons' educations and always left hundreds of ducats for their daughters'

dowries. Thus, along with fathers, mothers participated in their daughters' endowment.⁶³

Craftsmen who had only daughters often left them their workshops—and shopkeepers, their shops—but these choices were more complicated for richer merchants, who might have a mercantile company trading from the Mediterranean to the northern seas, of which neither daughters nor wives could take control. In these cases, daughters were dowered, and their uncles (their fathers' brothers) inherited the rest.⁶⁴ In some cases, however, merchants tried to insert their illegitimate sons into the family company, imposing them on their brothers, or even tried to re-create a family, adopting relatives or illegitimate children to form a new *fraterna*.⁶⁵ The purpose of the *fraterna*—the family company formed by the men of the family (brothers to be sure, but also fathers and sons, uncles and nephews)—was the guarantee of transmission and continuity.⁶⁶

Strictly speaking, women had nothing to do with the *fraterna*, but their dowries could be extremely important, as they were incorporated into the *fraterna's* capital. In his last will, merchant Alberto Grifalconi declared that his *fraterna's* capital was 44,947 ducats, including his wife's dowry (3,000 ducats).⁶⁷ When a dowry was part of the capital of a family's company, it could be difficult to get it back for a widow, and if there were no children, wives were supposed to leave it to their husbands or, when they were widows, to their brothers-in-law.⁶⁸

Nevertheless, a mother's dowry was usually a very important contribution to her daughter's dowry, as women could bequeath their dowries even during their marriage.⁶⁹ Thus, the fact that dowries were part of mercantile companies' capital can partially explain why some merchants' wives wrote in their last wills that they wanted to give their daughters the choice between marriage and the nunnery: "they will do what they want to do," wrote the wife of a coal and wood merchant.⁷⁰ Taking a dowry from a *fraterna's* capital could be difficult—even to pay daughters' dowries—after the mother's death.

Husband and wife did not inherit from each other in Venetian law, but in artisan families, dowries were invested in the workshop, in which husband and wife often worked together. In their marriage contracts, craftsmen often promised their wives a "counterdowry"—an amount of money for their widowhood. To be sure that their husbands did not have to return their dowry to their families, wives had to leave it to them in their wills, especially if they did not have children to inherit.⁷¹ Some women refused to leave anything to their husbands, whether to punish them for their infidelity, because they had debts with them, or simply out of ingratitude, but the majority of women without children chose to leave their dowry to their husband rather than to their family.⁷² We cannot say whether these decisions were made by free will or force, but we do know that some women left their husband's house to dictate their will. For example, the widow of

a furrier, already remarried, went to her brother's house to make her will. She wanted to leave three hundred ducats of her dowry to her son by her first marriage. She asked the notary to write in the last lines of her will: "If my husband, or someone else, forced me to make another testament, it would be valid only if I write three times 'Jesus Maria, Jesus Maria, Jesus Maria' in it."⁷³

Wives of merchants or professionals (lawyers, doctors) without children of their own did not usually make a will; consequently, after their death, the dowry went back to their families. On the other hand, many of these wives made a will not only when they had children but also during their pregnancy—an extremely dangerous time for a woman: "[women are] victims of many accidents, because of the fragility of their sex," wrote Ramberta Ramberti, a lawyer's wife, in her last will.⁷⁴ Pregnant women made a will to ensure that if their children died before them, the dowry would not be inherited by their husbands (who were, of course, the heirs of their children) but would go back to their families.

In these social groups, one does not find the kind of economic solidarity between husbands and wives that is in some way typical of artisan families, whose women, as noted previously, left their dowries to their husbands. Daughters' marriages were a large family investment that had to be recovered, and of course wives and husbands did not work together.

So how did the wives of professionals share their wealth? When they wrote wills during their first pregnancy, they shared their goods equally among their unborn children. Afterwards, women's wills, exactly like men's wills, adapted to the life-cycle stages. What's more, the principle of *exclusio propter dotem* (the exclusion of dowered daughters from further inheritance) appeared in women's wills.

The last wills of men and women show us how some fundamental concepts affirmed by Venetian law, such as the right of daughters to a dowry or the separation of property between husband and wife, were perceived and adapted by actors in the organization of their succession. They show us also that some ancient structures of Venetian society and the Venetian economy, like the *fraterna*, still existed and conditioned the behaviors and destiny of family members—even those who did not take part in it, such as wives and daughters. The law gave Venetian women specific property rights that must be considered over their life cycle: if the law afforded a girl less chances than her brothers to inherit immovable goods, a widow had many chances to become the owner of real estate. The law's protection of women's rights also had a political significance if we consider it as an aspect of the organization of reciprocity in marriage exchange. Reciprocity is certainly one of the fundamentals of marriage respected by all European nobility, but in a republican system, whose economy was founded on the society of "brothers" (*fraterne*), it has special meaning. Even in past societies, women's rights must be situated in their political context.

NOTES

1. Frederic C. Lane, "Family Partnerships and Joint Ventures," *Journal of Economic History* 4 (1994): 178–196.
2. Lane, "The Enlargement of the Great Council of Venice," in *Florilegium Historiale: Essays Presented to Wallace K. Ferguson*, ed. J. G. Rowe and W. H. Stockdale (Toronto, 1971), 236–274; Stanley Chojnacki, "La formazione della nobiltà dopo la Serrata," in *Storia di Venezia dalle origini alla caduta della Serenissima*, vol. 3, *La formazione dello Stato patrizio*, ed. Giacomo Arnaldi, Giorgio Cracco, and Alberto Tenenti (Rome, 1997), 641–725.
3. Andrea Padovani, "La politica del diritto," in *Storia di Venezia dalle origini alla caduta della Serenissima*, vol. 2, *L'età del Comune*, ed. Giorgio Cracco and Gherardo Ortalli (Rome, 1995), 303–329.
4. Gaetano Cozzi, *Repubblica di Venezia e stati italiani: Politica e giustizia dal secolo XVI al secolo XVIII* (Turin, 1982); Victor Crescenzi, "Il diritto civile," in Cracco and Ortalli, *L'età del Comune*, 409–474.
5. Florence, which maintained the Lombard tradition of the *mundwaldus*, is an example. See Thomas Kuehn, *Law, Family and Women: Toward a Legal Anthropology of Renaissance Italy* (Chicago, 1991).
6. Roberto Cessi, ed., *Gli Statuti veneziani di Jacopo Tiepolo del 1242 e le loro glosse* (Venice, 1938); *Novissimum Statutorum ac Venetarum Legum Volumen* [hereafter NSVLV] (Venice, 1729).
7. NSVLV, fol. 129v: "Si foemina masculo uno gradu praecedet, uterque aequaliter ad successionem admittantur. Consul. XV. Consultum Major. Cons. 1352.25.Novembr."
8. Isabelle Chabot, "Richesse des femmes et parenté dans l'Italie de la Renaissance: Une relecture," in *La famille, les femmes et le quotidien (XIVe–XVIIIe siècle): Textes offerts à Christiane Klapisch-Zuber*, ed. Isabelle Chabot, Jérôme Hayez, and Didier Lett (Paris, 2006), 263–290; Chabot, "Notes sur le système successoral florentin (XIVe–XVIIIe siècles)," in "Femmes, dots et patrimoines," ed. Angela Groppi and Gabrielle Houbre, special issue, *Clio: Histoire, femmes et sociétés* 7 (1998): 51–72; Renata Ago, "Universel/particulier: femmes et droits de propriété (Rome, XVIIe siècle)," in Groppi and Houbre, *Clio*, 101–16; Ago, "Ruoli familiari e statuto giuridico," *Quaderni Storici* 88 (1995): 111–133.
9. Martha C. Howell, *The Marriage Exchange: Property, Social Place, and Gender in Cities of the Low Countries, 1300–1500* (Chicago, 1998); Jacqueline Musset, *Le régime des biens entre époux en droit normand, du XVIe siècle à la Révolution* (Caen, 1997).
10. Archivio di Stato di Venezia [hereafter ASV], Compilazione Leggi, busta (b.) 186, Dote, fol. 322v: "Si controverte bene spesso nel foro quello cada sotto nome di mobili, cioè: se le possessioni di fuori, se gl'inviamenti et quali, se le biade grezze e separate, o se solo i crediti e denari contadi, se i semoventi, se i livelli affrancabili e se i perpetui."
11. Cessi, *Statuti*, 207: Liber Quartus, cap. 27: "Successiones autem mulierum morientium ab intestato eodem modo procedant, ut de viris superius dictum est, tamen quod tam masculis quam feminis, virginibus, maritatis et viduis omnium mobilium et immobilium equalis successio deferatur."
12. *Ibid.*, 203: Liber Quartus, cap. 24: "Si vero defunctus reliquit filium et filiam, unum et unam vel plures, volumus quod, si filia non fuit nec est uxorata, in bonis mobilibus patris succedat cum filio defuncti et nihil habeat de immobilibus, si mobilia sibi sufficiunt ad talem dotem, cum qua possit congrue uxori."
13. *Ibid.*, 205: Liber Quartus, cap. 25: "Sed si defunctus reliquit tantum filias, et earum quedam habent vel habuerunt viros, quedam nec habent nec

- habuerunt, volumus quod ille, que habent vel habuerunt viros, insimul succedant cum aliis iam dictis, ita tamen quod ille, que sunt vel fuerunt uxorate, tanto minus percipiant in parte sua, quantum fuerint dotes earum.”
14. *Ibid.*, 70: Liber Primus, cap. 39: “Si mulier in potestate viri sui aliquam caritatem fecerit contra repromissam suam, nihil valeat.”
 15. François Bougard, Laurent Feller, and Régine Le Jan, eds., *Dots et douaires dans le Haut Moyen Âge* (Rome, 2002), 295, especially L. Feller, “Morgengabe, dot, tertia: rapport introductif,” 1–25, and F. Bougard, “Dot et douaire en Italie centro-septentrionale, VIIIe–XIe siècle: Un parcours documentaire,” 57–95.
 16. Pierre Legendre, *Le dossier occidental de la parenté: Textes juridiques indésirables sur la généalogie*, trans. and ed. A. Schütz, M. Smith, and Y. Thomas (Paris, 1988).
 17. Cessi, *Statuti*, 89: Liber Primus, cap. 61: “Quod pro repromissis mulierum possessiones coniuncte et utiliores pro mulieribus appetentur. . . . Primo tamen appetentur possessiones de foris, ut in alio capitulo habemus. De foris. Id est possessiones in quibus vir vel socer non habitat. De hoc tamen dictum est infra, li. III, c. Mulier habens (c. 39).”
 18. On dowry inflation in Venice, see Chojnacki, *Women and Men in Renaissance Venice: Twelve Essays on Patrician Society* (Baltimore, 2000); Anna Bellavitis, *Identité, mariage, mobilité sociale: Citoyennes et citoyens à Venise au XVIe siècle* (Rome, 2001).
 19. ASV, Giudici del Proprio, Parentele, registro (reg.) 12, 1592–94; Successioni, reg. 9, 1592–95. Between 1592 and 1595, Giudici del Proprio granted 331 women and 443 men the right to inherit from 246 female and 194 male relatives who had died intestate.
 20. This is not stated in the *Statuti* but in treatises on practice in civil courts. See Filippo Argelati, *Pratica del foro veneto* (Venice, 1737).
 21. Gigliola Di Renzo Villata, “Tutela,” in *Enciclopedia del diritto* (Milan, 1992), 45: 305–360.
 22. On Florence, see Caroline Fisher, “Guardianship, the Family and the Rise of the Renaissance Florentine State, 1368–1393,” in *Famiglie e poteri in Italia tra medioevo ed età moderna*, ed. Anna Bellavitis and Isabelle Chabot (Rome, forthcoming).
 23. See Reinhold Mueller, “The Procurators of San Marco in the Thirteenth and the Fourteenth Centuries: A Study of the Office as a Financial and Trust Institution,” *Studi Veneziani* 13 (1971): 105–220.
 24. See Yan Thomas, “La division des sexes en droit romain,” in *Histoire des femmes: I. L’Antiquité*, ed. Georges Duby, Michelle Perrot, and Pauline Schmitt Pantel (Paris, 1990), 103–156.
 25. Richard P. Saller, “Strategie romane per l’eredità: teoria e prassi,” in *La famiglia in Italia dall’antichità al XX secolo*, ed. David I. Kertzer and Richard P. Saller (Florence, 1995), 35–58.
 26. See Giulia Calvi, *Il contratto morale: Madri e figli nella Toscana moderna* (Rome, 1994).
 27. See Marco Ferro, *Dizionario del diritto comune e veneto* (Venice, 1779).
 28. For a comparison with other European situations, see *Société Jean Bodin pour l’histoire comparative des institutions, L’enfant: Europe médiévale et moderne* (Brussels, 1976); Ann Ighe, “Replacing the Father—Representing the Child: A Few Notes on the European History of Guardianship,” in *Less Favoured—More Favoured: Proceedings from a Conference on Gender in European Legal History, 12th–19th Centuries, September 2004*, ed. Grethe Jacobsen, Helle Vogt, Inger Dubeck, and Heide Wunder (Copenhagen, 2005, online publication).

29. Ferro, *Dizionario*. Further research in the archives of the Giudici del Mobile will tell us if this law was applied.
30. ASV, Giudici di Petizion, Terminazioni, reg. 75. Of the remaining cases of guardianship, six went to brothers, one to a sister, two to paternal grandfathers, one to a maternal grandfather, and six to people not belonging to the family.
31. ASV, Giudici di Petizion, Terminazioni, reg. 119. Of the remaining cases of guardianship, eleven went to brothers, three to sisters, three to cousins, two to fathers-in-law, six to people not belonging to the family, eleven to maternal relatives (two to uncles, two to aunts, two to grandmothers, and one to a grandfather), and eight to paternal relatives, apart from the uncles (two to aunts, four to grandmothers, and two to grandfathers).
32. ASV, Giudici di Petizion, Terminazioni, reg. 119, August 17, 1592.
33. ASV, Giudici di Petizion, Terminazioni, reg. 119, May 17, 1591.
34. ASV, Giudici di Petizion, Terminazioni, reg. 119, May 18, 1591.
35. ASV, Giudici di Petizion, Terminazioni, reg. 119, May 5, 1591.
36. See Sarah Hanley, "Engendering the State: Family Formation and State Building in Early Modern France," *French Historical Studies* 16 (1989): 4–27; Amy Louise Erickson, *Women and Property in Early Modern England* (New York, 1993); on adolescence in Venice, see Chojnacki, "Measuring Adulthood: Adolescence and Gender," in Chojnacki, *Women and Men*, 185–205; on life stages, see Silvana Seidel Menchi, "La fanciulla e la clessidra: Note sulla periodizzazione della vita femminile nelle società preindustriali," in *Tempi e spazi di vita femminile tra medioevo ed età moderna*, ed. Silvana Seidel Menchi, Anne Jacobson Schutte, and Thomas Kuehn (Bologna, 1999), 105–154; Angiolina Arru, ed., *La costruzione dell'identità maschile nell'età moderna e contemporanea* (Rome, 2001); on emancipations, see Kuehn, *Emancipation in Late Medieval Florence* (New Brunswick, 1982); Sandra Cavallo, "Le emancipazioni: una fonte per lo studio dei rapporti intergenerazionali?" in Bellavitis and Chabot, *Famiglie e poteri*.
37. ASV, Giudici di Petizion, Terminazioni, reg. 119.
38. Bellavitis, *Identité*, 171. For similar data on southern Italy, see Gérard Delille, *Famille et propriété dans le Royaume de Naples (XVe–XXe siècle)* (Rome, 1985); for Aix-en-Provence, see Claire Dolan, *La famille, le notaire et la ville à Aix-en-Provence, durant la seconde moitié du XVIe siècle* (Toulouse, 1998).
39. Chojnacki, *Women and Men*, 186–188.
40. Bellavitis, "Apprentissages masculins, apprentissages féminins à Venise au XVIe siècle," *Histoire Urbaine* 15 (2006): 49–73.
41. See Bellavitis, *Identité*; Bellavitis and Chabot, "People and Property in Florence and Venice," in *The Renaissance at Home: Art and Life in the Italian House, 1400–1600*, ed. Marta Ajmar and Flora Dennis (London, 2006), 76–85. See also Jean-François Chauvard, *La circulation des biens à Venise: Stratégies patrimoniales et marché immobilier (1600–1750)* (Rome, 2005), 323.
42. ASV, Notarile Testamenti (NT), b. 165, n. 678, January 20, 1586.
43. Chojnacki, *Women and Men*, 98; see also Linda Guzzetti, "Dowries in Fourteenth-Century Venice," *Renaissance Studies* 16 (2002): 430–473.
44. Cessi, *Statuti*, 89: Liber Primus, cap. 60. "Quantum tempus mulier post viri decessum debeat vivere de bonis vir sui. LX. Cum secundum consuetudinem approbatam mulier annum et diem post decessum viri de bonis mariti vivere possit, ut inde questio non oriatur, determinantes dicimus quod, quandoquaque infra annum et diem mulier fecerit iudicatum de sua repromissa, ab inde in antea non debeat vivere de bonis viri, tamen remaneat in domo,

- quousque solutionem plenariam receperit de sua dote. Verum, si soluta fuerit de sua repromissa sine iudicatu infra annum et diem, similiter ab inde non vivat de bonis viri, salvo eo quod mulier habere et gaudere debeat omnia, que sibi relicta fuerint a viro suo.”
45. NSVLV, fol. 89: Liber Sextus. Cap. 17: “Quod uxor defuncti exeat de domo, praesentata sibi dote et dimissoria infra duos menses et ad id compellatur per Iudices Proprii, vel alios deputatos. . . . Et si mulier forte de domo viri sui exire noluerit, Iudices Proprii, seu alii Iudices, ad quos spectaret, possint imponere poenam, et poenas, sicut eis videbitur et servetur, sicut superius est expressum.” Book Six of the *Statuti* was added in the fourteenth century; this chapter was added during Francesco Dandolo’s *dogado*, in 1343.
 46. Chojnacki, *Women and Men*, 98.
 47. The whole procedure is well explained in Guzzetti, “Dowries.”
 48. ASV, Giudici del Proprio, Vadimonia, reg. 36 (1553–54) and 86 (1592–93).
 49. ASV, Giudici del Proprio, Vadimonia, reg. 36, August 13, 1553.
 50. NSVLV, fol. 149.
 51. ASV, Giudici del Proprio, Vadimonia, reg. 36, August 13, 1553.
 52. ASV, Giudici del Proprio, Vadimonia, reg. 36, September 28, 1553.
 53. For 153 *vadimonia* between 1592 and 1593, twenty-five were by patrician women and in seven of them, the dowries exceeded the limit of 6,000 ducats fixed by 1575 sumptuary law. All the other dowries were less than 6,000 ducats, with ninety of them less than 1,000 ducats.
 54. ASV, Giudici del Proprio, Dejudicatum, reg. 86, February 20, 1592: “Dijudicatus nobilis dominae Paulinae De Ponte relictae quondam clarissimi Gabrielis Cornelio quondam clarissimi domini Hieronymi completus et roboratus manu domini Galeatii Sicho doctoris aulae serenissimi principis cancellarii, sub die 17 januarii nuper elapsi quem fieri fecit dominus dux cum suis iudicibus eidem nobilis dominae Paulinae postquam comprobavit de sua dote et repromissa ut constat eius vadimonio in presenti officio elevato sub die 5 decembris 1589. Et debet accipere de bonis omnibus mobilibus et stabilibus predicti quondam clarissimi domini Gabrielis olim eius viri quantum sunt ducatos 7693 et quantum sunt soldos 12 ad grosso pro eius veste viduale.” On the sumptuary law, see ASV, Senato Terra, reg. 50, fols. 164–166v, July 28, 1575.
 55. Of 121 sentences between 1592 and 1593, twenty-one were returned in the week following the petition, twenty in one month, twenty-five in two months, thirteen in six months, five in a year, sixteen in two years, six in five years, seven in ten years, five in twenty years, and three after more than twenty years. See ASV, Giudici del Proprio, Vadimonia, reg. 86, Dejudicatum, reg. 86.
 56. See Bellavitis, *Identité*; Chojnacki, *Women and Men*; Chabot, “Ricchezza femminile e parentela nel Rinascimento: Riflessioni intorno ai contesti veneziani e fiorentini,” *Quaderni Storici* 118 (2005): 203–229.
 57. Bellavitis, “‘Et vedoando sia donna et madonna’: Guardianship and Remarriage in Early Modern Venice,” in Jacobsen, Vogt, Dubeck, and Wunder, *Less Favoured—More Favoured*.
 58. ASV, Giudici del Proprio, Vadimonia, reg. 86, July 4 and 16, 1592; August 27, 1592; Dejudicatum, reg. 86, September 5 and 12, 1592.
 59. ASV, Giudici del Proprio, Mobili, reg. 86, fol. 37, July 10, 1592; fols. 43–46, July 27, 1592.
 60. These consisted of 55,000 ducats of immovable goods in Venice and 95,000 ducats of immovable goods outside Venice, but according to the sentences, only 22,000 ducats of movable goods were to be returned to Venetian widows or their heirs as restitution of dowry. In the same year, widows or their heirs had proved dowry amounts for 280,405 ducats of movables, but only 4,915 ducats of immovable goods in Venice and 9,680 ducats of immovable goods

- outside Venice. See ASV, Giudici del Proprio, Mobili, reg. 86–87; Minutarum, reg. 26; De foris, reg. 27–28; Vadimonia, reg. 86; Dejudicatum, reg. 86.
61. In the following paragraphs I summarize some conclusions of my research on 850 sixteenth-century last wills of middle- and lower-class Venetian men and women. See Bellavitis, *Famille, genre, transmission à Venise au XVIe siècle* (Rome, 2008).
 62. ASV, NT, b. 782, n. 745, October 9, 1567. See Francesca Medioli, ed., *L'inferno monacale di Arcangela Tarabotti* (Turin, 1990); Jutta Gisela Sperling, *Convents and the Body Politics in Late Renaissance Venice* (Chicago, 1999).
 63. See Chojnacki, *Women and Men*; Chabot, “Ricchezze femminili.”
 64. See the last will of Malvasian wine merchant Crisostomo de Pattis, who had four daughters: ASV, NT, b. 1102, n. 80, October 23, 1538.
 65. See the wills of the merchant Giacomo Dalla Valle (ASV, NT, b. 1259, n. 584, 1574, November 4) and the merchant Gerolamo Grifalconi (ASV, NT, b. 201, n. 179, 1524).
 66. See the example of the *fraterna* Bortolussi—Murano glassmakers—formed by seven brothers and their six sons, in Bellavitis, *Identité*, 269–273.
 67. ASV, NT, b. 201, n. 47, 1512.
 68. See the wills of the women in the Bortolussi family in Bellavitis, *Identité*, 269–273.
 69. See Bellavitis, *Identité*, 200–207.
 70. See the will of Paola Orio, ASV, NT, b. 196, n. 904, February 20, 1545.
 71. See Bellavitis, “Trasferimenti patrimoniali negli strati medi e inferiori della società veneziana,” paper presented at the conference “Il costo delle nozze. Der Preis das Heiraten,” organized by Silvana Seidel Menchi and Diego Quaglioni, Trent, October 3–5, 2002, Istituto Storico Italo-Germanico.
 72. See the wills of Marina (ASV, NT, b. 782, n. 712, May 29, 1569); Anzelica (ASV, NT, b. 782, n. 932, May 9, 1555); and Gratosia, a silk weaver (ASV, NT, b. 782, n. 903, August 17, 1549).
 73. ASV, NT, b. 393, n. 292, July 11, 1579.
 74. ASV, NT, b. 70, n. 199, October 15, 1559.

12 Jewish Women in Eighteenth-Century Modena

Individual, Household, and Collective Properties*

Federica Francesconi

On November 23, 1735, twenty-two wives and daughters of the most influential families in the Jewish society of Modena—the capital city of the Estense Duchy—met in the ghetto home of Miriam Rovigo for a specific purpose. They founded the Havurat So'ed Holim (Association to Benefit the Sick, hereafter abbreviated as SH), its aim being to “help and assist all sick women, rich and poor, in the ghetto,” in the spirit of the famous biblical verse “Thou shalt love thy neighbor as thyself” (Leviticus 19:18).¹ The founders drew up the first statutes, which, together with other documentation, are preserved today in the Archive of the Jewish Community of Modena. Although the existence of a Jewish female organization was not exactly a novelty in early modern Italy, SH is noteworthy as being the earliest in Europe, documented with a complete *pinkas* (register) from 1735 to 1943.²

During the first meeting, SH “sisters” organized the *havurah* with a precise female self-consciousness. They employed women over ten years of age as assistants, servants, administrators, and representatives, and involved them in their weekly and monthly meetings.³ Over the years, the women of SH invested money in credits and properties, using collective profits in a number of activities. They provided sick care and burials, as well as donations of food, wood, and money “for all of the poor families of the ghetto”—amounting to at least 370 needy people out of a total Jewish population of 1,220 (6% of the Modenese population) in the mid-eighteenth century. The life conditions of Modenese Jewish society were aggravated after 1737, when the Estense Duchy entered into the bloody Franco-Spanish War, which would afflict both Jews and Christians alike for decades.⁴

This chapter deals with the history of upper-middle-class Jewish women in eighteenth-century Modena, focusing on their strategies of social, economic, and cultural survival. It investigates how three women, who I think are representative of this group—Miriam Rovigo, Devora Formigini, and Anna Levi—administered their patrimony. I discuss issues such as property ownership, the strategic use of dowries, and female autonomy and agency within the community. I also explore how women raised and spent the money required for assistance; how SH grew wealthier through

independent investments, legacies, and donations; and how SH's income reflected a greater involvement of its members with the Jewish community.

My ultimate goal is to help recover Jewish women's identity in early modern Europe, as we are often in the dark about what went on within the walls of their houses. Recently J. H. Chajes, facing both a scarcity of direct sources and a relative lack of scholarly work on Jewish female mysticism, proposed to hear "voices long since silenced" and recovered many accounts of female mystics in the early modern age through possession narratives, hagiography, and ego-documents.⁵ By using a different typology of sources—the registers of SH, together with notarial wills and dowry acts, records of financial transactions, and correspondence between the Jewish community and the state—we can hear the silenced voices of women from the eighteenth-century Modenese ghetto.

ITALIAN JEWISH WOMEN IN THE HISTORIOGRAPHICAL CONTEXT

Looking at the European scenario, the highly gendered nature of traditional Jewish society and culture is a commonplace. Yet perusal of any standard survey reveals that the lives of Jewish men have been explicated in ramified detail, while Jewish women are mostly described in brief, stereotypical fashion.⁶ It has taken recent work to demonstrate that Jewish women had complex cultural identities and contoured religious roles that both paralleled and contrasted with those of men.⁷ Historians face an almost complete absence of sources regarding the culture and religious life of Jewish women in medieval and early modern Europe.⁸ For recent Italian historiography, the most fruitful subject for studying the condition of both Jewish and Christian women in early modern Italy is the dowry. Dowries have provided a gauge for assessing women's share of private property and wealth; their familial relationships; their adult vocations; and their status vis-à-vis legal institutions, public authority, and prevailing cultural principles.⁹

Recent studies have stressed the growing autonomy of Italian Jewish women from the early modern through the modern era (in contrast with the restrictions faced by Christian women since the thirteenth century) and emphasized the importance of the dowry as a tool to preserve family estates. We see Jewish women's dowries invested as the financial basis for family firms, women named as heirs and administrators of business, women as testators, and women as guardians of their minor children—even if widowed and remarried.¹⁰ From a historiographical point of view, the question that emerges is how to combine these studies, which are solidly founded on impressive documentation from Italian archives, with other scholars' emphasis on the patriarchally oppressive attitude of traditional Judaism toward women. In addition, Jewish marriage law needs to be seen in a dynamic rather than an essentialized or static view. Finally, the give-and-take of rabbinic debate

through the ages should be taken into account, as well as variations in local practice and significant gaps between halachic (based on Jewish law) theory and judicial practice.¹¹ The assumption of the diminished autonomy of Christian women, which was first connected to the decline of dowry rights during the early modern age, needs to be reformulated in light of more recent scholarship. In fact, studies on Christian societies in northern and central Italy have reached more articulated conclusions compared to those of the past, emphasizing adaptations in practice that attenuated or undermined outright the patriarchal structures of the dowry regime.¹² In this essay, an attempt is made to respond positively to all of these historiographical shifts.

WOMEN IN THE GHETTO OF MODENA

In Modena in the sixteenth century, Jewish women who inherited and freely disposed of property were considered unexceptional and unremarkable. Archival sources have confirmed the presence of women in social and business associations.¹³ Women were known to claim their own rights within spaces generally dominated by men—for example, during synagogue services, Modenese women loudly asked for vengeance for wrongs, abandonment, and unfavorable settlements.¹⁴ While women of the lower class remained active in the society as simple workers (many were pedlars) and in widowhood sometimes invested their own dowries,¹⁵ the upper-middle-class Jewish women of Modena progressively disappeared from public Jewish life during the seventeenth and eighteenth centuries. Although instrumental in forging important social and political alliances among the Italian Jewish merchant elite for the reallocation and transfer of estates, they remained otherwise silent. They did not take part in family business activity, and widows renounced their dowries in favor of their sons.¹⁶ This invisibility compounds the difficulty of the silence afflicting the history of the religious and spiritual life of medieval and early modern European Jewish women.

The history of SH women is deeply connected to the specific social patterns of the Modenese Jewish community, which autonomously cultivated its own religious and cultural identity over more than two centuries. Through business, estate transference, cultural and philanthropic activities, and international interfamilial alliances, a network of merchants—including Formiggini, Modena, Sacerdoti, Rovigo, Norsa, and Sanguinetti—developed an oligarchic and male-centered bourgeoisie. Despite ghettoization (since 1638), they developed a leading Italian-merchant trade society, consisting of book dealers, silversmiths, printers, and silk weavers, which averted cultural and commercial stasis in the weak administrations of the city and duchy.¹⁷

In the mid-eighteenth century, the Modenese ghetto could boast nine synagogues, a renowned yeshivah (a type of academy), two schools, and

twelve confraternities (one of which was SH).¹⁸ These confraternities were based on the two main models of the sixteenth century: those such as Rahamim (mercy) and SH, which had assistance as their purpose, and those such as Hazot Laila (eve of midnight), which focused on the study of religious texts, including kabbalistic literature.¹⁹ Though women were probably accepted into confraternities—such as Gemilut Hasadim (loving kindness)—in the early sixteenth century, they were already being shut out by the first decades of the seventeenth century.²⁰

MIRIAM ROVIGO AND THE HAVURAT SO'ED HOLIM

With the creation of SH, Modenese Jewish women made a fundamental stand and negotiated a high level of autonomy. Such independence was unknown to Italian Catholic consorceries, which were attached to male-centered institutions and stressed their members' role as spiritual and political subordinates.²¹ In the opening paragraphs of its inaugural statutes, the observance of religious obligations is stressed in an attempt to legitimize the establishment of an autonomous female-centered confraternity. For example, the role of the founder, Miriam Rovigo (c. 1700–1778), is highly emphasized as the “first inspiring and inspired [woman] who took the initiative to establish SH in her house with all of the other women aimed at performing the mitzvoth (the Jewish precepts).”²² She was the daughter of Lustro and the wife of Raffaele (also a Rovigo), whose leadership within the community was connected to both culture and commerce. Influential bankers and silk traders, they owned a number of buildings: banks, shops, apartments, a main house with a private synagogue in the ghetto, a lodge and a water spinning mill in the city, and villas and farms in the countryside near Modena.²³ Her uncle, Abraham ben Michael Rovigo (c. 1650–1713), the most famous Italian exponent of Sabbateanism and a prominent kabbalist, was the leader of a yeshivah and the Hazot Laila confraternity.²⁴ Miriam thus grew up in a well-to-do family with both the difficulties of the ghetto and elements of *vivre noblement* common among influential merchant families of the Sephardic Diaspora. The family quite often hosted dukes in their ghetto house or in their lodge in the city for luxurious lunches, but at the same time lived constricted in the insufferably small ghetto just like the poor Modenese Jews.²⁵ The reality of the ghetto democratized Jewish society in that it closed huge gaps in economic status through physical proximity.²⁶

Miriam appears to have been a strong-willed woman. After the death of her husband in 1754, she received her dowry back. She managed her own business transactions, and—like other upper-middle-class Jewish women—she did not remarry. Both her patrimony and her day-to-day life appear to have been strongly connected to her nuclear family (in particular, to her son Lazzaro).²⁷ On the other hand, her highly acculturated family and the fact that her house represented a pole of attraction for religious activities had

to influence her decision to establish SH. The connection of her family to the Shabbetai Tzevi movement, with its female prophetesses, must be taken into consideration as well.²⁸ From the start of SH until her departure from the city in 1778, the organization met in Miriam's house; thus, a space usually associated with male dominance and nocturnal rites and prayers was challenged by a female and daily presence.²⁹

During the first meeting of SH, Miriam was elected as the *cassiera* (treasurer). The members, or "sisters," of the confraternity were divided into three categories. The first group included ten founders, who put up the necessary sum of money (64 lire) and composed the *va'ad* (board). The duties of this group consisted of organizing assistance, collecting money and bed linens, and taking care of corpses; two members of this group were chosen each month by sort as *massare pro-tempore*, or *parnashot* (chiefs).³⁰ Daytime assistance to sick women was performed by sisters who received this office by lot, while nighttime assistance was performed by twelve appointed and salaried servants. The nine women who took care of bodies and funerary expenses (free, since 1750, in the case of poor women)³¹ were on the payroll as well, and starting in 1747, they had apprentices.³² The second group of SH was composed of seven founders who preferred not to hold the office of *parnashot*; this category grew larger over the years, and promotion into the *va'ad* became a privilege. The third group was composed of only four women—among them Devora Formiggini—who joined the confraternity at its inception, but did not contribute money and declined participation in particular duties. All of the members were required to pay thirty bolognini per month. Among the first officials were two male nonmembers: a *custode* (keeper), Prospero Lonzana, who worked as an unpaid volunteer and functioned essentially as guardian or overseer, and a *sofer* (scribe), Leone Moisè Usiglio, who was also an unpaid volunteer.³³ After 1765, other men were employed for the care of corpses.³⁴

Although clearly derived from the organizational models of men, SH constituted a new development in the western European Jewish world in that upper-middle-class women organized themselves to carry out the traditional work of *tzedakah* (charity) both through their own hands and through the paid employment of others.³⁵ At the same time, their autonomy and initiative do not negate the oligarchic and paternalistic social background that came into play. The criteria of admission demonstrate the complexity of the scenario. Daughters and sisters of former members did not receive special privileges, unlike daughters-in-law;³⁶ those women who protested against this policy, such as Ricca Sanguinetti in 1778, were unheard.³⁷

COLLECTIVE PROPERTIES: INVESTMENTS AND EXPENSES

Good investments and collective income were central interests of SH. The statutes of 1735 explicitly emphasized that the treasurer, after having acquired the necessary furniture and linens, would invest the capital of

the confraternity. In the first year, that investment totaled 288 lire along with a lot of furniture. The male guardian was not allowed “to take any initiative, in particular, economic, without the permission of the two *par-nashot pro-tempore*.”³⁸ Every decision and proposal required the majority of an anonymous vote. Interestingly, in 1751 the sisters of the confraternity solicited the community of Modena for two men to oversee on financial matters; the community, “considering that the havurat So’ed Holim [had] become a subject of remarkable importance,” proposed to appoint Benedetto Giuseppe Vita Levi and Angelo Vita Norsa—respectively an important silversmith and a silk entrepreneur—whom SH’s women confirmed by vote. The same day, “considering the financial crisis of the community,” the women of SH agreed, at the request of the Modena communal leaders, to donate three hundred lire for the general benefit of the ghetto’s society.³⁹ It is not clear whether the request for the two supervisors originated with SH or came from without; certainly Levi and Norsa became prominent in SH affairs, partnering with Miriam and representing SH in matters of legal credit, property, donation, and social and religious standing before both Jewish and Christian authorities.⁴⁰

The success of SH came from three sources of income. Initial membership and monthly dues provided for ordinary expenses. Donations, the second source, augmented this income, and came as offerings in the *bussole* (offering boxes). Investments in credits and loans provided the third source of income. Confraternal expenses were similarly divided in three directions: ordinary assistance of sick women, ordinary benefits, and annual donations. The register—a report sent from the Jewish community to the municipality in 1798—and notarial documents (wills, dowries, and financial transactions) show the income and expenses of SH; account books, notably, were not preserved.⁴¹

Credits and loans appear to have been the more interesting and substantial sources of income, which greatly contributed to the expanding status of SH’s finances. Archival sources reveal that SH, as well as the other Modenese confraternities, used their institutions for investing money. In 1762, for example, Miriam Rovigo leased her spinning mill to SH for a sum of 15,500 lire plus annual payments of 380 lire, under the form of a *mascantà* (a traditional arrangement for rent in Jewish law), for seven years. The mill came equipped with a house for the master-chief and all its “tools and instruments.” It employed six workers and was directed by the Jewish banker and entrepreneur Emanuele Sacerdoti.⁴² SH paid for the mill by using another credit that Miriam had obtained through a similar agreement with the *Aron e Figli Sanguinetti* firm for a vast property in Monte Estenso, near Modena⁴³—an arrangement that demonstrates the intricacies that were taking place between individual and collective properties. Similarly, in 1763, Miriam drew up an agreement with the brotherhood Mismeret haKodesh (watch of the month) for an eight-year lease on an apartment and its accompanying appurtenances, which brought

her 4,000 lire.⁴⁴ In the same year, SH was paid 3,210 lire for a credit on another landed property, located in Spilamberto, near Modena.⁴⁵ Under such arrangements, Miriam and the confraternity earned significant income without the burdens of money collection and administration. The real estate was also a security for the loans, which constituted the chief financial investments of confraternities.

SO'ED HOLIM AND THE DOWRY

That Jewish men and women and their confraternal institutions were allowed to own real estate is quite remarkable in the context of early modern western Europe.⁴⁶ In the framework of the ambiguous politics of the Estensi ruling family, commercial activities of Modenese Jews were encouraged and sustained through monopolies, but both their real estate and commercial activities had to be scarcely visible so as not to interfere with the precarious balance in the civic society. Dowries of Jewish women played a critical role in this system.⁴⁷

Dowering brides was a philanthropic activity extremely common within both Christian and Jewish societies, where a number of confraternities devoted solely to the dowering of brides can be found.⁴⁸ Since 1742, good economic resources allowed SH to establish a fund for providing poor girls with an annual dowry of 10 scudi,⁴⁹ and in 1763, that sum was doubled.⁵⁰ Applications for dowries were received from the families of needy girls. At the beginning, no preferential criteria were applied (neither family ties nor ethnicity, as was common elsewhere), and if there were two or more applicants, they shared the sum. After 1763, the number of recipients was limited to two, who were chosen by lot.⁵¹ Then in 1769, preference was given to young women whose fathers or mothers worked for SH. At the same time, the paying positions in SH became de facto hereditary.⁵² What was happening, therefore, was a precise rechanneling of Jewish charitable activity into the confraternity itself, plus a cultivation of intimate bonds among its members, spanning the social strata of the ghetto.⁵³

The institution of the dowry is only one example of the progressive economic success of SH. Its growing wealth is evidenced by the expansion of its charitable activities: after 1738, every sick woman in the ghetto received the monthly sum of thirty bolognini and wood for her fireplace during the winter;⁵⁴ after 1742, SH provided shrouds for women as well as men;⁵⁵ after 1756, SH donated bread and one bolognino to all the poor of the ghetto, both women and men,⁵⁶ and in 1775, that sum was doubled.⁵⁷ Special ceremonies accompanied each of these donations. The dowry donation was celebrated in conjunction with Rosh Hodesh (the new moon) of the Hebrew month of Tevet, a day of special significance to women—and thus the general assembly of SH—on which they avoided heavy work, thus “emphasiz[ing] the sanctity of this *havurah*.”⁵⁸

THE DOWRIES, INDIVIDUAL OWNERSHIP,
AND HOUSEHOLD PROPERTIES OF
MIRIAM, DEVORA, AND ANNA

Miriam's spinning mill was a component of her dotal patrimony and a symbol of the Rovigos' mercantile success, since it had been in the family's possession since the mid-seventeenth century.⁵⁹ In 1754, when her sons, Lazzaro and Leone, decided to divide their properties, she received her dotal and extradotal patrimony, which consisted of three villas near Modena, a flat in the ghetto, and the spinning mill in the center of Modena; this real estate, together with livestock, facilities, machinery, seed, and credits, totaled 213,460 lire. The activities of the Rovigos included real estate, livestock, stamped leather, and a tannery in Modena, which was run on a sublease with another Modenese Jew, Abram Forti. Miriam committed herself to providing the 50,000 lire dowry for her young daughter, Sara, who married a member of the Sanguinetti family (her other daughter, Bonaventura, had already married with the same dowry).⁶⁰ In 1758, Miriam, to show "her passionate and maternal love" for her sons, donated to them her portion of wealth in the family synagogue, silver ritual objects totaling 603 ounces, and furniture.⁶¹ This donation, like others, reached beyond economic considerations and symbolized Rovigo family unity and pride within the oligarchic Modenese Jewish society.

Family continuity could be broken by death, by litigation, or more traumatically by conversion. The latter case happened to Miriam and her family twice, with devastating consequences. In 1765, her brother Isacco converted to Christianity after a period of economic difficulties.⁶² Generally in these cases Jews liquidated the convert from their own patrimony as soon as possible, even though legal transactions could be complicated;⁶³ in this case, the family quickly separated Isacco from the family estate with a payment of 36,000 lire.⁶⁴ Three years later, in December 1768, Miriam had to face the conversion of her son Leone, who decided to convert after the baptism of his wife, Eugenia, and his consequent impoverishment due to the loss of her dowry.⁶⁵

According to notarial documents, Leone, afraid of the reaction of Miriam, who "could not treat him with both equality and parity[,] and afraid that she and his older and widowed sister, Bonaventura, would decide to disinherit him," asked for and obtained, thanks to the intercession of both the duke and the *Opera Pia dei Catecumeni*, his inheritance immediately before the conversion.⁶⁶ Liquidating Leone from the family patrimony was extremely expensive for the Rovigos; in fact, in June 1769, Miriam and Lazzaro had to sell two properties in San Prospero (part of Miriam's dowry) to Giacinto Solieri, their Christian land agent.⁶⁷

In the same year, Miriam resigned her office as the treasurer of SH,⁶⁸ although she maintained contact and was often consulted in matters of organization; her daughter Sara undertook some of her duties. In 1778 she

left Modena, but died suddenly the same year. Her daughter-in-law Vital Paris, wife of Lazzaro, joined the board in 1785.⁶⁹

In a time of diminished public activity for upper-middle-class Jewish women, Miriam Rovigo was able to give them a new voice, carrying out an internal negotiation and renegotiation of the female sphere without subverting the existing social and halachic structures. Miriam's agency was characterized by work that included a wide spectrum of activities, from the assistance of the sick to the administration of agricultural properties. Moreover, the extent of her ownership concerned only her individual property, managed in a way that influenced both her household and the collective sphere of SH.

Remarkably, the life of Leone, the neophyte son of Miriam, was strongly influenced by the use or virtual use to which his mother, his wife, and his sister put their dowries. Modenese Jews enjoyed the benefits of *ius commune* (common law based on medieval Roman law), which guaranteed women the inviolability of their dowry, like Jews in Rome or Turin. The dowry was a property subject to a *fidei-commisum*, through which the property of the family was held legally immune from the claims of creditors.⁷⁰ Estensi jurisprudence as well as the Halakhah established that only creditors to whom money or goods were owed before the dowry and constituted by a legal notarial act had a prior claim on an estate. A father could not bypass his preexisting debts, for example, by stipulating a dowry in his will. But when a dowry did exist, especially dowries of women who were already married, debts and creditors came strictly second.⁷¹ To what extent is the case of the Rovigos paradigmatic for the whole of eighteenth-century upper-middle-class ghetto society? The vicissitudes of Devora Formiggini and Anna Levi contribute to our understanding of the real impact of women's use of dowry and its significance for the political, economic, and social strategies of their kin.

Devora Levi Formiggini (1693–post-1777) appears as a perfect example of the scenario of decreased female autonomy previously described. The stages of her life as a daughter, wife, and widow were clearly characterized by renunciations of ownership. When SH was established in 1735, she had already been married to Laudadio Formiggini (1690–1766) for seventeen years; significantly, she joined the sisterhood at its inception but declined participation in any specific duty. Therefore, as daughter and wife of the affluent silversmiths Benedetto Vita Levi and Laudadio Formiggini, her lifestyle was exceptional. Apparently Devora and Miriam Rovigo had much in common. *Casa* (household) Formiggini had a private synagogue and a yeshivah, where the confraternity Kove'e Ittim (those who establish the times [for the study of the Torah]) used to meet. The Formigginis reached the highest level of Modenese Jewish society in terms of wealth and community leadership thanks to Laudadio, who expanded the family's patrimony and commercial activities by using arranged marriages to exploit and reinforce existing bonds and to extend business ties.⁷²

Devora's first renunciation was in 1718 and was connected to her marriage contract. Represented by Moisè Vita Castalbolognese—a sort of *mundualdus* (male guardian)—and in the presence of her mother, Miriam Uzzielli, because she was a minor, she declared: “considering both the number of [my] brothers and sisters and the goods of [my] father and mother, not obliged because of *timore, lusinga e verun'altro rispetto*”; that is, she wanted to give up her rights on her paternal and maternal patrimonies because of her dowry (7,500 lire). According to the notarial document, Benedetto Vita Levi immediately paid out the dowry amount; meanwhile, Laudadio Formiggini and his brother Moisé guaranteed the restitution of it and contributed 10 percent of the entire dowry through a *donatio inter vivos* (an irrevocable gift). This kind of donation, a concept that has a perfect halachic equivalent, the *mattanah gemurah*, was an important legal adaptation for both men and women in Italian ghetto societies. In addition, Devora had received *mobiletto* or *donativi* (2,500 lire), both a form of trousseau, together with the *doni della tavola* (1,000 lire) and other small amounts for the wedding.⁷³ This was a typical marriage contract, with a daughter liquidated from the family patrimony through the dowry, and the groom and his family committed to its restitution.

As I have shown elsewhere, the dowry was not the main resource for patrimonial reallocation and transference for Modenese Jewish families—as was the case in eighteenth-century Turin, where dowries were enormous—but certainly represented an important form of resource. Moreover, it is a good indicator for the economic history of the Modenese ghetto. For example, Devora and Laudadio gave birth to eight children; significantly, at the time of Laudadio's death (1766), their five daughters were each provided with a dowry of 25,000 lire; in only one generation, the dowry amount tripled.⁷⁴ As a new widow in 1766, Devora made her second renunciation: she gave up her dotal and extradotal patrimony by making another *donatio inter vivos* in favor of her sons. In return, as established by Laudadio, she received an annuity (900 lire plus another monthly payment of 15 lire), food, and lifetime accommodation at the house of her eldest child, Benedetto.⁷⁵

Finally, as an octogenarian, Devora had to face the premature death of both her son Benedetto and his wife, Grazia Vita Levi, between 1776 and 1777. At that point she renounced the guardianship of her five grandchildren, which was assumed by the oldest grandson, Moisé—the future leader of Italian Jews during the Napoleonic age.⁷⁶ Her decision not to administer properties or exert legitimate rights was a clear product of the social system in force, but at the same time all of her “passive” choices were meaningful. Whether her decision was made independently or not, Devora prevented financial trauma for her family. Moreover, acting through the halachic institution of the *mattanah gemurah*, her status continued to be perfectly rooted in the Jewish tradition. This was the typical habit adopted by the majority of upper-middle-class Modenese Jewish women at that time.⁷⁷

This aspect can be further developed by focusing on the life of Anna Levi, “mother of Consiglio and the other Levi brothers and widow of Salomone,” who remains the most silent figure. In 1794, her sons, together with Sanson Rovighi, Israele Forti from Reggio Emilia, a certain Coen, and Fortunato Attias, founded the Società Attias and Its Fellows of Modena for the production of a coin correspondent to the Prague *tallero*. In the mid-eighteenth century, the majority of the *zecche* in the Estense Duchy were in the hands of Jewish merchants.⁷⁸ In May 1795, the Ducal Camera examined the guarantees provided by the fellows for the necessary sum of 80,000 lire, initially requested to begin the business. Only the Levis’ firm was declared qualified due to both its patrimony and the guarantee of the dowries of Anna and Settimia, wife of Consiglio, because, as reported in the Ducal correspondence, in case of “sudden withdrawals of *negozianti* (merchants), specifically of the *nazione ebraica* (the Jewish Nation), the dowries are kept safely and quite often constitute their safety planks.”⁷⁹

Anna Sacerdoti Levi was one of the members of the *va’ad* of SH after November 1785,⁸⁰ and her daughter-in-law, Settimia, served as a board member after December 1787.⁸¹ Both of them, by renouncing (freely?) their dowries, had a pivotal role in expanding the business of their households but at the same time were not that different from Devora. All three of our protagonists were functional elements in an oligarchic system in which women were seen as recipients of dowries and patrimonies progressively more considerable over the decades, and whose ownership and property were to remain only virtual. Miriam Rovigo was an exceptional case because of her strong initiative and autonomy, but she remained only an ancillary element to the consolidated social system of the Modenese ghetto: she continued to work with her son Lazzaro and did not form a second family.

In their capacity to challenge Jewish ghetto life without subverting its balance, we can see the main agent of internal negotiation of Modenese upper-middle-class Jewish women. From this perspective, philanthropy and assistance, participation and involvement, individual and collective work, and collective property are beneficial for an in-depth analysis of the main elements of Jewish female agency in the early modern age, including individual ownership, administration of deceased husbands’ estates, and guardianship over children.

As I hope to have shown, despite a certain historiographical emphasis, the importance of the dowry and legal safeguards of women’s rights did not automatically imply female autonomy among Jewish women in eighteenth-century Modena. The existence of SH, on the other hand, was a much more challenging phenomenon in the redefinition of female agency. Despite individual vicissitudes and participation, it gave to all of the upper-middle-class silent, or “silenced,” women an impressive voice. Thus, we are a little bit less in the dark about Jewish women’s lives in early modern Italy.

NOTES

- * I wish to thank Professor J. H. “Yossi” Chajes for his helpful suggestions. The study of the Havurat So’ed Holim Archive was conducted thanks to a fellowship granted by Hadassah Brandeis Institute (HBI) at Brandeis University; I am grateful to the institute for its generous support.
1. Archivio della Comunità ebraica di Modena, So’ed Holim, Registers [hereafter SH—Registers], November 23–December 21, 1735.
 2. It functioned until 1943, the beginning of the Nazi-Fascist domination in Italy. The existence of SH is mentioned in Bracha Rivlin, *Mutual Responsibility in the Italian Ghetto: Holy Societies 1516–1789* (Jerusalem, 1991), 52; and Luisa Modena, “Note a margine della vita delle donne ebreo modenesi nell’epoca del ghetto,” *Le Comunità ebraiche di Modena e Carpi*, ed. Franco Bonilauri and Vincenza Maugeri (Florence, 1999), 141–150, esp. 152–153 (with some misunderstandings). Regarding early modern Italy, there is evidence of the existence of two *Compagnie delle Donne* in Venice in the 1640s and in Florence at least since 1669, both of which were devoted to the dowering of brides; unfortunately, documentation has not been preserved. See Stefanie Siegmund, *The Medici State and the Ghetto of Florence: The Construction of an Early Modern Jewish Community* (Stanford, 2005), 404; Carla Boccato, “Aspetti della condizione femminile nel ghetto di Venezia (secolo XVIII): i Testamenti,” *Italia* 10 (1993): 105–135, esp. 120.
 3. Interestingly, the minimal age for formal membership was ten, considerably lower than that for other Jewish confraternities; see Elliott Horowitz, “Mondi giovanili ebraici in Europa, 1300–1800,” *Storia dei giovani*, Vol. 1, *Dall’ antichità all’età moderna*, ed. Giovanni Levi and Jean-Claude Schmitt (Rome, 1994), 101–157.
 4. For the history of Modenese Jews in the eighteenth century, see my doctoral dissertation, “Jewish Families in Modena from the Renaissance to the Napoleonic Emancipation (1600–1810)” (PhD diss., University of Haifa, 2007), 131–189.
 5. See J. H. Chajes, *Between Worlds: Dybbuks, Exorcists, and Early Modern Judaism* (Philadelphia, 2003), 95–118; Chajes, “He Said and She Said: Hearing the Voices of Pneumatic Early Modern Jewish Women,” *Nashim: A Journal of Jewish Women’s Studies and Gender Issues* 10 (2005): 99–125. The ideas that are found in Chajes’s works as well as the method proposed have now been adopted in part by Roni Weinstein, “Feminine Religiosity in Jewish-Italian Context during the Early-Modern Period: Preliminary Observations,” *Italia Judaica* 9 (2007): 147–170.
 6. See the interesting observations in Murray “Moshe” Rosman, “A Prolegomenon to the Study of Jewish Cultural History,” *Jewish Studies: An Internet Journal* 1 (2002): 109–127.
 7. See Chava Weissler, *Voices of the Matriarchs: Listening to the Prayers of Early Modern Jewish Women* (Boston, 1998); René Levine-Melammed, *Heretics or Daughters of Israel? The Crypto-Jewish Women in Castile* (New York, 1999).
 8. On this point, see the interesting and different observations by Avraham Grossman, *Pious and Rebellious: Jewish Women in Medieval Europe* (Waltham, MA, 2004), 3–5; Chajes, “He Said, She Said”; Rosman, “A Prolegomenon”; and Rosman, “The History of Women in Early Modern Poland: An Assessment,” *Polin* 18 (2005): 25–56.
 9. The bibliography on Christian women is immense, but we refer at least to Christiane Klapisch-Zuber, *Women, Family, and Ritual Renaissance* (Chicago, 1985); Jutta Sperl, *Convents and the Body Politic in Late*

- Renaissance Venice* (Chicago, 1999); Stanley Chojnacki, *Women and Men in Renaissance Venice: Twelve Essays on Patrician Society* (Baltimore, 2000); and the works mentioned in note 14. Regarding Jewish women, see note 10.
10. See Luciano Allegra, *Identità in bilico: Il ghetto ebraico di Torino nel Settecento* (Turin, 1996); Cristina Galasso, *Alle origini di una comunità: Ebrei ed ebrei a Livorno nel XVII secolo* (Florence, 2002); Kenneth Stow, "The Jewish Woman as Social Protagonist: Jewish Women in Sixteenth Century Rome," in *Le Donne delle minoranze: Le ebrei e le protestanti d'Italia*, ed. Claire Honess and Verina Jones (Turin, 1999), 87–100.
 11. For a historiographical consideration on these issues, see Bernard Cooperman, "Alle origini di una comunità: Ebrei ed ebrei a Livorno nel Seicento (review)," *Renaissance Quarterly* 58 (2005): 1325–1326. For an articulate study on women who had the power to affect their own lives as well as reconfigure existing halachic structure, see Stow, "Marriages Are Made in Heaven: Marriage and the Individual in the Roman Jewish Ghetto," *Renaissance Quarterly* 48 (1995): 452–491. For a recent and in-depth study taking into account both social life and halachic debates in eighteenth-century Italy, see Lois Dubin, "Jewish Women, Marriage Law, and Emancipation: A Civil Divorce in Late-Eighteenth-Century Trieste," *Jewish Social Studies* 13/2 (Winter 2007): 65–92. Important contributions on various Jewish communities in Europe and the Mediterranean basin during the medieval and early modern periods have been made by Grossman, *Pious and Rebellious*; Elisheva Baumgarten, *Mothers and Children: Jewish Family Life in Medieval Europe* (Princeton, 2004); Ruth Lamdan, *A Separate People: Jewish Women in Palestine, Syria, and Egypt in the Sixteenth Century* (Leiden, 2000).
 12. See, for example, Thomas Kuehn, *Law, Family and Women: Toward a Legal Anthropology of Renaissance Italy* (Chicago, 1991); Joanna Ferrero, *Family and Public Life in Brescia, 1580–1650: The Foundation of Power in the Venetian State* (Cambridge, 1993); Chojnacki, *Women and Men*; and the contributions by Elena Brizio and Linda Guzzetti in this volume.
 13. On this issue, see Francesconi, "Jewish Families," 82–92; 178–180.
 14. See Howard Adelman, "Servants and Sexuality: Seduction, Surrogacy, and Rape: Some Observations Concerning Class, Gender and Race in Early Modern Italian Jewish families," in *Gender and Judaism: The Transformation of Tradition*, ed. Tamar M. Rudavsky (New York, 1995), 81–97.
 15. For example, from a preliminary analysis of the Modenese archival sources, one can conclude that the Guild of Pedlars hosted a number of both Christian and Jewish women among its members; see Francesconi, "Jewish Families," 178–180.
 16. *Ibid.*, 170–180.
 17. *Ibid.*, 199–219.
 18. *Ibid.*
 19. On the history of the Jewish confraternities in early modern Italy, see Elliott Horowitz, "Jewish Confraternities in Seventeenth-Century Verona: A Study in the Social History of Piety" (PhD diss., Yale University, 1982), and his other pioneering contributions quoted in the following notes.
 20. Regarding the presence of women in the Modenese *havuroth*, I have examined the following documentation located in the Archive of the Jewish Community of Modena: the registers of Asmored Aboker Veagnored; Cabalad Sabad; Misericordia Uomini; Confraternite 1, 2, 3 Colonna; Compagnie Misnajod and Mismered Akodes; Talmud Tora; Hassod Laila; Covegne Hittim; Malbisc Harumim; and Perc Shira (with the denomination as reported in the archival sources). According to Elliott Horowitz, the presence of women is attested in the *Ghemilut Hasadim* in Ferrara since the beginning of 1515 and until

- 1553; Horowitz, "Membership and Its Rewards: The Emergence and Decline of Ferrara's Gemilut Hasadim Society (1515–1803)," in *The Mediterranean and the Jews: Society, Culture, and Economy in Early Modern Times*, ed. Elliott Horowitz and Moises Orfali (Ramat Gan, Israel, 2002), 27–65.
21. On this point, see Nicholas Terpstra, *Lay Confraternities and Civic Religion in Renaissance Bologna* (Cambridge, 1995), 151–170; Terpstra, *Abandoned Children of the Italian Renaissance* (Baltimore, 2005), 116–117; Giovanna Casagrande, "Confraternities and Lay Female Religiosity in Late Medieval and Renaissance Umbria," in *The Politics of Ritual Kinship: Confraternities and Social Order in Early Modern Italy*, ed. Nicholas Terpstra (Cambridge, 2000), 48–66.
 22. SH—Registers, November 23–December 21, 1735.
 23. On the Rovigo family, see my "Strategie di sopravvivenza di una minoranza in una capitale europea: Commercio, filantropia e cultura degli ebrei modenesi (secoli XVII–XVIII)," in *Vita e società ebraiche di Modena e Reggio Emilia durante l'età dei ghetti*, ed. Federica Francesconi and Luisa Levi D'Ancona (Modena, 2007), 9–41.
 24. On Abraham Rovigo and mentions of his activities in the ghetto of Modena, see Isaiah Sonne, "Visitors at the House of R. Abraham Rovigo" (Hebrew), *Sefunot* 5 (1961): 275–295 and the bibliography therein; on the Hazot Laila, see Horowitz, "The Eve of Circumcision: A Chapter in the History of Jewish Nightlife," *Journal of Social History* 23 (1989): 45–69; and Horowitz, "Coffee, Coffeehouses and the Nocturnal Rituals of Early Modern Jewry," *AJS Review* 14 (1989): 17–46.
 25. Francesconi, "Jewish Families," 169–170.
 26. *Ibid.*, 219–220.
 27. On the importance of the nuclear family for Italian Jews, see Stow, "Marriages Are Made in Heaven"; Stow, *Theater of Acculturation: The Roman Ghetto in the Sixteenth Century* (Seattle, 2001), esp. 11–12; Mario Livi Bacci, "Ebrei, aristocratici e cittadini: Precursori del declino della fecondità," *Quaderni Storici* 18 (1983): 913–939.
 28. I owe to Yossi Chajes this idea that I am developing in a forthcoming work. For a contextualization, see Ada Rapoport-Albert, "On the Position of Women in Sabbatianism," in *The Sabbatian Movement and Its Aftermath: Messianism, Sabbatianism, and Frankism* (Hebrew), ed. Rachel Elijor (Jerusalem, 2001), 143–327.
 29. SH—Registers, November 23–December 21, 1735; April 16, 1778.
 30. SH—Registers, November 23–December 21, 1735.
 31. SH—Registers, November 8, 1750.
 32. SH—Registers, October 15, 1747.
 33. SH—Registers, November 23–December 21, 1735.
 34. SH—Registers, December 29, 1765.
 35. On the organization of Jewish male confraternities, see the works by Horowitz mentioned earlier. For a new analysis of *zedakah* and the rabbinic sources, as well as the medieval situation on the ground, see Mark Cohen, *Poverty and Charity in the Jewish Community of Medieval Egypt* (Princeton, NJ, 2005). For an in-depth and innovative study on the new forms of philanthropy in European Jewish societies in the passage to the modern age, see Derek Penslar, *Shylock's Children: Economics and Jewish Identity in Modern Europe* (Berkeley, 2001).
 36. SH—Registers, November 23–December 21, 1735.
 37. SH—Registers, September 17, 1778.
 38. SH—Registers, November 23–December 21, 1735.
 39. SH—Registers, August 29, 1751.

40. It is also difficult to understand if and how Miriam reacted to this change that in essence deprived her of part of her office. In 1765, Miriam asked the *va'ad* to decide how to invest another 300 scudi; the other members did not express any preference but granted this task to Levi and Norsa. SH—Registers, December 25, 1765; September 28, 1766.
41. A report on the activities of SH for the years 1735–1798, sent to the municipality in 1798, is located in the Archivio Storico Comunale of Modena, Consiglio della Municipalità, Prodotte, July 23–July 31, 1798 [hereafter Prodotte 1798]; see also Prodotte, August 18–September 6, 1798. Generally, economic documentation for Renaissance Catholic confraternities is richer; moreover, they usually gained more donations; see, for example, Terpstra, *Lay Confraternities*, 151–170.
42. Archivio di Stato of Modena [hereafter ASMO], notarile, Fondo Antonio Jacopo Alessandri, filza 5123, #363, May 26, 1762; ASMO, notarile, Fondo Nicolò Giannozzi, filza 5242, #1435, May 11, 1769. On the Jewish properties of all of the spinning mills in Modena during the eighteenth century, see ASMO, Archivio per Materie, b. 34/b Arti e Mestieri, Arte della Seta; Francesconi, “Jewish Families,” esp. 149.
43. SH—Registers, April 25, 1762.
44. ASMO, notarile, Fondo Antonio Jacopo Alessandri, filza 5123, #383, July 23, 1763.
45. ASMO, notarile, Fondo Giuseppe Antonio Cavicchioli, filza 5370, #75, February 15, 1770.
46. There is much similarity with the history of the Jews in the Polish-Lithuanian commonwealth, the larger European Jewish community in the eighteenth century. The bibliography is enormous but see, especially, Rosman and Gershon David Hundert, *Jews in Poland-Lithuania in the Eighteenth Century: A Genealogy of Modernity* (Berkeley, 2004).
47. Francesconi, “Jewish Families,” 170–180.
48. See Miriam Bodian, “The Portuguese Dowry Societies in Venice and Amsterdam,” *Italia* 6 (1987): 30–61; for the Christian world, see the volumes indicated in note 23.
49. SH—Registers, May 15, 1742; Prodotte 1798.
50. SH—Registers, October 8, 1763; Prodotte 1798.
51. *Ibid.*
52. SH—Registers, November 29, 1769; Prodotte 1798.
53. On this mechanism within sixteenth-century Jewish confraternities in Italy, see Elliott Horowitz, “Jewish Confraternal Piety in Sixteenth-Century Ferrara: Continuity and Change,” *Lay Confraternities*, 150–171.
54. SH—Registers, November 23, 1738; Prodotte 1798.
55. SH—Registers, May 15, 1742; Prodotte 1798.
56. SH—Registers, June 20, 1756; Prodotte 1798.
57. SH—Registers, September 17, 1775; Prodotte 1798.
58. At the first instance, all of these donations took place on Rosh Hodesh of Tevet; after 1759, the distribution of wood to the poor took place on Rosh Hodesh of Shevet. See SH—Registers, May 15, 1742; November 8, 1750; June 20, 1756; December 24, 1759; September 17, 1775. On the importance of Rosh Hodesh for Jewish women, see Weissler, *Voices of the Matriarchs*, 23, 112–116.
59. Francesconi, “Jewish Families,” 146–150.
60. ASMO, notarile, Fondo Gaetano Tonani, filza 5227, #87, October 17, 1754; *ibid.*, #96.
61. ASMO, notarile, Fondo Giuseppe Antonio Cavicchioli, filza 5370, #59, July 4, 1768. The document reports the donation that took place on August 2, 1758.

62. This conversion is mentioned in Andrea Zanardo, “Catecumeni e neofiti a Modena alla fine dell’antico regime,” in *Le Comunità ebraiche di Modena e Carpi*, 121–139, esp. 125; for the economic agreements, see ASMO, notarile, Fondo Giuseppe Antonio Cavicchioli, filza 5370, #76, March 4, 1766.
63. See Stow, “*Neofiti* and Their Families: Or, Perhaps, the Good of the State,” *Leo Baeck Institute Year Book* 47 (2002): 105–113; Allegra, *Identità in bilico*, 110–162.
64. ASMO, notarile, Fondo Giuseppe Antonio Cavicchioli, filza 5370, #76 March 4, 1766.
65. *Memorie attinenti all’Opera Pia del Catecumeno*, II, 115–117, reported in Zanardo, “Catecumeni e neofiti,” 125, 128.
66. For this complicated economic settlement, the documentation is located in ASMO, notarile, Fondo Giuseppe Antonio Cavicchioli, filza 5370, #59, July 4, 1768. In February 1769, Leone was baptized in the Duomo (the main church) of Modena with great publicity, and his godfather was the duke himself. Given the name Francesco Maria Varesi, he became a canon of Mirandola.
67. ASMO, notarile, Fondo Nicolò Giannozzi, filza 5242, #1418, June 9, 1769. Miriam and Lazzaro sold Giacinto Solieri two of their landed properties, located in San Prospero, for 38,000 lire.
68. SH—Registers, October 18, 1768.
69. SH—Registers, November 22, 1785.
70. On these issues, see the recent analysis by Stow, “Jewish Pre-Emancipation: Ius commune, the Roman Comunità, and Marriage in the Early Modern Papal State,” *Festschrift in Honour of Professor Reuven Bonfil*, ed. Elisheva Baumgarten, Amnon Raz-Krakotzkin, and Roni Weinstein, forthcoming.
71. Francesconi, “Jewish Families,” 170–180.
72. On the history of the Formigginis, see *ibid.*, 131–189.
73. Biblioteca Estense of Modena, Archivio familiare Angelo Formigginini [hereafter AfAF], cassetta 1, fascicolo #15, June 13, 1718.
74. AfAF, cassetta 1, fascicolo #25, August 18, 1763 (notarial act of Nicolò Giannozzi).
75. AfAF, cassetta 1, fascicolo #37, July 7, 1770 (notarial act of Gaetano Radighieri).
76. ASMO, notarile, Fondo Niccolò Giannozzi, filza 5238, #666, June 20, 1763; AfAF, cassetta 1, fascicolo #31, June 20, 1763, “Obbligazione assunta per parte della Compagnia Ebraica Covegnè Gnitim a favore dell’eredità di Laudadio Formigginini.” On Moisè Formigginini, see Francesconi, “Jewish Families,” 240–328; and Francesconi, “The ‘civile ammiglioramento’: The New Society of Italian Jews under Napoleon (1796–1814),” *Integration Processes in Comparative Perspective in the Eighteenth-Century Europe, Jewish History*, Special Issue, ed. Francesca Bregoli and Federica Francesconi, forthcoming.
77. Francesconi, “Jewish Families,” 178–180.
78. Documentation regarding the Jewish ownership and administration of *zecche* in Modena is located in ASMO, Camera Ducale, Zecca, filze 1–20.
79. ASMO, Camera Ducale, Zecca, filza 20, fascicolo #2. Furthermore, Anna Rovighi, wife of Flaminio (owner of the Sanson Rovighi Firm, famous for silk production, and whose patrimony was 20,000 lire) renounced her dowry rights as well.
80. SH—Registers, November 22, 1785.
81. SH—Registers, December 23, 1787.

13 Counting on Kin

Women and Property in Eighteenth-Century Cairo

Mary Ann Fay

European travelers to Egypt and other parts of the Ottoman Empire in the eighteenth century wrote disparagingly of women in the societies where they traveled, describing them as oppressed, deprived of rights, and virtual captives in the harems of lascivious men. The Comte de Volney, who visited Egypt and Syria between 1783 and 1785, blamed what he considered the miserable condition of women on Muhammad and the Qur'an for not doing women the honor of treating them as part of the human species. He also blamed the government for depriving women of all property and personal liberty and making them dependent on their husbands or fathers, which he described as slavery.¹

Similar views were expressed by other male travelers to Egypt in the eighteenth century, including Denon, who accompanied Napoleon's forces to Egypt in 1798, as well as Savary, Sonnini, and Niebuhr.² All the more remarkable, then, are the views of Lady Mary Wortley Montagu, expressed in a series of letters to friends and family between 1716 and 1718, when she resided in Istanbul with her husband, Edward, the English ambassador to the Sublime Porte. Lady Mary wrote that she was critical of "common voyage writers who are very fond of speaking of what they don't know," while acknowledging that the views she expressed in her letters would no doubt surprise the recipients.³

Lady Mary had the kind of access to women that European Christian men did not have, since as a woman and the wife of the English ambassador, she was invited to the homes of upper-class women, including the widow of a sultan. Thus, she was able to see firsthand the harem or family quarters of the home, whose descriptions she claimed were greatly distorted in the travel writings of European men, who would never have been granted access to those places. In addition, Lady Mary learned that Islamic law gave Muslim women property rights, and she quickly understood how these rights empowered women. In a letter to her daughter, she wrote about "those ladies that are rich having all their money in their own hands, which they take with 'em upon a divorce with an addition which he is obliged to give 'em. Upon the whole, I look upon the Turkish women as the only free people in the empire."⁴

Lady Mary's linking of property rights to freedom was not just the result of astute and empathetic observation but based on her own experiences as a daughter and wife living under English Common Law.⁵ Lady Mary was the daughter of an earl, Lord Dorchester, and the wife of another aristocrat, Edward Montagu, whose grandfather was Edward, the first Earl of Sandwich. Wealthy and wellborn, Lady Mary should have had a life of comfort and ease, but because she married without her father's consent, she lived a penurious existence, with a penny-pinching husband who was increasingly cold and absent from home for long periods. Because she and Montagu had eloped, her father refused to settle property on her for her separate use—a tactic that wealthy aristocratic families employed to evade English common law, which prohibited married women from owning property and kept them under the perpetual guardianship of their husbands. Without a settlement from her father, Lady Mary had no money of her own and was therefore reduced to writing letters to her husband, begging for housekeeping money for their home in the country, where she lived with their children while he was away in London. Drawing on her own experiences, her knowledge of English and Islamic law, and her acquaintances among elite Ottoman women, she was able to write with more understanding than her male counterparts about the lives of Muslim women.

PROPERTY RIGHTS IN COMPARATIVE PERSPECTIVE

In this chapter, I will first compare the property rights of early modern women in England and France with women living under Islamic law (*shari'a*) in order to show how property rights secured by law and legal personhood empowered Muslim women. Second, I will focus on how women in eighteenth-century Egypt exercised their rights by buying and selling property, managing the property of other women, and establishing religious endowments that benefited them during their lifetimes and their designated heirs after their death. Although Islamic law gave women distinct advantages in both their right to own property and their right to have independent legal standing before the courts, there are commonalities between early modern European and Egyptian women. Even in the most restrictive legal environment, women had some access to family property through inheritance, dowry, or their widow's portion. Also, court cases show that women used the courts to challenge their kin in order to protect their rights and interests. Nevertheless, the evidence from early modern legal codes and court cases demonstrates that Muslim women were more secure in their property rights than English and French women of the same period.

As an Englishwoman—and a titled one at that—Lady Mary's predicament was due to the fact that common law in eighteenth-century England

did not accord women property rights or even a separate legal personality. Under English common law, married women could not own property and therefore could not make contracts on their own. Once married, a woman's personal property (chattels) became her husband's absolutely, to use or dispose of as he saw fit without her consent.⁶ W. S. Holdsworth, in his *A History of English Law*, described the law's conception of marriage as "a gift of the wife's chattels to her husband."⁷

A married woman's real property (land and improvements) came under her husband's control but not his legal ownership—that is, he could not sell it without her consent. It was not until the fifteenth century that married women were granted a life interest in one-third of the land that had been in their husband's possession at the time of the marriage. As Sir William Blackstone, the noted eighteenth-century English jurist, said, "By marriage the very being or legal existence of a woman is suspended, or at least it is incorporated or consolidated into that of the husband, under whose wing, protection and cover she performs everything and she is therefore called in our law a *feme covert*."⁸

As a *feme covert*, a married woman could not own any personal property except clothing and personal ornaments, could not control her real estate, and could not make a contract in her own name. The law placed the wife under the guardianship of her husband and made him legally responsible for her. The only way a woman could be recognized as a *feme sole*, or separate legal person, was by remaining a spinster; becoming a widow; or persuading her husband to agree to this designation so that, for example, she could conduct her own business. In other words, women living under common law were disadvantaged regarding property ownership not only because they were women but also because they were married.

Since changes in women's legal status were not possible under common law, they began to be made through equity jurisprudence in the chancery courts. From the sixteenth century on, equity law and chancery provided the propertied classes with the legal means to settle property on women for their separate use, with the consent and approval of the husband.⁹ These settlements were known as jointures and could be set up by any adult of sound mind—including the woman herself, her relatives or friends, or her future husband—and were managed by a trustee appointed by the court. This, of course, is what Lady Mary would have received if Montagu had not quarreled with her father or if she had accepted the suitor her father had chosen.

If a wife survived her husband, her real property reverted to her control absolutely. She also enjoyed a life interest in one-third of the freehold lands that had been in her husband's possession at the time of the marriage—a right granted to all women in the fifteenth century. A woman could give up this life interest or dower for a jointure lasting for at least her lifetime.

English common law did not endow women with property rights or a separate legal personality, and the custom of entailing landed property to

the eldest male disadvantaged them even more. In order to keep their estates intact, members of the aristocracy and landed gentry practiced entail and primogeniture to prevent fragmentation of landed property, which was the chief source of wealth during this period. Entail and primogeniture cut all but the eldest male out of the inheritance of the family's landed property, thereby disadvantaging younger males and all females. In contrast to English law, Islamic law works against the consolidation of property and inheritance through the male line by requiring the division of the deceased's property among both male and female heirs according to the relationship of the heirs to the deceased. In the case of women, their share is generally one-half that of a man's.

It was not until the passage of the Married Women's Property Bill in 1870 that married women in Britain gained legal rights to their own property. In the United States between the 1840s and the 1880s, most states passed a series of acts recognizing the right of married women to own and control their own property. Eventually, the legal definition of *property* was widened to include earnings from wages and business.¹⁰

Before the Revolution and the reform of the legal system completed by Napoleon, the situation in France was more complex due to differences between the customary law enforced in provinces across northern France and the civil or statutory law practiced in the south, where the influence of Roman law was still felt.¹¹ The absence of a unified code of law before the nineteenth century makes generalizations about women's property rights difficult. However, studies of various provinces and districts around France have made it possible for scholars to see some commonalities in the treatment of women and their access to property.

According to Diefendorf, both customary law and Roman law tended to give all children, both male and female, some rights to shares of property owned by their parents at their parents' death.¹² Customary law in the various regions of France prescribed that children should share equally in the assets. The only other time in a woman's life when she was allocated a share of parental property was when she married and was given a dowry (*dot*). Scholars previously assumed that women were "dowered off" by their parents and thus renounced their share in the inheritance after their parents' death.¹³ However, studies like Diefendorf's demonstrate that there were differences depending on whether customary or statutory law was in force. In sixteenth-century Paris, for example, only two of the 180 marriage contracts recorded involved the renunciation of future inheritances.¹⁴ Meanwhile, in regions where statutory law prevailed, a daughter usually renounced all further claims when she received the dowry promised in her marriage contract.¹⁵

The most restrictive laws concerning women's access to property were in Normandy, which followed customary law. An eighteenth-century Parisian commentator called Norman customary law "barbarous" with regard to

women, and the legal historian Jean Yver noted that “the Norman regime constituted the most severe situation of inferiority” for women in all the French customary law regions.¹⁶ In general, daughters were excluded from the inheritance of their parents’ property and had no legal right to a dowry. In Normandy, the dowry was a natural obligation, not a legal one. Also, women had no permanent rights to the property she and her husband acquired during their marriage, and this could not be altered by either a marriage contract or a will made by the couple.¹⁷

Although Normandy was the most restrictive region in France toward women and property rights, all married women in France, as in England, were constrained by the lack of legal personhood, which placed them under the perpetual guardianship of their husbands. As a seventeenth-century Grenoble barrister said, a woman’s husband was “her head, her eyes, her guardian and her master.”¹⁸ Women with the most autonomy and control over their persons and their property were widows, whether in England or in France. French widows generally had a share of their husband’s inheritance, typically equal to their dowry or to their dowry plus a share of the goods acquired as a couple since the marriage. They also had legal control of all possessions in the interval between the death of the husband and the coming of age at twenty-five of their children.¹⁹ Women could also obtain some autonomy from their husbands by being declared a *marchande publique*, which, like the *feme sole* in England, allowed them to make valid contracts relating to their trade or business.

Muslim women were different from early modern English and French women because their rights to property were not dependent on their marital status. Because an adult Muslim woman did not lose the right to own or manage her property upon marriage, she did not have to remain a spinster to retain those rights or wait to regain them as a widow. Rather than linking property to marriage to the disadvantage of married women, as did the laws in England and France, Islamic law looks upon adult women as autonomous where rights to property are concerned. The law gives Muslim women the right to own and manage property and endows them with legal personhood, making them legally autonomous from husbands, fathers, or brothers.²⁰ Thus, Muslim women can exercise their property rights as individuals, and they have the power to make binding legal contracts without the approval of a father, a husband, or some other guardian. Unlike eighteenth-century common law and French law, Islamic law does not conflate the personhood of a wife into that of her husband, thereby making it possible for a married woman of any class to own property or make a contract. In England and France, on the other hand, a married woman was under the perpetual guardianship of her husband and could not act legally in her own right. In other words, the law kept her in a childlike state, and she could never, as long as she was married, achieve her legal majority.

THE LEGAL BASES OF WOMEN'S RIGHTS

Women's right to property in Islamic law is derived from a verse in the Qur'an, which Muslims believe is the literal word of God as revealed to the prophet Muhammad in the seventh century. The Qur'an also became one of the sources of Islamic law, which after the death of the Prophet in AD 632 evolved into the four schools of Sunni jurisprudence that exist today. The particular revelation relating to women's property ownership is found in *sura* (chapter) 4, *aya* (verse) 7:

From what is left by parents
 And those nearest related
 There is a share for men
 And a share for women,
 Whether the property be small
 Or large—a determinate share.²¹

Under the law, an adult woman—married, unmarried, or widowed—has the right to own and manage her own property; to will it to her heirs after her death; and to endow it as a religious trust, or *waqf*. A female who is not yet legally an adult can inherit property from a relative, for example, but the property, like her person, would be supervised and managed by her legal guardian, in most cases her father. The only legal restriction on women's property ownership is the same as that on men's—namely, that the property of the deceased is subject to division according to the law. The Qur'an stipulates which relatives have an interest in the property of the deceased as well as the size of the share each should receive. Female children are entitled to half the share of their brothers. Sura 4:2 of the Qur'an says:

God (thus) directs you
 As regards your children's
 (Inheritance): to the male,
 A portion equal to that
 Of two females.²²

Both men and women can evade the division of property stipulated by the Qur'an by making a will, which allows the testator to divide the property as he or she pleases. However, only one-third of the testator's estate can be willed and thus not subject to Islamic inheritance law. Such practices as the English entail and primogeniture and the French *preciput*, which privileged the eldest males in a family, would be illegal under Islamic law, which produced a fragmentation rather than a consolidation of property and thus of wealth through the laws governing inheritance.

Additionally, the dowry, or *mahr*, is paid directly to the woman, not to her family or to her husband, and she maintains control of it after her marriage.

Sura 4:4 makes this explicit by saying, “And give the women (on marriage) their dower as a free gift.”²³ A woman retains possession of her property after her marriage, and neither spouse has a legal claim to or interest in the property of the other because of the marriage. The woman does not have the legal responsibility or obligation to use her personal wealth or property to support her husband or family. Maintenance—providing food, clothing, and lodging—is the primary responsibility of the husband. In return, a woman gives her husband faithfulness and obedience. According to Sura 4:34:

Men are the protectors
 And maintainers of women,
 Because God has given to one more (strength)
 Than the other, and because
 They support them
 From their means.
 Therefore the righteous women
 Are devoutly obedient.²⁴

Thus, Islam, while expanding the legal and property rights of women, did not overturn the patriarchal order set in place by its emergence in seventh-century Arabia. It did, however, restructure the gender system and give women some autonomy within a patriarchal legal system and family structure.

WOMEN AS PROPERTY OWNERS IN EIGHTEENTH-CENTURY EGYPT

There is ample evidence in court documents and archives that women throughout the Ottoman Empire exercised their property rights.²⁵ Women bought and sold property; were heirs to the property of deceased relatives; acted as moneylenders; ran businesses; and made religious endowments known as *awqaf* (sing. *waqf*), which are similar to the European *mortmain*. In early modern Egypt and the wider Ottoman world, court documents show that women’s religious trusts endowed Qur’anic schools, public fountains, mosques, soup kitchens, and other public buildings or charitable endeavors.²⁶ Egypt’s thriving commercial economy from the medieval through the early modern period provided women with the means to invest in urban, commercial real estate that produced an income for themselves and for their heirs, supported their charitable endeavors, and provided salaries for other women whom they designated as managers (*naziras*) of their charitable trusts.

Egypt in the eighteenth century was a province of the Ottoman Empire, having been conquered by an army led by Sultan Selim in 1516–1517. Before the Ottoman conquest, Egypt was an independent sultanate, governing from its capital in Cairo an empire that included greater Syria and Palestine as well as the region along the Red Sea in Arabia known as the Hijaz, which

contained the holy cities of Mecca and Medina. The sultanate arose in the wake of the Mongol invasion of the Islamic lands, when a group of slave soldiers in the entourage of the Egyptian provincial governor stopped the Mongol advance along the eastern Mediterranean at Ayn Jalut in Palestine. Between 1260 and 1516, Egypt and the empire were ruled by dynasties of slave soldiers known as Mamluks. During this period, Egypt was an entrepôt in the East-West trade in spices, textiles, and luxury goods. In 1383, the scholar Ibn Khaldun described Cairo as the “metropolis of the universe, swarming core of the human species . . . a city embellished with castles and palaces, bedecked with convents and colleges, illuminated by the moons and stars of knowledge.”²⁷ At about the same time, an Italian traveler named Frescobaldi wrote, “the imperial city of Cairo is rich and abounds with the sugars, spices and food from all places. . . . This city of Cairo has a population greater than all of Tuscany, and there is one street more populated than all of Florence.”²⁸

The process of recruiting non-Muslim slaves to serve as soldiers in imperial armies and as managers in imperial households began with the Abbasid caliphs in Baghdad in the ninth century. This form of slavery is sometimes called Islamic or household slavery to distinguish it from the chattel slavery of the Americas. The slaves who were recruited or sold into the service of the caliphs were trained in warfare and bureaucratic skills, and when their training was complete, they converted to Islam, were manumitted, and were placed into positions in either the military or the ruler’s household. As the caliphs began to lose control of the provinces, imperial governors and soldiers, who had slave origins, developed a great deal of autonomy from the capital and sometimes went into open revolt. The Mamluk sultans who ruled Egypt between 1260 and 1516 recruited their slaves first from among the then animist Turks from central Asia and later from Circassia. When the Mamluks were defeated in 1516, it was at the hands of another slave dynasty, the Ottoman, whose army and bureaucracy was largely composed of Christian slaves from the Balkans.

Although Egypt was incorporated into the Ottoman Empire as a province, Mamluk power never entirely disappeared, and by the end of the seventeenth century, Mamluk households began to reassert themselves and challenge the Ottoman establishment for military control of Egypt and its tax revenues from agriculture and trade.²⁹ The Mamluks reproduced themselves and their households primarily through slavery. In the eighteenth century, slaves destined for Egypt came primarily from Georgia. Male Mamluks also imported women as slave concubines and wives for themselves and for members of their households, which ensured that they would remain a group separate and apart from the Egyptian population they dominated. It is ironic that European travelers like the Comte de Volney described Egyptian harem women in particular as captives or slaves, because although elite Mamluk women did have origins as slaves, after their manumission, conversion to Islam, and marriage to powerful Mamluk men, they enjoyed the same rights

as freeborn Muslim women, including property rights. What's more, they were among the wealthiest women in the country, as their religious-trust deeds demonstrate.

The context for Egyptian women's economic activity is not just the legal rights that Muslim women enjoyed and exercised but also the particularities of the eighteenth-century economy, which provided women with lucrative investment opportunities in urban residential and commercial property.³⁰ Egypt continued to occupy an important position as an entrepôt in the East-West trade, but its relationship to the global market began to change around the time of its defeat by the Ottomans and its incorporation into the empire. The decisive event for Egypt was the entrance of Europeans into the Indian Ocean in 1496 and their eventual dominance of the trade in spices, textiles, and luxury goods, which had previously flowed through Egypt to European markets. As Egypt's share of the market in these commodities began to decline, it compensated both by monopolizing the trade in coffee from Yemen and by becoming part of the huge internal Ottoman market. Although by the eighteenth century the trade in coffee was under pressure from production in European colonies in the Caribbean, as was the sugar trade, Egypt still had a thriving commercial economy, the center of which was Cairo. The city had an infrastructure to accommodate the transit trade as well as local manufacturing and handicraft production, including the centerpiece of trade and artisanal production, the *wakala*—also known as the *caravanserai*—which had several functions. The *wakala* served as a warehouse for goods in transit, lodging for merchants, workshops for manufacturing, and retail shops for the sale of domestic and foreign goods. The city also had tenement housing called *rab'* for the working class, as well as shops and workshops scattered around the city and the Nile port of Bulaq.

Islamic law also worked in women's favor not only by giving women property rights and legal personhood but also by requiring partibility of inheritance. Estates had to be divided among heirs according to a certain legal formula based on consanguinity and gender; thus, structures such as houses, shops, and *wakalas* would sometimes have to be divided into shares to satisfy the law. The shares resulting from the division of an estate could subsequently be bought and sold. Thus, women of modest means would be able to invest in commercial buildings that they might not otherwise have been able to afford.

The documents used for this essay that present evidence of women's property ownership are the deeds of religious endowments, or *awqaf*, housed in the archives of the Ministry of Awqaf in Cairo. Briefly, a *waqf* is the alienation of income-producing property in perpetuity to benefit—although not always immediately—a religious or charitable cause.³¹ The impulse of pious Muslims to establish religious endowments is said to go back to the time of the Prophet Muhammad. The formulation of the legal doctrines related to *waqf* date back to the eighth century, when Islamic law was taking shape. Under the law, a *waqf* was deemed to be valid only if it was irrevocable and

made in perpetuity. A *waqf* has certain advantages for all donors, since it allows them to evade Islamic inheritance laws and designate the heirs to the income of the endowment as well as the share that each heir will receive. The law also allows donors to endow their entire estate, while a will can only bestow one-third of the testator's estate. A *waqf* is particularly attractive to women because all *awqaf* are supervised by the Islamic courts. Thus, a *waqf* reinforces the legality of women's property ownership and places the property, the donor's stipulations for the disbursement of its income, and the donor's role in the endowment under the auspices of the Islamic courts.³²

Although all endowments are supposed to have a charitable or pious purpose, the law allows donors to establish family (*ahli*) *awqaf* instead of pious (*khayri*) *awqaf*. The difference between the two is that the pious *waqf* immediately benefits religious institutions or pious causes, such as providing bread to the poor, while a family *waqf* allows the donor to benefit from the income of the *waqf* during her lifetime and that of her heirs after her death. When there are no heirs left to claim an income from the *waqf*, the revenues generated by the *waqf* property finally revert to the religious or pious causes stipulated by the donor. The family *waqf* also allows the donor to name herself the administrator (*nazira*) of her *waqf*, giving her control of the endowment during her lifetime and the power to name the administrator who will take over after her death. In this way women could—and did—name other women as administrators, who drew a salary for the performance of this duty.

For example, Shawikar Qadin, one of the wealthiest and most famous of Mamluk women during her lifetime, was the concubine of two powerful Mamluk amirs and the wife of another. In her endowment, which she recorded in the central Cairo court of al-Bab al-'Ali in 1762 and which contained many lucrative assets, she named her freed female slave, Mahbuba Bint 'Abd Allah al-Bayda, as the administrator of her *waqf* after her death and the deaths of her children and grandchildren.³² We know that Mahbuba assumed this role because of a note on the endowment deed, which records her as acting in this capacity in the exchange of a piece of property in Shawikar's endowment.

The pattern that emerges from a reading of the *waqfiyyat* (endowment deeds) of women in the eighteenth century is that most women founded family *awqaf*, in which they named themselves beneficiaries of the income from the *waqf* during their lifetime and also designated themselves as administrators of their own *waqf*. Thus it appears that women were using the *waqf* system as a court-sanctioned trust fund from which they derived an income and over which they exerted control.

WOMEN'S RELIGIOUS ENDOWMENTS

The records of the Ministry of Awqaf show a total of 3,316 entries related to *waqf* cases during the entire Ottoman period.³⁴ According to the ministry's

index for the eighteenth century, the total number of men endowing *awqaf* as individuals or with other men was 364, and the total for women as individuals or with other women was 104. Of the total number of endowments founded by individuals, women donors made up 24 percent, the *waqfiyyat* of which can be found in the archives (*daftarkhana*) of the ministry. A majority of the women—sixty out of 104, or 57.6 percent—endowed more than one property. This means that the majority of endowments can be classified as middling or large rather than small or having only one asset.

That women founded 24 percent of these *awqaf* is consistent with results obtained by other researchers for both the Arab provinces and Anatolia during the Ottoman period, which placed women between 20 and almost 37 percent of total donors.³⁵ These include female donors from fifteenth- and sixteenth-century Edirne, sixteenth-century Istanbul, eighteenth-century Aleppo, nineteenth-century Jerusalem, nineteenth-century Nablus and Tripoli, and Jaffa during the entire Ottoman period.

The kinds of property Egyptian women endowed can be broadly divided into two groups: urban commercial and residential and agricultural. The types of property included *makan*, defined as a building or a unit in a building that could have a number of possible uses, depending on the needs of the occupant;³⁶ various kinds of shops, workshops, warehouses, living units (*tabaqat*) in apartment houses, *wakalas*, and *rab* (tenements or apartments often found over *wakalas*); plus mills, waterwheels, watering troughs, springs, courtyards, gardens, coffeehouses, public baths (*hammam*), and productive agricultural land. In short, women owned and endowed all manner of income-producing property, which provided them with the revenue to support themselves and their endowments.

Women of all classes bought property and created religious endowments. However, the largest *awqaf* by far belonged to women who were former slaves and part of the Mamluk elite. They can be identified by their names, which include their relationship to Mamluk men as wives or widows, and by their designation as *al-Bayda* (the white), indicating Georgian or less frequently Circassian origin. For example, Shawikar Qadin named herself this way in her endowment deed: “Al-Sitt al-Masuna Shawikar Qadin Bint ‘Abd Allah al-Bayda Ma’tuqat al-Marhum al-Amir ‘Uthman Katkhuda al-Qazdughli wa al-Ma’rufa bi zawjat al-Marhum al-Amir Ibrahim Katkhuda Ta’ifat Mustahfizan al-Qazdughli.” Translated, the name means: “The Esteemed Lady Shawikar Qadin daughter of God’s servant, the white (*al-bayda*), freed slave (*ma’tuqat*) of the deceased amir ‘Uthman Katkhuda al-Qazdughli of the Mustahfizan (Janissaries) and known as the wife (*zawjat*) of the deceased Amir Ibrahim Katkhuda of the Mustahfizan.”

Of the 126 women who endowed *awqaf* in the eighteenth century, forty-three (34.1%) were manumitted slaves in Mamluk households. Among them, two were freed black slaves, whom we can identify by the names in their endowment deeds, which include “*al-sawda*” (the black). Their endowments were small, having one or two assets of the least valuable type of property.

Based on evidence from endowment deeds as well as the chronicles of the period, white slaves who shared the same ethnicity as Mamluk men were preferred as marriage partners, while black slaves served Mamluk households as domestic servants.

Freeborn women made the largest number of *awqaf*, fifty in total, but thirty-two of these were small, having only one or two assets. The most common asset in small *awqaf* was either a *makan* or a share of a *makan*. Freeborn Mamluk women, including eleven daughters and one sister of Mamluk amirs, also made *awqaf*, which, while often substantial, were not as large as those of the freed slaves.

When using the religious endowment deeds for evidence of women's ownership of property, it is not possible to give the value of each asset, since the deeds did not record the sales price or value of the property in individual endowments. However, since the law required that the property endowed be sufficient to support the religious or charitable purposes stipulated in the endowment, we must assume that the courts had this information at the time the endowment was recorded. However, we can use other sources to estimate the value of the property, particularly the division of estates after death as required by law, which attach monetary values to the assets as well as to claims on the estates from various creditors. Thus, Andre Raymond's work on Cairene merchants during the Ottoman period demonstrates that the most lucrative investment was first a *wakala*, whose sales price could reach a million *paras*—the currency of the time—depending on its location in the city.³⁷ Descending in value from the *wakala* were retail shops, dwelling units, and finally artisanal workshops.

A family *waqf*, favored by male and female elites with wealth to protect and a desire to pass on property to their heirs, will revert to a pious or charitable *waqf* when the line of stipulated heirs to the income is extinguished. Women like 'A'isha Qadin, one of the wives of the powerful Mamluk, Hasan Katkhuda, stipulated that the income from her *waqf* be given to support the holy cities of Mecca and Medina, a very common bequest, and also to support poor Muslims.³⁸ Some women left instructions for prayers to be said at the tombs of their deceased relatives or the distribution of food during the fasting month of Ramadan, when many Muslims engage in charitable acts. Nafisa al-Bayda, perhaps the most famous of eighteenth-century Mamluk women, also undertook charitable endeavors. Nafisa was the widow of the powerful 'Ali Bey al-Kabir, who died while fighting against the Ottomans for control of Egypt and the eastern Mediterranean. She was later the wife of Murad Bey, one of the last Mamluks to hold power in Egypt. Nafisa acted as intermediary between her husband and the French community of merchants in Cairo. During the French occupation of Cairo between 1798 and 1801, she served as the go-between between the French forces and her husband, who had fled the city and organized Mamluk resistance to the French from Upper Egypt. Nafisa did not make a *waqf*, or at least one has not yet come to light. However, she was an investor in the city's commercial economy, owning a

wakala with an attached *sabil-kuttab* in an intensely commercial district near the Bab Zuwayla gate. She was commended by the chronicler al-Jabarti for her piety and charity in building the *sabil-kuttab*, a structure that had a public water fountain at its base and a Qur'anic school for boys at the top.³⁹

CONCLUSION

A comparison of women's property ownership in eighteenth-century England, France, and Egypt shows clear advantages for women living under Islamic law. The Qur'an is clear that women have property rights, which gives those rights the sanction of religion and the force of law. Qur'anic verses attest to women's inheritance rights; a woman's right to have her dowry (*mahr*) paid directly to her; and the right of an adult woman to make a valid contract, whether it be a marriage contract, a will, a religious endowment, or a contract to buy or sell property. Women's property is her own and for her own private use; neither her husband nor any other male relative has a legal claim to it. Thus, Islam as a religion and a legal system speaks directly to women and to their rights and responsibilities as Muslims.

What early modern Muslim and European women appear to have had in common was their willingness to use the courts to protect their property or their right to property they believed was theirs under the law. In upper Normandy between 1680 and 1745, for example, one-quarter of the 1,200 cases from the lower royal and seigneurial courts had women as their principal parties. Over 95 percent of women's suits were civil cases that turned on critical matters of property, family, and honor.⁴⁰ Cases from the Egyptian courts reveal that women actively used the courts to protect their rights as property owners, as wives demanding maintenance or petitioning for divorce, as mothers requesting guardianship of their minor children, as business owners, and as moneylenders.

In addition, no matter how restrictive women's access to property was, women achieved some rights and access to family property. Whether in Europe or the Islamic world, society recognized the centrality of women to the family, and of the family to society and the state. The state and the courts had an interest in making sure that widows would not slide into penury after the death of a spouse and that her children would be cared for. The state wanted to make sure that agricultural land would continue to be cultivated and the taxes paid, while the family wanted to ensure its longevity by keeping its descendants on the land. Thus, even when women were prohibited from inheriting agricultural property, they were able to do so in the absence of male heirs. Also, it was not unusual for a family to welcome a son-in-law into the home to assure lineage continuity. Wealthy English families like Lady Mary's as well as the less well-off had an interest in protecting the well-being of the daughters they married off and the family property they sent with her as a dowry, both for her sake and for the

sake of the grandchildren who would one day inherit it. Pressures such as this resulted in wealthy Englishmen turning to equity law in the chancery courts as a way to settle property on a daughter so that she could enjoy the income during her lifetime. The property would be protected from a possibly irresponsible husband and preserved through the maternal line for the grandchildren. What is clear in the European and Islamic legal codes relating to women's property rights is that laws of property regulate the family as a whole as well as gender relations inside the family, and act to preserve the dominance of the male as head of household.

When considering the clear advantages of property rights for women under Islamic law, the image of Muslim women in eighteenth-century European writings was generally inconsistent with the realities of most women's lives. European travel writers and memoirists were generally uninformed about the Islamic faith and the law and would not have been invited into upper-class homes and certainly not into family quarters, where they would have made the acquaintance of women about whom they were writing. Although lacking firsthand knowledge of Egyptian women, European male travelers portrayed women as oppressed and degraded, childlike and ignorant, and virtual prisoners in their harems. The allegedly miserable condition of women in Egypt was used by Europeans to proclaim the superiority of Western civilization over Eastern Islamic civilization on the basis that the West did not have harems, and that Western women enjoyed a much higher status and better treatment than the women they encountered in Egypt.

In their travel writings and memoirs, the harem and the veil served as signifiers of the low status of all women, even though only the elite practiced female seclusion and veiling. Polygamy was also rare and practiced mainly by the elite and the very wealthy. Only the wealthy could afford to keep the women in their households economically inactive, and only they could afford the large homes with separate family quarters, where women could entertain their guests, and men not related to them could not enter. Only the very wealthy Mamluks or merchants could afford separate dwellings for each of their wives and concubines. Lower-class peasant women worked alongside their men in the fields and were active as sellers of farm products in the local markets. Urban women worked alongside their men in shops and workshops and worked at various trades, such as midwives, bakers, sellers of foodstuffs, attendants in the public baths, and singers. The housing units of working-class Cairenes were small, and privacy was a luxury. When men wanted to entertain their male friends, they did so on the stone bench, or *mastaba*, outside of the tenements that housed the city's working families. Also, female seclusion did not equate to imprisonment, since elite women left their homes for various reasons. Male travel writers regularly commented on the sight of veiled women on the streets, on boats on the river, or riding about the city on the backs of donkeys. Women visited their families and friends, the public baths, and the cemeteries and tombs of their dead on Fridays; walked in the marriage processions of friends and

relatives; and made ritual visits to the homes of friends or family members who had just given birth. Elite women participated in religious and secular holidays, and their boats could be seen on the Nile—easily recognized by the screens surrounding the deck, which protected the privacy of the women on the boat.

Constraining women's physical and sexual autonomy and keeping marriageable men and women separated from each other was an ideal for all of society, not just for the elite. However, these constraints did not abrogate women's legal rights to own property or to engage in economic activity, whether as investors in the city's urban and commercial economy, or as workers in the shops and workshops around the city or on the family farm.

When she resided in Istanbul, Lady Mary Montagu often donned the concealing clothing of upper-class women and visited the sights of the city. She reported that she felt a certain freedom as she walked around the city because she could not be approached by anyone, even a man who might suspect her of being his wife.⁴¹ Because of her willingness to don the clothing worn by Ottoman ladies and visit them in their harems and baths, she was able to see through and beyond the veil and the harem walls to something more fundamental to women's position within the family and society. As she wrote to her daughter, Lady Mary, it was "having all their money in their own hands."⁴²

NOTES

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2. Vivant Denon, *Travels in Upper and Lower Egypt*, 3 vol. (1803; repr., New York, 1973); Claude Etienne Savary, *Lettres sur l'Égypte* (Paris, 1785); C. S. (Charles Sigisbert) Sonnini, *Travels in Upper and Lower Egypt* (1800; repr., Westmead, 1972); Carsten Niebuhr, *Travels through Arabia and Other Countries in the East*, trans. Robert Heron (1792; repr., Beirut, n.d.).
3. Christopher Peck, ed., *Embassy to Constantinople: The Travels of Lady Mary Wortley Montagu* (New York, 1988), 125–126.
4. *Ibid.*, 111.
5. For biographies of Lady Mary and her collected letters, see Lewis Saul Benjamin [Lewis Melville, pseud.], *Lady Mary Wortley Montagu: Her Life and Letters (1689–1762)* (Boston, 1925); Robert Halsband, *The Life of Lady Mary Wortley Montagu* (Oxford, 1956); Robert Halsband, ed., *The Complete Letters of Lady Mary Wortley Montagu*, 3 vol. (Oxford, 1965–67); Malcolm Jack, ed., *Turkish Embassy Letters* (Athens, GA, 1993); Peck, ed., *Embassy to Constantinople*; Lord Wharncliffe, ed., *The Letters and Works of Lady Mary Wortley Montagu*, 2 vol. (London, 1893).
6. Lee Holcombe, *Wives and Property: Reform of the Married Women's Property Law in Nineteenth-Century England* (Toronto, 1893), 22.
7. W. S. Holdsworth, *A History of English Law*, vol. 3, 3rd ed. (Boston, 1923), 531.
8. Cited in Holcombe, *Wives and Property*, 25.

9. Holcombe, *Wives and Property*, 10; Holdsworth, *A History*, 533; Susan Staves, *Married Women's Separate Property, 1660–1833* (Cambridge, MA, 1990). In Staves, see her discussion of the jointure, which allowed property to be settled on a married woman (95–97).
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11. Barbara B. Diefendorf, “Women and Property in Ancien Regime France: Theory and Practice in Dauphine and Paris,” in *Early Modern Conceptions of Property*, ed. John Brewer and Susan Staves (London, 1995), 170.
12. *Ibid.*, 172.
13. See, for example, Emmanuel Le Roy Ladurie, “Family Structure and Inheritance Customs in Sixteenth-Century France,” in *Family and Inheritance: Rural Society in Western Europe, 1200–1800*, ed. Jack Goody, Joan Thirsk, and E. P. Thompson (Cambridge, 1976), 44.
14. *Ibid.*, 172.
15. *Ibid.*, 173.
16. Cited in Zoe A. Schneider, “Women before the Bench: Female Litigants in Early Modern Normandy,” *French Historical Studies* 23 (2000): 2.
17. *Ibid.*, 4.
18. Diefendorf, “Women and Property,” 175.
19. See James B. Collins, “The Economic Role of Women in Seventeenth-Century France,” *French Historical Studies* 16 (1989): 443.
20. See Judith Tucker, *In the House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine* (Berkeley, 1998), 48; John L. Esposito, *Women in Muslim Family Law* (Syracuse, 1982).
21. The Holy Qur’an, translated with a commentary by A. Yusuf Ali (Brentwood, MD, 1983), 180.
22. *Ibid.*, 181.
23. *Ibid.*, 179.
24. *Ibid.*, 190.
25. For studies of women as *waqf* donors during the Ottoman period, see Gabriel Baer, “Women and Waqf: An Analysis of the Istanbul Tahrir of 1546,” *Asian and African Studies* 17 (1983): 9–28; Haim Gerber, “The Waqf Institution in Early Ottoman Edirne,” *Asian and African Studies* 17 (1983): 29–45; Randi Carolyn Deguilhem-Schoem, “History of Waqf and Case Studies from Damascus in Late Ottoman and French Mandatory Times” (PhD diss., New York University, 1986); Butrus ‘Abd al-Malik and Daniel Crecelius, “A Late Eighteenth-Century Egyptian *Waqf* Endowed by a Sister of the Mamluk Shaykh al-Eyey Muhammad Bey Abou al-Dhahab,” *Arab Historical Review for Ottoman Studies* 1–2 (1990): 9–14. See also Leslie P. Peirce, *The Imperial Harem: Women and Sovereignty in the Ottoman Empire* (New York, 1993); Fanny Davis, *The Ottoman Lady: A Social History from 1718 to 1918* (Westport, CT, 1986); Ülkü Bates, “Women as Patrons of Architecture in Turkey,” in *Women in the Muslim World*, ed. Lois Beck and Nikki R. Keddie (Cambridge, 1978), 245–260.
26. See Peirce, *The Imperial Harem*; Davis, *The Ottoman Lady*; Bates, “Women as Patrons of Architecture”; Amy Singer, *Constructing Ottoman Beneficence: An Imperial Soup Kitchen* (Albany, 2002).
27. Cited in Janet L. Abu-Lughod, *Cairo: 1001 Years of the City Victorious* (Princeton, NJ, 1971), 38.
28. *Ibid.*
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 32. For a useful discussion of the administration of the *waqf* system in Ottoman Cairo, see Nelly Hanna, “Structures et Institutions,” in *Habiter au Caire: La Maison Moyenne et Ses Habitants aux XVIIe et XVIIIe Siecles* (Cairo, 1991), 5–36.
 33. Waqf #921, Ministry of Awqaf, Cairo.
 34. This is according to the then director of the archives section (*daftarkhana*) of the Ministry of Awqaf, Muhammad Husam al-Din King ‘Uthman.
 35. Gerber, “The *Waqf* Institution,” 37.
 36. Muhammad M. Amin and Laila A. Ibrahim, eds., *Al-Mastalahat al-Mi‘mariyya fi al-Watha’iq al-Mamlukiyya* (Architectural Terms in Mamluk Documents) (Cairo, 1990), 115, defines *makan* as “place” and says that “the term is used in the documents to mean any building or unit of a building except a mosque, a *madrassa* (Qur’anic school) or palace.”
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 38. Waqf #208, Ministry of Awqaf, Cairo.
 39. ‘Abd al-Rahman al-Jabarti, *‘Aja’ib al-Athar fi al-Tarajim wa al-Akhbar*, vol. 4 (Cairo, 1959), 264.
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14 From *Mahalle* (Neighborhood) to the Market and the Courts

Women, Credit, and Property in Eighteenth-Century Istanbul

Fariba Zarinebaf

Research on the social and economic history of Ottoman women has entered a new phase with the exploration of archival documents, particularly Islamic court registers (*sicill*) that have not been subject to deliberate destruction and the ravages of fire.¹ Taking into consideration certain gaps and biases inherent in any official and legal documentation, I will offer some insight into the social and economic position of women in eighteenth-century Istanbul based on a study of a sample of these records. Not only were these women property owners, investors in the real estate market (sellers and buyers), and managers and tenants of endowed residential and commercial property, but they also participated in credit networks, as both borrowers and lenders, with the spread of the cash economy in Istanbul. They came to the courts to register loans and property transactions, and to claim their inheritance shares.

Islamic law recognized women's inalienable rights over property and allowed them to defend those rights in the courts.² In many premodern societies, women did not have extensive property rights, and lost whatever ones they had to their male relatives or husband when they got married. In more patriarchal tribal societies, women's right to property was rarely recognized. Even in Muslim societies, the given right was often subject to contestation by male relatives who pressured women into giving up or selling their shares to them. Nevertheless, many women were fully aware of their rights and were willing to fight for them in the courts against their relatives and husband. The inventory and registration of the goods and property of deceased men and women in the courts helped achieve this goal.

The estates of deceased women reflect a growing class differentiation among Ottoman women in Istanbul. While most women owned only some basic household goods, usually kitchenware (copper pots and pans), linen, and old clothing, others possessed jewelry, precious textiles (silks and furs), shares in houses, and even cash. They seldom owned agricultural land or farms.³ Some had looms and textiles, which indicate that they were spinners and weavers. The inventory of their estates (*tereke*) show that many owned property in the form of residential units in Istanbul during the eighteenth century.⁴ But a good number of the women whose estates were

registered were women of modest means. In contrast to upper- and middle-class women, who enjoyed a measure of economic well-being, working-class women owned little and were far more exposed to the downturns of the commercial economy, which was spreading in Istanbul during the early modern period.

WOMEN ON THE MARGINS

The economy of Istanbul was part of an expanding network of trade and credit during the eighteenth century. At the same time, the expansion of tax farming and commercial agriculture integrated the countryside into the economic orbit of cities. The flow of goods and people from the rural hinterland to major cities became part of everyday life and changed the social fabric of cities in a profound manner. Rural migrants—both men and women—became part of the growing poor and underclass of Istanbul and other cities.

As the economy of this major port city on the Mediterranean became integrated into the European economy with the expansion of trade, certain trading communities, including the Greeks and Armenians, gained more advantage as protégés of European traders. Armenian *sarrafs* (financiers) dominated banking, although Muslims and Jews became very active in this sector with the growing needs of the expanding population for cash and credit. Women constituted an important group that borrowed simply to survive. Most were rural migrants, seasonal laborers, servants, flower sellers (gypsies), *hamam* (public bath) attendants, spinners, and weavers. There was also a subculture of women in the economy that remained marginal and outside the guilds.

The cash economy was more widespread in Istanbul, where Muslim and non-Muslim moneylenders had an active business despite Islamic bans on the taking of interest. Though Armenian and Jewish moneylenders dominated banking, everyone lent money, including managers of cash *awqaf* (sing. *waqf*, “trust”), which were set up for this purpose. The rate of interest varied between ten and forty percent, and depending on demand, some moneylenders charged even higher rates. For example, Um Kolsum, a woman who resided in Istanbul, borrowed 100 kuruş from a woman named Rukiye and paid her back 140 kuruş, which Rukiye denied. Um Kolsum sued Rukiye in the court, bringing witnesses to prove that she had paid her loan back. She also demanded forty kuruş back from Rukiye, which she had paid as interest (forty percent).⁵ One possible reason for the high interest charge could have been that Um Kolsum had taken this loan to pay back a previous loan and thus had a bad credit history with the same moneylender. She may have simply been desperate and therefore willing to pay such a high interest rate.

Women suffered the most at times of economic crisis generated by long wars, shortages, and inflation. Most did not have an independent source of

income or steady employment and resorted to taking loans more frequently when the loss of guardians, illness, divorce, and other disasters hit.

Women engaged in taking small loans to survive on a daily basis and sometimes used anything they owned to place as surety (*rehn*) with *sarrafs*, who could take possession if the women defaulted on the payment of their loans. Some borrowed from family members, who were more flexible and did not charge interest, while others borrowed from managers of cash *awqaf*.

The use of cash *awqaf* spread in the Ottoman Empire during the sixteenth century despite the Islamic ban on usury and the opposition of conservative religious figures like Birgevi.⁶ Most charged an interest rate of 10 percent, which was lower than what *sarrafs* charged.⁷ It may have been preferable for Muslims to borrow from *mütevellîs* (managers of cash *awqaf*) rather than from moneylenders, who were often non-Muslim (Armenian and Jewish). Vahide Hatun bint (daughter of) Mustafa, for example—a resident of Hoca Hayreddin quarter in Istanbul—took a loan of 120 kuruş from a cash *waqf*. She placed her house—with its two upper rooms, lower room, privy, kitchen, and courtyard—as surety with the manager of the *waqf*, al-Hac Abdullah Çelebi, and registered it in the court in the presence of two witnesses. She paid the manager 156 kuruş (36 kuruş extra), which covered the loan, the interest, and the expenses of the house, and he agreed to give up the house to her in the court. She then sold the house to her brother, al-Hac Mehmed Agha, for 366 kuruş. He paid her the full amount, and she gave up her right of possession to him and registered it in the court in January 1721.⁸ This case ended happily for the moneylender and the borrower, although the circumstances suggest that Vahide Hatun may have borrowed money from her brother to pay off her first loan and then sold her house to him to cover the second loan.

On another occasion, Havashah bint Muharram ibn Abdullah, a resident of Üsküdar, took a loan of 295.5 kuruş from the cash *waqf* of Rabi'a Hatun in December 1720 and placed her belongings, which included precious textiles, clothing, bedding, two daggers, a gold bracelet, and a silk-and-jewel-studded robe, as surety with the *mütevelli* of the *waqf*, Ibrahim Efendi ibn Mehmed, a resident of Aşik Pasha quarter in Istanbul. When her loan was due ten days later, she and her agent, Hatib Ahmed Efendi, pledged to sell the goods that were placed as surety to pay her debt back. When she failed to do so, the *mütevelli* demanded payment from the agent. The latter brought a lawsuit to the court against her. When she denied taking the loan, the court carried out an investigation, and six Muslim witnesses testified to the taking of the loan by Havashah, which was registered in the court in January 1721.⁹ These women were not poor; they owned property, precious textiles, and jewelry but had fallen on hard times after divorce or the loss of a husband and were taking loans from cash *awqaf* before losing or selling their property—a last resort in both cases. Both women were taken advantage of by moneylenders and even managers of cash *awqaf*. In the latter case, the *mütevelli* took possession

of Havashah's goods and sold them in the market when she failed to pay her loan back.

Although women tended to default more often when they could not afford the high interest rates charged by bankers, some who borrowed without interest still had problems fulfilling their obligations and came to the courts as litigants and defendants to try to reach a settlement. For example, a certain Halil sued Emine Hatun for failing to pay three and a half months' worth of installments amounting to seventy kuruş on a loan of 260 kuruş. After the court carried out an investigation, Emine confessed to defaulting and agreed to pay the loan of seventy kuruş in August 1766.¹⁰ Halil was either a Muslim moneylender or a relative who had loaned the money to Emine without charging any interest, but still Emine had been unable to pay—most likely due to poverty. She may have ended up taking another loan to pay off the first one.

In a lawsuit a month later, Hüseyin complained that Um Kolsum had failed to pay her loan of 158 kuruş to Yorgancı al-Seyyid Mehmed. The latter demanded the payment from Hüseyin, who was her *kefil* (guarantor), since Um Kolsum had become destitute. Hüseyin had agreed to pay four kuruş a month for thirty-nine and a half months, and Um Kolsum had agreed to pay 158 kuruş to Hüseyin at the end of the period in September 1766.¹¹ In this case, the moneylender was again a Muslim who demanded payment from the loan holder's guarantor, possibly a neighbor or relative, who agreed to pay but registered the transaction in the court to make sure he would be paid back. Destitute women like Um Kolsum had to provide a guarantor in order to take loans, and when they failed to pay them back, they faced legal action in the courts. It is not clear how long it took for Um Kolsum to pay Hüseyin back, but she was lucky both that she did not have to pay interest for her second loan and that Hüseyin was willing to wait several years.

Many moneylenders and managers of cash *awqaf* demanded goods as surety and guarantors when they loaned to women, and sometimes these transactions needed to be settled in the courts. For example, when Fatma defaulted on her loan of 529 kuruş to Molla Mustafa, he complained to the court that she was willing to pay only 333 kuruş. They settled on the payment of 370 kuruş, and she took back from him her emerald earrings, fur-lined robe, woolen outer garment, gold coins, ruby ring, diamond necklace, gold bracelet, and silver censer (*buhurdan*), which she had placed with him as surety in July 1766.¹² Clearly, Fatma was a woman of some means, who may have lost or been divorced from her husband and placed her dowry as surety with a Muslim moneylender—in this case, a religious figure (*molla*). Her refusal to pay interest in a Muslim court turned the case to her advantage, and she managed to settle with a lower payment and get back her personal belongings. Going to the courts sometimes helped these women win back their goods and settle on a lower payment, but not every borrower was so lucky.

These cases show that even women of middle-class backgrounds who owned jewelry and luxurious personal goods fell on hard times and had to resort to taking loans in Istanbul just to survive. Although women did own property, their precarious social position made them turn in times of crisis to moneylenders, who did not hesitate to take advantage of their situation and lay claim to their personal belongings and property once they defaulted on their loans. To protect their property, women often resorted to taking second loans to pay off their first loans. The courts tended to support the claims of moneylenders despite Islamic bans on the taking of interest. One could argue that *rehn* was a form of security deposit that bankers asked of borrowers with a low credit rating and a history of defaulting. Destitute women often lost everything they owned to bankers, including their clothing and homes.

WOMEN IN THE REAL ESTATE MARKET

If they did not fall prey to moneylenders in times of financial crisis, many women who owned shares in residential and commercial units rented them out to tenants and artisans, sold them, or set up family endowments (*ahli waqf*). When relatives and others violated these rights, the women brought lawsuits to the courts and often reached a favorable settlement. It was mostly women of middle-class backgrounds who owned property, could afford the court fees, and received the support of their families in defending their rights. Many women sold their shares to end property disputes in the family. Some were pressured into selling their shares to their brothers and husbands.

For example, a certain Kerime Hatun sold her house to her husband, Hüseyin Beşe, for the very low price of sixty kuruş. She later set up a *waqf* in the court in Istanbul and declared that her husband should spend one-third of her property on poor relief after her death. She also stipulated that he should spend 1,001 akçe on cooking and distributing food to the poor, and purchase a copy of the Qur'an for 1,000 akçe and give it to a Qur'an reader. She set up Hüseyin Beşe as her heir (*vesi*), and he accepted and pledged to carry out her will in the court in January 1721.¹³ Thus, her husband became the new owner of her house and the manager of her small endowment. To protect their property from future claims and sale, women set up family endowments to ensure their heir a place of residence and some income (if they rented the house) to be devoted to charitable purposes.

Many women were tenants of shops that were part of charitable foundations. For example, in 1793, several women paid the rents (10–30 kuruş/month) of various shops to the *waqf* of the Friday mosque (*cami'i şerif*) in Çarşamba Pazari, endowed by Iranian merchant Hüseyin Efendi in Istanbul in the late eighteenth century.¹⁴ Afife Hanım rented out several of these *waqf* shops, including a spice shop (*attar*), a barbershop, and a dried fruit and nut shop (*yemişci*), in Karaköy—a neighborhood in Istanbul—for twenty to thirty kuruş a month from 1788 to 1798.¹⁵

Middle-class women were very active in setting up small, charitable, family foundations in Istanbul, which included mostly residential units, small fountains, *hamams*, and shops.¹⁶ They usually set up their husbands, sons and daughters, slaves, and their descendants as beneficiaries and managers of their endowments in perpetuity.¹⁷ Often, however, embezzlement by corrupt managers undermined the value of these small endowments; thus, it was generally wiser to sell rather than leave property to heirs.

Women sold their property to other women as well. For example, Fatma bint Mehmed and her mother, Emine bint Osman, both residents of Karabaş quarter in Istanbul, came to the court and registered the sale of their house and all its dependencies—including two lower rooms, a kitchen, and a courtyard—to Hadice Hatun for ninety-nine kuruş. They gave up their rights to the house after Hadice paid them and registered the sale in the presence of nine Muslim witnesses in the court in February 1721.¹⁸ In this case, Fatma and her mother may have inherited the house from Fatma's father and held shares to it jointly. Since neither could afford to buy the other's share, they decided to sell it to a third party, in this case another, unrelated woman.

Women also bought shares in their house and furniture from their husband, to protect themselves against the claims of heirs after their husband's death. Through her agent, Ali Beşe ibn Resul, and in the presence of two Muslim witnesses in the court, Emine Hatun bint Abdullah sold to her husband, Al-Hac Ali ibn al-Hac Ilyas, seven sets of old bedding, bedding covers and sheets, clothing, nine dresses, thirty *zira'* (22.74 meters) of cotton thread, five *vukiyye* (6.4 kg) of cotton, copper pots and pans, dishes, a candlestick, a cotton comb, a loom, two old chests, clothes, and more, for forty kuruş. He paid the sum and took possession of the furnishings and goods from his wife, who gave up her claim through her agent in the court in March 1721.¹⁹ From the list of her belongings, it is clear that Emine Hatun, a former slave, was a spinner of cotton. As in the preceding case, she may have been ill or near death, selling her belongings to her husband. Perhaps her children were too young or had formed their own households. If she had no children, her own family would have inherited her belongings. Thus, it is possible that Emine was trying to bypass the Islamic inheritance laws by selling her belongings, in this case the house furnishings, to her spouse before death. In a similar case, Mustafa Agha ibn Ali, who served in the customs house in Istanbul and lived in the quarter of Hüseyin Agha in Aksaray, came to the court and registered the following transaction in the presence of ten Muslim witnesses, including the *imam* (leader of prayer) and *muhtar* (warden of the neighborhood) of the quarter, in March 1871.²⁰ He sold to his wife, Amine Munire bint Ibrahim, who resided with him, the furnishings of the house, a cloak, beddings, a fur-lined cloak, woolen clothing, two turbans, two pipes, two prayer rugs, copper dishes, pots and pans, a metal chest, and so on, for 2,500 kuruş. His wife paid the agreed-upon sum and took possession of all the household goods except for his old clothes. It is possible that Mustafa was ill and about to die

and was passing the home furniture to his wife to protect her against claims by his children and heirs.

Some women were more business oriented and rented out the property that they inherited. For example, a certain Fatma Hatun rented out her bakery (*simitci*) and all its tools to Ibrahim and his partners for sixteen kuruş a month. The latter rented the shop for eleven months and sent her only ten kuruş a month. When she claimed 140.5 kuruş, they settled on the payment of 110 kuruş in the presence of the warden of the guild and Muslim witnesses, and she promised to forego her additional claim of 30.5 kuruş in the court. In addition, Ibrahim gave up his claim that he had paid from his pocket eighty kuruş for the repair of the bakery and the tools, and they reached a mutual agreement in June 1766.²¹ It is clear in this case that due to economic difficulties, the bakers were unable to pay her the agreed-upon rent of sixteen kuruş a month. She had to take them to court but finally accepted the lower rent in return for not paying the cost of repair, which was higher than her loss. Since these men belonged to a guild that was willing to support them, they managed to lower the rent on their own. Many artisans and producers had difficulty keeping up with higher rents for their shops (*gedik*) in the second half of the eighteenth century, a period characterized by steep inflation.

Women also owned shares in *hamams* and rented them out. In a lawsuit presented by a tenant, al-Hac Mustafa, against the owners of Agha Beg Hamam—Rukiye, Sa'ide, and Züleyha, the daughters of the deceased Ali Agha—the tenant claimed that he had rented the *hamam* from them in 1765 for three years but that they had canceled the rental agreement and were willing to pay him forty kuruş for the expenses of the *hamam*. He agreed to cancel the rent in the presence of the warden of the guild of public bath attendants, al-Hac Mehmed, who was present in the court, and vacate it to the three women in June 1766.²² In this case, the landlords may have withdrawn the rental agreement because they wanted to raise the rent and find another tenant.

Women also operated *hamams* that were attended by women. Salihe bint Mehmed, a resident of Un Kapani neighborhood, sued Molla Ali Mustafa, the owner of the double (*çifte*) *hamam* in Kuçuk Mahmud Pasha. She claimed that he had rented it to her for ninety-five kuruş a month for one year in December 1765 but had evicted her at the end of October 1766. She claimed a loss of 300 kuruş but Ali Mustafa claimed that she had canceled the rent. After documentation was submitted to the court, Ali Mustafa agreed to rent the *hamam* to Salihe from December 1766 for another five months, and she agreed to pay the rent of three months up front and give up her claim of loss and to settle. Ali Mustafa in turn gave up any claim for unpaid rent by Salihe, and they reached a settlement in October 1766.²³ It appears that in this case either Salihe was behind on her rent payments or the landlord wanted to raise the rent and decided to evict her. Salihe sued by claiming a business loss of 300 kuruş for the cost of running the bath and providing their one-year contract. The court accepted her claim to rent the *hamam* for another five months and

asked her to pay the rent of three months up front to protect the landlord, who would give up any future claims for unpaid rent prior to December 1766.

WOMEN IN THE HOUSEHOLD

Islamic law recognized the legal rights of every member of the household, including women and children, which turned the family into a potential legal arena of disputes, claims, and counterclaims. In particular, in recognizing the rights of male and female offspring as legal heirs (with females receiving half the shares of male members) and promoting the rights of children over those of the parents, Islamic inheritance laws turned children against each other and against parents. The court was the arena for the resolution of these claims and counterclaims, which constituted a good portion of the lawsuits in eighteenth-century Istanbul. Many cases were settled outside the courts. In one such case, two sisters, Ayşe and Rukiye—the elder daughters of the deceased Halil, son of Abdülkerim—claimed that their mother had wrongly taken possession of half the share in a house that they had inherited from their father. According to them, their mother had given up her right over the house to their father. But the mother, Rabi'a, claimed that her share belonged to her until she died and, after her death, would pass on to her second husband in return for the payment of a loan of 100 kuruş, which he had taken from her in 1752. They reached a settlement with the help of the *mütevelli* of the house and other Muslims, in which the daughters agreed to give up their claim over half the house to their mother, who paid them twenty gold coins in August 1766.²⁴ Here the court protected the rights of the heirs as well as the mother over the house and encouraged a financial settlement so that they could all have a place of residence. It is interesting to note that Ayşe and Rukiye were willing to take their mother to court to claim their shares over the house and that the court had to intervene to protect the rights of all three to the house. The Islamic right of inheritance stipulated in the Qur'an clearly upholds the rights of male over female children and the children over the wife as heirs, which created a deep rift among family members after the death of the head male of the family. Nevertheless, this was a far more beneficial situation for Ottoman and Muslim women, who could actually inherit property and control it, in contrast to their Christian sisters.

Christian women sought the safeguards of the *shari'a* courts and registered inheritance and property transactions in Islamic courts. Despite community disapproval, a growing number of Armenians, Greeks, and Jewish women came to the Islamic courts to register property transactions, claim debts, register loans, register estates of the deceased, and sue for inheritance claims. The Islamic law of inheritance that recognized the transfer of property to male and female relatives may have provided these women with better guarantees and protection against future claims. The estates of deceased Greek and Armenian women of Galata and Kuruçeşme who

registered in Islamic courts show a great deal of wealth in their possession. For example, the *tereke* of a deceased Greek woman in Galata amounted to 68,550 akçes in 1728. She owned, among other things, a house that was valued at 48,000 akçes and a garden valued at 12,000 akçes.²⁵ The estate of an Armenian woman in Kuruçeşme was valued at 152,525 akçes in 1730. Included in her possession were her house valued at 144,400 akçes, and her garden, 12,000 akçes.²⁶ Greek women's testaments show that they engaged in a great number of property transactions in Beşiktaş and Arnavütköy.

At the same time, many of these women were poor and fell victim to moneylenders. For example, Maria, a Greek woman, came to the court in Mustafa Pasha in February 1768. She claimed that her husband, a grocer, had sued Musa for taking a bribe of one hundred gold coins from her husband for opening a sherbet shop in Balat.²⁷ Her husband had presented a lawsuit to the imperial council but was absent in the court. She claimed that she was not aware of the lawsuit or the bribe and had no claims against Musa. Again, it is possible that Maria and her husband had borrowed money from Musa, could not pay him back, and provided evidence to the contrary. When her husband did not show up in court, Maria was called in, and she rightfully denied the charges against Musa. In a case from October 1769, a Greek Orthodox woman named Kaso, the daughter of Yoriki, sued her former husband, Ayostol, for not paying child support for their two underage daughters in Istanbul. Ayostol denied the charges and claimed that the two children were from Kaso's first husband, a grocer named Praşkuva who had died in Boğdan, and that she had presented a false claim to the court of Istanbul. After he provided witnesses, the court ordered Kaso to withdraw her lawsuit or face banishment to the islands if she continued her false claims.²⁸ Clearly, Kaso was desperate and in need of financial assistance, hoping to force her former husband to provide for her children since the real father had died without leaving them anything.

CONCLUSION

Ottoman women were active players in the urban economy of Istanbul as borrowers, property owners, buyers and sellers, founders of small family endowments, managers, and landladies. While it is difficult to establish any precise economic trend in the absence of systematic data, a study of their estates show that while a middle group was gaining in wealth, many women were barely surviving. Their possessions included basic personal goods and some household goods, along with the rare piece of jewelry or property. It is certain that many women sold or gave away their personal possessions and property before they died. Nevertheless, when they were young and healthy, they worked, rented out property, and participated in the real estate market as buyers and—more often—sellers. Additional research in the Turkish archives will establish more precise trends in the economic fortunes of women across social boundaries, time, and space.

TEREKE

Document 1

(Translated by Fariba Zarinebaf)

ISAM (Islamic Research Center), Istanbul, Galata Sicill, vol. 14/249, folio 2b.

The estate of deceased Şerife Emine bint (daughter of) Seyyid Mustafa ibn (son of) Seyyid Yusuf, a resident of the quarter of Çuhur Cuma in Tophane, in the district of Galata (Istanbul), to be divided among her heirs, her husband Hasan Odabaşı ibn Ahmed, her cousins, Seyyid Mustafa and Şerife bint Seyyid Hüseyin, registered in January 1721.

Goods	Price (akçe)
2 used Yemeni pillow	110
2 used Yemeni pillow (<i>yasdik</i>)	120
Small cushion (<i>mendir</i>)	40
Cushion	100
Cushion	60
2 used medium-sized felt	213
Used cloak (<i>ferace</i>)	400
2 used sheets	60
2 used vests (<i>antari</i>)	24
Fur-lined wool coat (<i>kürklü çoha</i>)	330
Towel (<i>peştemal</i>)	40
Used quilt	100
2 head cover	40
Handkerchief (<i>mekreme</i>)	30
Silver belt	600
Small earrings	186
Used wrapper for a bundle (<i>boğça</i>)	15
Basin (<i>leyen</i>)	170
2 round shallow dishes (<i>sahan</i>)	45
Mattress	120
Small things (<i>hurdevat</i>)	15
Bride-price in the possession of her husband	1,000
Total	3,853²⁹

Expenses and Fees

Debt to Fatma Hatun	240
Special fees (<i>hamaliye, delaliye, dukaniye</i>)	78
Regular tax (<i>resm-i 'adi</i>)	60
Court fees (<i>kalemiye, hudamiye, ihsariye</i>)	20
Registration fee (<i>kaydiye</i>)	15
Total expenses	413
<hr/>	
Remainder of estate	3,440
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<i>To be distributed among heirs.</i>	
Distribution of estate:	
To her husband	6 shares out of 12
To her cousin	4 shares
To her female cousin	2 shares
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Document 2

ISAM, Istanbul, Galata Sicill, vol. 14/225, folio 8b.

The Armenian Akabet, the daughter of Kirkor, son of Artvin, passed away in the neighborhood of Bayezid in Galata. Her heirs are her husband, the son of Avanes, her father Kirkor, her minor son Anton, and her minor daughter. The court set up 2 *para* per day for her minor son and daughter for their expenses (*nafaka ve keseve*) from the estates of their mother upon their request in RI 1141/October 1728.

Goods	Price (akçe)
4 pillows	800
2 mattresses	600
2 quilts	720
Chest	180
Sheets	120
Copper <i>hamam</i> bowl	40
Gold bracelet (15 <i>miskal</i>)	5,400
Pearl belt/girdle	1,500

Goods	Price (akçe)
A woolen robe with pearl collar	1,800
A woolen robe with fur lining	800
Chinese ermine fur	1,000
Jeweled [unknown item]	2,640
Pearl necklace	1,500
Pearl cap (<i>serpuş</i>)	1,200
Silk upper gown & vest	1,800
Satin vest	200
Skirt cover (<i>kavuşdurma</i>)	400
Chinese silk gown & vest	1,200
Chinese silk vest	1,000
Quilt cover	600
Bundle wrap	300
Embroidered kerchief	620
Embroidered inner garment	180
Old Chinese silk cover	200
Embroidered [unknown item]	700
Silver embroidered shirt	600
Embroidered shirt	120
Embroidered [unknown item]	300
Handkerchief	60
[Unknown item]	240
Leather shoes (<i>yemeni</i>)	200
Total	27,020
<hr/>	
<u>Expenses & Fees</u>	
Delaliye	565
Taxes on estate:	
Kasamiye & kudamiye	675
[Unknown]	120
Nafaka	60
Other expenses	800
Total	2,220

Goods	Price (akçe)
Remainder of estate	24,800
Shares of heirs:	
Husband	6,150
Father	4,133
Son	9,678
Daughter	4,839

NOTES

1. For a good example of this kind of scholarship, see Amira El Azhary Sonbol, ed., *Women, the Family and Divorce Laws in Islamic History* (Syracuse, 1996); Sonbol, ed., *Beyond the Exotic: Women's Histories in Islamic Societies* (Syracuse, 2005); Iris Agmon, *Family and Court: Legal Culture and Modernity in Late Ottoman Palestine* (Syracuse, 2006); Madeline Zilfi, ed., *Women in the Ottoman Empire* (Leiden, 1997); Abraham Marcus, "Men, Women, and Property: Dealers in Real Estate in Eighteenth Century Aleppo," *Journal of Economic and Social History of the Orient* 26 (1983): 137–163; Suraiya Faroqhi, *Men of Modest Substance: House Owners and House Property in Seventeenth Century Ankara and Kayseri* (Cambridge, 1981); Faroqhi, *Towns and Townsmen of Ottoman Anatolia: Trade, Crafts and Food Production in an Urban Setting: 1520–1650* (Cambridge, 1984).
2. John L. Esposito, *Women in Muslim Family Law* (Syracuse, 1982); Judith E. Tucker, *In the House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine* (Berkeley, 1998).
3. For a study of the estates of women in sixteenth-century Istanbul, see Yvonne Seng, "The Üsküdar Estates (Tereke) as Records of Everyday Life in an Ottoman Town, 1521–1524" (PhD diss., University of Chicago, 1991); Faroqhi, *Towns and Townsmen*. See also Judith E. Tucker, "Ties That Bound: Women and Family in Eighteenth- and Nineteenth-Century Nablus," in *Women in Middle Eastern History*, ed. Nikki R. Keddie and Beth Baron (New Haven, 1991), 233–254.
4. See the translation at the end of this chapter of the *tereke* documents of a Muslim and an Armenian woman from Istanbul.
5. Başbakanlık Archives, Istanbul, Şikayet defteri, vol. 35, 455:2.
6. Jon E. Mandaville, "Usurious Piety: The Cash Waqf Controversy in the Ottoman Empire," *International Journal of Middle East Studies* 10 (1979): 289–308.
7. Fariba Zarinebaf, "Women, Patronage and Charity in Ottoman Istanbul," in Sonbol, ed., *Beyond the Exotic*, 89–102.
8. Müftülük Archives, Istanbul Sicill [hereafter Istanbul Sicill], vol. 2/125, folio 3a:1.
9. *Ibid.*, vol. 2/125, folio 20b:2.
10. *Ibid.*, vol. 1/25, 128.
11. *Ibid.*, vol. 1/25, 132.
12. *Ibid.*, vol. 1/25, 114.

13. Istanbul Sicill, vol. 2/125, folios 10a:3, 10b:1.
14. BBA, EV.HMH 2966, 1–8.
15. *Ibid.*, 10.
16. Zarinebaf, “Women, Patronage and Charity,” 96-97; Shirine Hamadeh, *The City’s Pleasures: Istanbul in the Eighteenth Century* (Seattle, 2008), 79; Afaf Lutfi al-Sayyid Marsot, *Women and Men in Late Eighteenth-Century Egypt* (Austin, 1995).
17. Zarinebaf, “Women, Patronage and Charity,” 97.
18. Istanbul Sicill, vol. 2/125, folio 8a:2.
19. *Ibid.*, vol. 2/125, folio 23a:2.
20. *Ibid.*, vol. 2/478, folio 16b:2.
21. *Ibid.*, vol. 1/25, 82:1.
22. *Ibid.*, vol. 1/25, 83:2.
23. *Ibid.*, vol. 1/25, 179.
24. *Ibid.*, vol. 1/25, 122:2.
25. Galata Sicill, vol. 14/275, 50.
26. *Ibid.*, vol. 14/275, 39.
27. Istanbul Sicill, vol. 1/32, 9a.
28. *Ibid.*, vol. 1/32, 22b.
29. The total actually adds up to 3,818 akçes; the scribe must have made a mistake.

15 Kin and Marriage in Two Aegean Islands at the End of the Eighteenth Century

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On January 12, 1765, on the island of Mykonos, Giannis Gouliermakis composed the dowry contract of his daughter Fratzeskaki, who was marrying a man named Nikolaos, the son of the late Mpenardou. Several relatives of the bride added their own properties to the dowry her father was bestowing, augmenting it significantly. Her uncle Kostantis added a vineyard, a workshop, some items for her trousseau, and two hundred *asylania politika*;¹ her brother Nikolaos added a further fifty *grosia*,² while the uncle of the groom—the priest Nathanail—gave his nephew a house, a vineyard, several fields, and some furniture.³ Giannis was under legal obligation to provide a dowry for his daughter, as was often the case in many parts of Europe,⁴ but the kinsmen who appeared in the document were not under such obligation. Why, then, would they be willing to show such generosity to their relatives?

This chapter will seek to determine the frequency of the participation of kin in the property allocations taking place at marriage in the final decades of Ottoman rule in Greece, and the differences, if any, that existed among societies with different socioeconomic structures. It will examine the people who most frequently participated in the dowering of women and men in the Aegean islands of Mykonos and Naxos, as well as the types of property given as gifts to relatives, and ultimately attempt to ascertain why relatives chose to give part of their own wealth when they were under no legal obligation to do so. This chapter is based on 142 dowry contracts from the island of Naxos—particularly the province of Drymalia—and 256 dowry contracts from the island of Mykonos, covering the years from 1750 until the eruption of the Greek war of independence in March 1821.

In Mediterranean societies, marriage was not only a time of celebration but a time to make alliances and certain statements regarding honor and status. Such statements were closely tied to the dowry,⁵ at least in those places where that institution was practiced, which was most of the European coast of the Mediterranean. By the time of the Renaissance in many parts of Europe, the marriage of daughters had come to represent a significant expenditure, especially among the better-off and noble families.⁶ In some regions of the continent, there were periods of considerable “dowry

inflation,” which put an enormous burden on the parents of marriageable girls who had to provide ever-rising dowries.⁷ Many states tried to control the rising cost of dowries by legislation,⁸ and the same efforts were undertaken by the Orthodox Church under the Ottomans in the eighteenth century,⁹ though such efforts invariably failed to have a lasting effect. In these conditions, when fathers were often incapable of providing a dowry—or at least the amount of dowry needed for an “honorable” marriage—daughters may have tried to find the additional properties themselves,¹⁰ or may have turned for assistance to more distant kin. Kinsmen and kinswomen throughout Europe assisted, interfered, and participated in the lives of their relatives, from planning baptisms and marriages to raising credit—even to supporting a mistreated wife.¹¹ Blood relatives were assisted in their time of need,¹² and networks of potential assistance were sought both through marriages and through spiritual ties (through baptism, for instance).¹³ Such expanded and simultaneously close-knit networks were as present in Greece as they were in Europe, and they took many forms.¹⁴ Widowed women often turned to their brothers for support,¹⁵ but equally important were the links forged through marriage, baptism, and so on. Giovanni Morelli of Florence, for example, strongly advised his descendants, if they were orphaned, to seek a substitute father through a marital alliance¹⁶—an indication of the significance of marital arrangements. Marriage created new networks of kin, increased the number of kinsmen and kinswomen, and connected not only the couple but each other’s relatives as well.¹⁷

The same significance was attached to marriage in Greece—especially since in the early modern Aegean islands, this was the time when property was passed from one generation to the next. Unlike most other regions of Europe, the Mediterranean, and other parts of Greece, both men and women often received the bulk of their share of the family wealth at the time of their marriage, with some later adjustments being made through wills or donations.¹⁸ In both cases the transferring of property was called a dowry, although there were significant legal distinctions between female dowries and male ones.¹⁹ Male dowries were simply the son’s share of the patrimony, which he was free to manage and dispose of as he wished, as long as there were no specific stipulations mentioned. Female dowries, on the other hand, had a very different legal status. As was the case throughout Greek-speaking Orthodox Christian areas of the Ottoman Empire, dowries were inalienable and the wife was the absolute owner.²⁰ Although the husband managed the dowry under most circumstances,²¹ he was obliged to keep his wife’s dowry intact and often guarantee it with his own property, providing compensation in case of losses.²² Throughout the marriage, the wife remained the undisputed owner of her dowry, and every transaction involving her property required her approval, including the dowering of her daughters.²³ Such provisions stemmed from Roman-Byzantine law, which was in essence the basis of the legal system functioning on the islands. The centuries of Ottoman rule, however, alongside the absence of trained legal

scholars, judges, and advocates, had led to certain significant deviations in the laws and practices of the Greek-speaking regions, including those that determined property rights and dowering.²⁴

In Byzantine times, the legal burden for the dowering of daughters fell squarely on the father,²⁵ even if the wife often contributed her share for her daughter's dowry, as was the case in other parts of Europe.²⁶ In many Aegean islands, however, including those under consideration here, this legal obligation had been transformed into a gender-based approach to property allocation—what is often referred to as the *materna-maternis, paterna-paternis* practice. In its pure form, this practice mandates that the property of the father be passed along to the sons, while that of the mother be divided among the daughters. In the Aegean islands, the principle held true in broad terms but with considerable variation. In Naxos and Mykonos, there was a tendency to follow gender lines in dowry allocations, but it was not unusual for a father to add property to his daughter's dowry, or for a mother to do the same with that of her son. In fact, both husbands and wives, if living, were almost always present in their sons' and daughters' dowry contracts, and rarely was the provenance of the allotted properties stated in the documents. Only the occasional dispute or clarification allows us to see that a gendered practice of property transmission was generally in practice.²⁷ If parents provided the bulk of their offspring's dowries, however, they were not the only people who bestowed property to the newlyweds, as shown in the earlier example. Kinsmen and kinswomen from both sides of the family often stepped in to augment male and female dowries.²⁸ Before looking at what the data tell us regarding their participation, a brief look at these two islands is necessary to set the stage.

Although geographically they are remarkably close to each other, these two islands had considerably different social, cultural, and economic structures. Naxos is the largest of the island complex known as the Cyclades, as well as the most fertile, which led to the development of a mostly agricultural economy.²⁹ Mykonos is considerably smaller and much less fertile, and perhaps as a result its inhabitants had become much more involved with the sea, in both shipping and mercantile activities.³⁰ Mykonos was also a homogeneous society, composed almost entirely of Greek-speaking Orthodox Christians. Naxos, on the other hand, as a result of both the conquest of the Cyclades in the early thirteenth century by the Franks and the establishment of a feudal Duchy with its capital on the island, retained many feudal institutions even after the incorporation of the Cyclades into the Ottoman state, leading to a series of revolts and uprisings that pitted the Catholic "aristocracy," which owned much of the arable land, against the Orthodox peasantry.³¹ Inevitably the two islands developed different social and economic structures over the centuries, a divergence facilitated and exacerbated by the administrative and judicial autonomy allowed by the Ottoman overlords over many of their subjects, and especially in privileged areas like the Cyclades, which had in essence negotiated their entry into the Ottoman Empire.³²

As was the case with most of the Aegean islands, Naxos and Mykonos were practically self-governing, with the most significant members of the community—the notables—exercising control over most administrative and judicial matters. There were of course other bodies and individuals with significant power, such as the *Kapudan Pasha*—the admiral of the Ottoman fleet—who was ultimately the man in charge of most islands, as well as the Orthodox Church, which had retained significant judicial power, especially in civil matters such as marriage and divorce.³³ For our purposes, however, the notables seem to have been the ultimate authority in resolving disputes over matters of property transmission, and in both Naxos and Mykonos, they seem to have based their decisions on customary law, which was in essence an evolution of earlier Byzantine practices.³⁴ From those traditions stemmed the idea of the inviolability of a woman's dowry, the legal obligation of the father to provide a dowry, and so on.

The different social and economic structures of the two islands, however, led to subtle but significant differences in their marriage patterns and dowering processes, including the patterns of participation of kin other than the required parents or guardians. The two islands shared the practice of male and female dowering, but as Table 15.1 indicates, there were some differences. While in Naxos the majority of dowry contracts provided property to both groom and bride, in Mykonos, the dowry was principally a female institution. An examination of these dowry contracts can lead, and has led, to various conclusions regarding the age of marriage on each island, property relations between genders and generations, and the means by which property was passed from one generation to the next on each island. What concerns us here, however, is the role of kin as exposed by these documents.

Differences persist in the participation of kin in the dowry contracts of each island, along with some surprising similarities. As seen in Table 15.2, nearly twice as many dowry contracts from Mykonos than from Naxos mention at least some participation of kin. On both islands, the main beneficiaries of the largesse of kin were brides, yet men were not entirely excluded from such property allocations—a deviation from the

Table 15.1 Dowry contracts in Naxos and Mykonos, 1750–1821

	Naxos		Mykonos	
	N	%	N	%
Beneficiaries of dowry contracts				
Women	50	35.21	178	69.53
Men	18	12.68	7	2.73
Both	74	52.11	71	27.73
Total	142	100.00	256	100.00

Source: Historical and Ethnological Society of Greece, Naxos Archive (hereafter IEEE Naxos), General State Archives, Mykonos Archive (hereafter GAK Mykonos).

most common European practices.³⁵ In many cases this generosity can be explained by the absence of parents due to death, as was the case with Gianakis, who dowered his niece Irini;³⁶ Anousa, who dowered her niece Maria;³⁷ the priest Zacharias, who dowered his sister Maroula;³⁸ and Maria, who dowered her foster child (*anathrefti*).³⁹ Parents could also be absent without being dead, as seen in the case of Giorgakis, who dowered Maria, the daughter of Stamatini Karagiorgi, according to the wishes of her mother as expressed in a letter,⁴⁰ but such circumstances, though not uncommon, were certainly not the bulk of the cases. Before we attempt to explain why the more cosmopolitan Mykonos would have nearly twice the participation of kin in the dowering of daughters than agricultural Naxos, we should explore the identities of such kin that did participate, as well as the types of property they offered to augment the dowries of women.

The question of what type of property the beneficiaries received is significant for distinguishing between a possible confusion of marriage gifts with actual dowry enhancements. The exchange of gifts was an essential part of marriage in Greece, as was the case in most parts of Europe and the Mediterranean, and it would be a valid question as to whether these additions in the dowry contracts were merely a cataloging of the gifts offered by kinsmen and kinswomen to the newly married couple.⁴¹ Two observations, however, make such an assertion improbable. First, all marriages included the presentation of gifts, while only a minority of dowry contracts included additions by kin. Despite the haphazard manner in which such documents were composed and maintained, it is unlikely that such a discrepancy would occur, especially since even where recorded, only one or two relatives seem to be offering gifts. Although many of the items offered could conceivably be seen as marriage gifts (gold rings, jewelry, household items, or articles of clothing), they were almost certainly not the only gifts received by the couple.⁴² Furthermore, particularly in the case of women, the incorporation of these gifts into the dowry changed the legal nature of the goods, placing them under much greater protection—a fact that must have been a deliberate act by the donors.

Table 15.2 Participation of kin in dowry contracts, 1750–1821

	Naxos			Mykonos		
	N	%	% of total	N	%	% of total
Recipients of gifts from kin						
Women	21	75.00	14.78	77	76.24	30.08
Men	5	17.86	3.52	9	8.91	3.52
Both	2	7.14	1.41	15	14.85	5.86
Total	28	100.00	19.72	101	100.00	39.45

Source: IEEE Naxos; GAK Mykonos.

Second, and more significantly, the “gifts” included in these contracts were quite frequently of a nature more closely associated with dowries (land, buildings) than those given as marriage gifts (objects, money). As shown in Table 15.3, the property given by kin to newlyweds closely matches the ratios found in dowry contracts on the islands, with land slightly more prominent than the trousseau, buildings following, and the rest of the categories trailing.⁴³ Combined, these two observations indicate that the allocations and “gifts” included in the marriage contracts of men and women of the time were not presents given on the occasion of marriage but something quite different.

On the question of the identity of the donors, again we encounter significant differences between the two islands. On Naxos, brides could expect to be supported by their brothers, who quite clearly dominate the category of donors. Brothers, of course, were closer kin, and were often expected to take the place of the father if the latter were no longer living.⁴⁴ Although hardly absent in Mykonos, brothers there played a less prominent role, while more distant relatives—uncles, aunts, cousins—assumed a more significant one. On that island, even sisters were as prominent as brothers—and, in the case of male beneficiaries, more prominent. On Mykonos, therefore, it was the whole extended family that participated in the support of marriages, including people who were not even related by blood, such as brothers-in-law and godparents. Coupled with the overall greater frequency of kin participation in Mykoniate marriages, it begins to appear that this kind of participation had quite different motives and goals on each of the islands. While on Naxos it may have been a matter of necessity under specific circumstances, on Mykonos it was a matter of choice—of deliberate planning by the extended families of brides and grooms.

The circumstances of kin participation in the dowering process on Naxos seemed to be rather specific, dictated by unfortunate circumstances, such as the death of one or both parents. In the latter case, some relative

Table 15.3 Type of property added by kin to dowry contracts, 1750–1821

	Naxos		Mykonos	
	Female beneficiaries	Male beneficiaries	Femal beneficiaries	Male beneficiaries
Land	11	6	59	13
Buildings	8	3	19	5
Chattel	10	3	55	15
Animals	9	3	9	1
Money	6	3	17	3
Other	1	3	4	1

Source: IEEE Naxos; GAK Mykonos.

would necessarily assume the burden of managing the property of underage children, along with the responsibility of marrying them off and providing their dowries. This was the case of Lios, who “adopted” the son of his brother Vasili after the latter’s death and proceeded to marry him off and dower him when he came of age.⁴⁵ Although Mykonos had its share of similar situations, the bulk of the cases on Naxos seems to be tied to such circumstances, even when a parent was still living and providing part of the dowry. On a number of occasions, brothers appear to be augmenting

Table 15.4 Degree of kinship in dowry contracts, 1750–1821

	Naxos		Mykonos	
	Female beneficiaries	Male beneficiaries	Femal beneficiaries	Male beneficiaries
Brother	15	-	17	3
Sister	1	-	16	9
Uncle	3	7	28	5
Aunt	1	1	12	-
Cousin (M)	2	-	5	2
Cousin (F)	-	-	10	2
Grandfather	1	-	2	-
Brother-in-Law	-	-	4	4
Sister-in-Law	-	-	-	1
Santoulos ^I	-	-	1	-
Santoula ^{II}	-	-	2	-
Kioura ^{III}	-	-	4	-
Amnia ^{IV}	-	-	18	3
Kali ^V	-	-	8	2
Lala ^{VI}	1	-	-	-
Foster mother	1	-	-	-
Wife of uncle	-	-	1	-
Other (M)	2	-	11	3
Other(F)	-	-	6	-

Source: IEEE Naxos; GAK Mykonos.

^I *Godfather*

^{II} *Godmother*

^{III} Usually *aunt*, but it could also be used as a term of respect similar to *madam*.

^{IV} Again, usually *aunt*, but also used as a term of respect by younger women addressing older ones. It also referred to a grandmother, on occasion a nanny, and later a woman teacher.

^V Usually the term was used to refer to a grandmother.

^{VI} Also usually used to refer to a grandmother.

the dowry provided by their widowed mothers because they had already inherited from their father, according to the *paterna-paternis, materna-maternis* inheritance principle often found on the islands, while their sisters had not, as was quite possibly the case with Erini, the daughter of the late Vasilios Vlaseros.⁴⁶ On certain occasions it is unclear whether brothers were actually adding to the dowry of their sister or merely supervising the division of their deceased father's property. Although we should not ignore the close emotional bonds between brothers and sisters, which have been frequently brought to light by researchers,⁴⁷ the presence of brothers often had less to do with the augmentation of a dowry than with the readjustment of properties among offspring.⁴⁸ On Mykonos, however, something quite different seems to have been taking place.

In the case of Mykonos, the range of donors is significantly greater, and the presence of kinsmen and kinswomen of a second or third degree of affinity surpassed the presence of even brothers and sisters, although the latter continued to play a prominent role in the marriages of their siblings. We also observe a great number of donations by individuals who had a spiritual or emotional relationship to the bride or groom—a situation that was quite rare on Naxos. To understand the rationale behind the variety of donors and donations on Mykonos, we must look at each group separately.

In the case of siblings, there is no reason to doubt that some of the same strategies that existed on Naxos were taking place on Mykonos. In the case of Theodoroula, for example, her sister and brother-in-law provided their dowry “as a father,” implying the absence of surviving parents.⁴⁹ However, siblings were often present right alongside their parents, sometimes offering significant properties such as sheep and goats,⁵⁰ while the deacon Makarios was willing to give his sister 150 *grosia* in addition to generous donations of household items, clothes, and jewelry.⁵¹ More often, however, the participation of siblings was limited to token gifts, such as golden rings. Sisters were particularly prominent in this role, adding golden rings or similar ornamental objects to the dowries of both brothers and sisters. In general, as can be seen from Tables 15.5 and 15.6, the presence of sisters in the dowry process was considerably more prominent in Mykonos, by itself an indication that siblings were not merely substituting for deceased parents but were there for some other reason or custom.

What could be the reason behind the involvement of siblings in Mykonos? I will return to this question shortly, but I should stress the fact here that by appearing in the arguably most significant legal document of their female and male siblings, sisters—and of course their husbands and families—asserted their role within the extended family, becoming a component in the marital arrangements of their brothers and sisters and thus fostering material ties along with emotional and customary ones. At the time of their marriage, men and women on Mykonos did not leave behind their former families to start new ones but reaffirmed and even expanded their existing ties. For them, it was not only a new beginning but also an affirmation of

Table 1.5.5 Women's dowry additions by source of origin

	Naxos						Mykonos					
	Land	Buildings	Chattel	Animals	Money	Other	Land	Buildings	Chattel	Animals	Money	Other
Brother	6	5	6	6	3	-	7	1	5	3	7	-
Sister	-	-	1	-	-	-	7	3	12	1	-	-
Uncle	1	-	1	2	1	-	17	6	11	2	8	1
Aunt	1	1	1	-	-	-	7	3	7	-	-	-
Cousin (M)	1	-	-	-	2	-	1	-	3	-	1	-
Cousin (F)	-	-	-	-	-	-	1	-	10	-	-	-
Grandfather	1	1	-	1	-	1	-	1	-	-	1	-
Brother-in-Law	-	-	-	-	-	-	3	1	2	-	-	1
Santoulos	-	-	-	-	-	-	1	-	-	-	-	-
Santoula	-	-	-	-	-	-	2	1	1	-	-	-
Kioura	-	-	-	-	-	-	4	1	4	-	1	-
Amnia	-	-	-	-	-	-	11	4	10	2	-	-
Kali	-	-	-	-	-	-	7	2	5	1	-	-
Lala	-	-	-	1	-	-	-	-	-	-	-	-
Foster mother	1	1	1	-	-	-	-	-	-	-	-	-
Wife of uncle	-	-	-	-	-	-	-	-	1	-	-	-
Other (M)	-	-	-	1	1	-	4	-	4	1	1	2
Other(F)	-	-	-	-	-	-	3	3	3	-	-	-

Source: IEEE Naxos; GAK Mykonos.

past and future kinship ties, formalized and preserved in a document with great legal significance.

As was the case on Naxos, there were occasions when people had to act in place of their parents. Quite often these were people unrelated to the recipients of the dowry but who had spiritual or emotional ties to them. In these cases they were in essence foster parents, who were thus required to perform the duties of dowering in the same manner that actual parents were required to do.⁵² On other occasions they were related to the recipients, but unlike on Naxos, uncles, aunts, and male and female cousins regularly appeared to augment a dowry, even when one or both parents were still present. And unlike the case with grooms, in which the majority of such gift giving was clearly ceremonial (gold rings), in the case of brides, much of the property involved was significant, including land and buildings. To complicate matters further, cousins tended to give brides ceremonial gifts, mirroring in this the attitude of sisters toward their brothers, while uncles and aunts gave more substantial goods. Godparents also appeared, offering gifts to their godchild on the most momentous day of the latter's life. Occasionally these gifts were substantial, especially when the godparents or other relatives were old and without children of their own.

Excluding the cases where somebody was acting in the place of an absent or deceased parent, the gift giving evidenced in these dowry contracts can be explained by examining certain goals and strategies that families and individuals pursued, and can be divided into two main categories. The first—gift giving by godparents, childless older relatives, and so on—served a similar purpose to that seen in the donation documents that dot the notarial archives of the period. These acts were attempts to ensure the donor's well-being in old age, and to make sure that the appropriate rites were conducted after their deaths. This was a time when children formed the only retirement security for older people.⁵³ Those that lacked children of their own had to look for succor elsewhere, either taking under their wing poor children, often known as soul children (*psychopaidia*), or turning to younger relatives—nieces and nephews, in particular—who were willing to help their elderly relatives in exchange for some kind of compensation, in the form of either property donations or, as in the cases previously described, additions to their dowries at the time of marriage.⁵⁴

The second category applies primarily to men still in their prime, mostly uncles but also brothers-in-law⁵⁵ and even some brothers, who used the opportunity of the marriage of a female relative to establish close ties between the extended families. In some cases this participation may have been driven by a desire to marry into a more prosperous or influential family (hypergamy), which may have demanded a considerably more expensive dowry than the parents of the bride alone could provide. Marriages, after all, were supposed to be between roughly equal partners, not only in Naxos and Mykonos but in most neighboring regions and cultures as well.⁵⁶ However, it was not rare for relatives of both families to provide

Table 15.6 Men's dowry additions by source of origin

	Naxos						Mykonos					
	Land	Buildings	Chattel	Animals	Money	Other	Land	Buildings	Chattel	Animals	Money	Other
Brother	-	-	-	-	-	-	-	-	1	1	1	-
Sister	-	-	-	-	-	-	5	2	8	-	-	-
Uncle	6	3	3	3	3	2	4	2	3	-	1	-
Aunt	1	1	1	1	-	-	-	-	-	-	-	-
Cousin (M)	-	-	-	-	-	-	1	-	1	-	-	-
Cousin (F)	-	-	-	-	-	-	-	-	2	-	-	-
Grandfather	-	-	-	-	-	-	-	-	-	-	-	-
Brother-in-Law	-	-	-	-	-	-	1	-	1	-	1	1
Sister-in-Law	-	-	-	-	-	-	2	-	-	-	-	-
Santoulos	-	-	-	-	-	-	-	-	-	-	-	-
Santoula	-	-	-	-	-	-	-	-	-	-	-	-
Kioura	-	-	-	-	-	-	-	-	-	-	-	-
Amnia	-	-	-	-	-	-	-	3	-	-	-	-
Kali	-	-	-	-	-	-	-	2	1	-	-	-
Lala	-	-	-	-	-	-	-	-	-	-	-	-
Foster mother	-	-	-	-	-	-	-	-	-	-	-	-
Other (M)	-	-	-	-	-	-	-	-	3	-	-	-
Other(F)	-	-	-	-	-	-	-	-	-	-	-	-

Source: IEEE Naxos; GAK Mykonos.

additional properties to both bride and groom, as can be seen from Table 15.2, a fact that weakens the preceding assertion. But the financial equity may have been less important in such cases than the forging of extensive links between multiple members of different families. Such marriages could confer significant benefits, especially in a society so involved in trade and shipping, by allowing access to greater pools of funding or trade networks, which would be useful to the entire family.⁵⁷

Indeed, we do know that such mercantile alliances did take place among the wealthiest merchants on Mykonos, who needed trusted individuals to expand their trade networks around the Mediterranean.⁵⁸ Furthermore, it has been shown that most commercial ventures of the time were of a cooperative nature. The launching of a single commercial undertaking involved many individuals, who thus shared the considerable risks involved. Even the ships themselves were run as cooperatives, with every member of the crew having a stake in the profits of the venture, depending on his rank.⁵⁹ Remarkably, there were even reports of ships run by families, the crew being composed of parents, siblings, and more distant relatives, though such ships must have been small and limited to short voyages around the Aegean.⁶⁰

One could ponder the difference between the situation on the island and that of fifteenth-century Venice, where uncles often offered support to assure the good marriages of their nieces, in expectation of the future economic and social benefits—benefits shared by the *fraterna*. Venetian grandparents also offered aid, both to shore up the status of their line and again to secure economic and social benefits.⁶¹ The difference lies in the social and gender structures of the island. Although the concerns were undoubtedly similar, in Venice only one side of the family was involved in the augmentation of dowries, because women were excluded from the *fraterna* and the benefits and costs or investments that involved her. On Mykonos, agnatic and cognatic kin were equally involved on each side, which possibly allowed for more extensive networks to develop.

Throughout Europe, the participation of kin in the marriage of women—or even in the courtship leading to marriage⁶²—in the form of financial aid⁶³ has been well proven. What this analysis demonstrates, however, is that differences in the customs of property transmission can emerge even among societies that share a legal, cultural, and ethnic milieu. Naxos and Mykonos were at the time remarkably similar in both legal culture and marital customs. In both cases, the legal culture was based on Byzantine-Roman law and had evolved along similar lines. The custom of male “dowries” was practiced on both islands; the property and inheritance rights of women were well defined and enforced; and the bulk of the share of patrimony was received at the time of marriage, assuming a death or some other misfortune had not previously occurred. Even the language of the documents, the properties involved, and the requests and conditions of parents were remarkably similar. Despite all that, however, in terms of relatives being involved in dowering practices, the two islands present quite different tendencies.

That difference, as I hope I have made clear, can be traced to the different socioeconomic structures and practices of the island. It is well known that Mykonos was a wealthier island, with greater links to the wider Mediterranean and beyond. Even a simple look at the properties mentioned in the dowry contracts makes this clear, since the Mykoniates had considerably more expensive clothing and furnishings than did the Naxiotes, often of a Western style, including Venetian mirrors and furniture. It is conceivable that the dowry inflation that worried the Orthodox ecclesiastical authorities at the end of the eighteenth and beginning of the nineteenth centuries had a greater impact on the commercialized island of Mykonos, thus placing a greater burden on Mykoniate parents to provide the kind of dowry that necessitated the assistance of kin. Such a burden, however, should have been felt on both sides, since both men and women received dowries, and would certainly not explain the cases in which kin assisted both sides simultaneously. Instead we should look to the benefits of forging broad alliances as an explanation for the generosity of kin—benefits that would accrue to both sides. The impact of the mercantile activities of the Mykoniates, however, has not been examined as to its effect on women and the role of gender. Even excluding the presence and impact of female merchants and entrepreneurs—a topic for another essay—the different economic structures of the island transformed dowering practices, which in turn subtly modified relations within families and between genders.

At a basic level, there was a significant increase in the number of formalized interactions between family members, such as uncles, cousins, and other relatives who put their names—and properties—in the dowry contracts of both men and women, seeking to forge strong links that would bind households and secure economic arrangements and alliances. This was done in part as a ceremonial gesture—a statement of close ties—just as in other parts of Europe the exchange of material goods at the time of marriage confirmed an alliance and created networks of support.⁶⁴ Beyond that, however, we can discern a greater role for women, taking part in a very important transaction involving members of their families. They may have been doing so to promote the interests of their own families or their husbands, in particular, but the fact remains that it is their names that appear in the documents, and that it is they who are the connecting link in such alliances. Furthermore, women often appear alone in these transactions, perhaps indicating a weakening of the earlier legal requirement for a husband to approve fiscal transactions involving his wife.

In essence, we can see that women in Mykonos did not only have clearly defined property rights, as was the case in Naxos and most of Greece as well, but we have also seen evidence of them exercising some control over their properties and using them to make what amounted to public statements. The economic structures of the islands thus determined that kinship relations would develop quite differently within two societies that shared an almost identical culture and legal structure. These different kinship

relations in turn allowed for slightly different gender roles, giving perhaps an opportunity for some Mykoniate women to assert a little more control over their wealth and possibly gather a bit more social capital than was believed common in the region.

NOTES

1. Although *asylania* often referred to the Dutch Thaler (Eftychia D. Liata, *Floria Dekatessera Stekoun Grosia Saranta—I kykloforia ton nomismaton ston Elliniko choro 15os–19os aionas* [Athens, 1996], 151–152), in this case it refers to coins stamped in Istanbul (Panagiotis Kousathanas, *Christiko Lexiko tou idiomatos tis Mykonou* [Irakleio, 1996], 22–23).
2. The most common currency found in these documents, this Ottoman coin replaced the older *akce* (often referred to in Greek as *aspro* or *asper*) (Liata, *Floria Dekatessera*, 99). In 1801, 3:10 *grosia* equaled a Spanish or Mexican real (*ibid.*, 191).
3. General State Archives, Mykonos Archive [hereafter GAK Mykonos], F9/090, 12 January 1765.
4. Stanley Chojnacki, *Women and Men in Renaissance Venice* (Baltimore, 2000), 135.
5. Sharon T. Strocchia, “Gender and the Rites of Honour in Italian Renaissance Cities,” in *Gender and Society in Renaissance Italy*, ed. Judith C. Brown and Robert C. Davis (New York, 1998), 44.
6. Margaret L. King, *Women of the Renaissance* (Chicago, 1991), 26.
7. Samuel Cohn has identified an extended period of dowry inflation following the period of the Black Death. See Samuel Kline Cohn Jr., “Marriage in the Mountains: The Florentine Territorial State, 1348–1500,” in *Marriage in Italy, 1300–1650*, ed. Trevor Dean and K. J. P. Lowe (Cambridge, 1998), 188.
8. See, among many, Chojnacki, “Nobility, Women and the State: Marriage Regulation in Venice, 1420–1535,” in Dean and Lowe, *Marriage in Italy*, 144.
9. Eleni Kyrtsi-Nakou, “Ai Peri Proikodosion ‘Nomothetikai’ Rythmiseis Vasi ton Kanonikon Diataxeon tou Oikoumenikou Patriarcheiou (1701–1844),” *Epistimoniki Epetirida tou Dikigorikou Syllogou Thessalonikis* 1 (1980): 11, 27; and Manouil Io. Gedeon, “Ai Peri Proikodosias Eparchiakai kai Patriarchikai Diataxeis,” *Ekklesiastiki Alitheia* 27 (18 May 1888): 217; and 28 (25 May 1888): 225.
10. King, *Women of the Renaissance*, 27.
11. Julie Hardwick, *The Practice of Patriarchy: Gender and the Politics of Household Authority in Early Modern France* (University Park, PA, 1998), 159, 181; Joanne M. Ferraro, *Marriage Wars in Late Renaissance Venice* (Oxford, 2001), 122; Rebecca Edwards, “Andrea and Giovanni Gabrieli: Musicians and Sororal Relations in Later 16th Century Venice,” in *Sibling Relations and Gender in the Early Modern World*, ed. Naomi J. Miller and Naomi Yavneh (Burlington, VT, 2006), 129.
12. Christiane Klapisch-Zuber, *Women, Family, and Ritual in Renaissance Italy* (Chicago, 1985), 75.
13. *Ibid.*, 91.
14. Aglaia E. Kasdagli, *Land and Marriage Settlements in the Aegean: A Case Study of Seventeenth Century Naxos* (Venice, 1999), 259.
15. *Ibid.*, 257.

16. Klapisch-Zuber, *Women, Family, and Ritual*, 81.
17. Ioannis Karachristos, "Kin Terminology and the Study of Kinship: A Case Study of the Greek Island of Syros (1750–1820)," *The History of the Family* 9 (2004): 301, 307. Karachristos also sees an equalization of agnates and cognates in his examination, something that is observable in the sample used previously as well (*ibid.*, 306).
18. Eleftheria Sp. Papagianni, *I Nomologia ton Ekklisiastikon Dikastirion tis Byzantinis kai Metabyzantinis Periodou se Themata Perousiakou Dikaion* (Athens, 1997), 88. Male "dowries" were not an entirely unique Greek phenomenon. Other parts of Europe had similar traditions, including some regions in southern France; see Agnes Fine, "Hommes Dotes—Femmes Dotees dans la France du Sud," in *Femmes et Patrimoine*, ed. G. Ravis Giordani (Paris, 1980), 39. Women received their patrimony at the time of marriage throughout Europe; however, dowered women were often disinherited, even sometimes when there were no sons to inherit (Klapisch-Zuber, *Women, Family, and Ritual*, 19).
19. In strictly legal terms, there were considerable differences between male and female dowries, as legal scholars point out (Papagianni, *I Nomologia ton Ekklisiastikon Dikastirion*, 34), but other scholars point to the similarities in the function of these vehicles and their similar characteristics (Kasdagli, *Land and Marriage*, 195).
20. Papagianni, *I Nomologia ton Ekklisiastikon Dikastirion*, 96.
21. *Ibid.*, 95. Women could assume the management of their dowry under certain extreme circumstances, primarily if they could show that their dowry was being endangered by their husbands' bad management or behavior. In general, most court cases involving women in the Byzantine period (and the Ottoman period, for that matter) involved dowries. See Angeliki E. Laiou, *Gender, Society, and Economic Life in Byzantium* (Brookfield, VT, 1992), 234, 237; R. J. Macrides, *Kinship and Justice in Byzantium 11th–15th Centuries* (Brookfield, VT, 1999), 89–90.
22. According to Byzantine law, a wife was the second claimant to the property of her husband if her dowry had been in any way compromised before any other creditor, excepting the state.
23. In fact, even regarding a wife's nondowered properties (*exoproiki*), her consent was required for any sale or donation, including the inclusion of such properties in a daughter's dowry contract. See Konstantinos Armenopoulos, *Procheiron Nomon I Exavivlos* (Athens, 1971), 80; Manuil Malaxos, "Nomocanonul," in *Indreptarea Legii (1652) Adunarea Izvoarelor Vechiului Drept Rominesc Scris VII*, ed. Andrei Radulescu (Bucharest, 1962), 851.
24. Georgios S. Maridakis, *To Astikon Dikaion eis tais Nearais ton Byzantinon Aftokratoron* (Athens, 1922), 131, 135.
25. There is significant variation regarding the legal obligation of dowering a daughter in Europe, although the father was invariably involved. During the ancien régime in France, for example, parents had the moral obligation to marry off their daughters, and in the regions where the dotal system was in place, this was a judicial obligation for parents or brothers (George Augustinos, "La Position des Femmes dans trois types d'organisation sociale: La Lignee, la parentele et la maison," in *Femmes et Patrimoine*, ed. G. Ravis Giordani [Paris, 1980], 32). In Venice, the father had the primary legal responsibility of providing the dowry, and in case of death or incapacity, the burden fell upon his sons and, in their absence, to the father's male ascendants (Chojnacki, "Dowries and Kinsmen in Early Renaissance Venice," *Journal of Interdisciplinary History* 5 [1975]: 576).
26. *Ibid.*, 577.

27. Although Kalpourtzi does see a mixed picture in Naxos; see Eva Kalpourtzi, *Syggenikes Scheseis kai Stratigikes Antallagon* (Athens, 2001), 86–87.
28. Jack Goody has seen kinship in the Mediterranean as “decidedly” bilateral, so the involvement of maternal and paternal relatives should not be a surprise to us. Jack Goody, *The Oriental, the Ancient, and the Primitive: Systems of Marriage and the Family in Pre-industrial Societies of Eurasia* (Cambridge, 1990), 453.
29. Contemporary accounts called the inhabitants of Naxos “peasants,” “poor housekeepers,” and “worthless at sea.” Dimitrios Fillipidis, Daniel Ieromonachos, and Gregorios Ierodiakonos, ton Demetriaion, *Geographia Neoteriki* (Athens, 2000), 293. The population of the island was estimated at eight thousand inhabitants (*ibid.*, 294), though other accounts of roughly the same period (on the eve of the Greek revolt of 1821) suggested as many as sixteen thousand people; see Michail Chouliarakis, *Geographiki, Dioikitiki kai Plithysmiaki Exelixi tis Ellados, 1821–1871* (Athens, 1973), vol. A, pt. 1, 27. The mostly agricultural nature of the island compared to the rest of maritime Greece can be seen in the post-independence professional division of the population; see Sokratis D. Petmezas, *I Elliniki Agrotiki Oikonomia kata ton 19o Aiona* (Irakleio, 2003), 189.
30. Mykonos was thought to have between 3,000 (Demetriaion, *Geographia Neoteriki*, 232) and 5,500 inhabitants (Chouliarakis, *Geographiki, Dioikitiki kai Plithysmiaki Exelixi*, 32).
31. Eleni E. Koukkou, *Oi Koinotikoi Thesmoi stis Kyklades kata tin Tourkokratia* (Athens, 1980), 83–84, 180.
32. Kasdagli, “Family and Inheritance in the Cyclades, 1500–1800: Present Knowledge and Unanswered Questions,” *The History of the Family* 9 (2004): 262. I should note that my sources for Naxos come from the Greek-speaking rural part of the island, known at the time as Drymalia. This may have reduced the presence of cultural differences with Mykonos (especially in terms of legal rights and practices) but probably exacerbated the socioeconomic ones, since the wealthier and mercantile parts of Naxos were not part of the archive.
33. Sharing of jurisdiction over marriage between secular and ecclesiastical authorities was not uncommon throughout Europe at this time; see Emlyn Eisenach, *Husbands, Wives and Concubines: Marriage, Family, and Social Order in Sixteenth Century Verona* (Kirksville, MO, 2004), 45.
34. Georgios Men. Valassis, “Tina Peri tis Patrikis Exousias kata to Dikaion tou Meta tin Alosin Ellinismou,” in *Themata Genikis Theorias kai Filosofias tou Dikaïou*, ed. Stavros I. Stavropoulos (Athens, 1970), 530. For a more complete, nuanced, and accurate discussion, see Nikolaos I. Pantazopoulos, *Apo tis “Loggias” Paradoseos ston Astiko Kodika* (Thessaloniki, 1965); N. J. Pantazopoulos, “Church and Law in the Balkan Peninsula During the Ottoman Rule,” *Institute for Balkan Studies* 92 (1967).
35. Even in areas where relatives were often involved in the marriages of their kinfolk, this was almost exclusively done in order to augment the dowry of a woman. For example, in fourteenth–fifteenth century Venice, there is strong evidence that men often contributed to the dowries of their kinswomen (especially granddaughters and nieces), but there was no equivalent aid offered to their kinsmen, at least in terms of property (Chojnacki, *Women and Men in Renaissance Venice*, 136–137, 147).
36. GAK Mykonos, F10, 8 January 1775.
37. *Ibid.*, F10, 3 May 1780.
38. *Ibid.*, F10, 10 December 1782.
39. Historical and Ethnological Society of Greece, Naxos Archive [hereafter IEEE Naxos], 4044, 12 May 1786.

40. GAK Mykonos, F9/052, 23 October 1757. See also IEEE Naxos, 4101, 4110 February 1788.
41. In Italy, prior to the actual marriage there was an event usually called the ring day, during which the marriage contract was agreed on and the groom gave a ring to his bride and presented her and his future in-laws with gifts (the counterdowry), followed by a banquet organized by the parents of the bride (Strocchia, "Gender and the Rites of Honour," 45). This counterdowry, however, or at least the part given to the bride, was often temporary until the conclusion of the ceremonies (*ibid.*, 46; Klapisch-Zuber, *Women, Family, and Ritual*, 227). Significantly, none of this was documented by the notary, unlike the dowry itself (Klapisch-Zuber, *Women, Family, and Ritual*, 219).
42. In Mediterranean societies, brides received significant and varied gifts, often as early as the time of courtship and leading up to the day of marriage; see Daniela Hacke, *Women, Sex and Marriage in Early Modern Venice* (Burlington, VT, 2004), 189.
43. Evdoxios Doxiadis, "The Shackles of Modernity: Women, Property and the Transition from Ottoman to Independent Greece, 1750–1850" (PhD diss., University of California, Berkeley, 2007), 141.
44. In several parts of Greece, brothers assumed the legal obligation to provide the dowries of their sisters after the death of the father, although this does not seem to have been the case in maritime Greece; see Papagianni, *I Nomologia ton Ekklesiastikon Dikastirion*, 49.
45. IEEE Naxos, 6037, 14 September 1820/3 March 1829. See a nearly identical case in IEEE Naxos, 4684, 8 February 1805, and 4290, 19 March 1795, in which a couple had "adopted" their nephew as a baby because they had no children of their own.
46. IEEE Naxos, 5203, 23 June 1812. See also IEEE Naxos, 4789, 4 February 1807; 4740, 11 April 1806; 4598, 11 July 1803; 4424, 8 November 1799; 4375, 4 November 1797; 4365, 3 September 1797.
47. J. G. Peristiany, ed., introduction to *Mediterranean Family Structures* (Cambridge, 1976), 15. See also Eleftherios P. Alexakis, "Ta Geni kai i Oikogeneia stin Paradosiaki Koinonia tis Manis" (doctoral diss., University of Athens, 1980), 229.
48. IEEE Naxos, 3668, 20 February 1769.
49. GAK Mykonos, F4/116, 4 January 1817.
50. *Ibid.*, F10, 30 November 1793; F10, 6 November 1793.
51. *Ibid.*, F10, 31 March 1798.
52. Macrides, *Kinship and Justice*, 1–148.
53. Even parents in dowry contracts often retained much of the property they promised for their old age; see Kasdagli, "Family and Inheritance," 268.
54. GAK Mykonos, F11, n.d. 1802. Such arrangements were not limited to individuals without kinship ties to the beneficiaries. Even a brother or sister could set up such arrangements if he or she had remained childless and was getting old. That was the case with Eleno, who offered her entire fortune as a "dowry" to her brother—Captain Nikolo Kalergi—in return for the obligation to "look after her living and dead" (GAK Mykonos, F11, 20 November 1806). I should note that in the same document, an uncle of the groom also added some properties to the "dowry." On occasion the donors retained the usufruct of said properties (as was the case with donation documents) until their deaths, solidifying their hold on the individual who was to take care of them (see, among others, GAK Mykonos, F11, 12 September 1806; GAK Mykonos, F11, 26 October 1806). Children were under a legal obligation to sustain their parents if the latter were unable to do so, and vice versa (Malaxos, "Nomocanonul," 871), but if an elderly individual lacked children,

- he or she had to make other arrangements, usually by giving property to individuals in return for material support (Kalpurtsi, *Syggēnikes Scheseis*, 166–169). It is in this context that we should examine some of the gifts given to *psychopedia*, or spiritual children, although the term was broad enough to refer to adopted children, godchildren, and servants (*ibid.*, 185).
55. I am hesitant to make strong claims regarding the surprising presence of brothers-in-law, since they could be acting in the place of someone else, such as their wives. On at least one occasion, a brother-in-law clearly stated that he dowered his sister-in-law as a representative (*epitropikos*) of his own brother-in-law (*gynaikadelfos*)—that is, the brother of the bride, who was for some unknown reason unable to do it himself (GAK Mykonos, F10, 7 July 1798).
 56. Goody, “Bridewealth and Dowry in Africa and Europe,” in *Bridewealth and Dowry*, ed. Jack Goody and S. J. Tambiah (Cambridge, 1973), 18. See also Kasdagli, “Family and Inheritance,” 270.
 57. Kasdagli has found significant participation of aunts and uncles in the dowering of brides in Naxos in the seventeenth century (about one in ten cases), but her sample came from the more commercialized and prosperous capital of the island and surrounding locations rather than the agricultural part I examined (Kasdagli, *Land and Marriage Settlements*, 215). As such, her conclusions reinforce my own regarding the importance of economic and material considerations even within an island (or class).
 58. Merchants at the time lived a life of constant mobility in order to conduct their business (Kasdagli, “Family and Inheritance,” 258). See also Vasilis Kremmydas, *Emporikes Praktikes sto Telos tis Tourkokratias, Mykoniates Emporoi kai Ploioktites* (Athens, 1993), 83. Such trade networks could lead a single Greek merchant to travel to such diverse places as Trieste, Ancona, Smyrna, Istanbul, Bucharest, Chios, Tinos, Mykonos, Venice, Kos, and Tsesme (*ibid.*, 67–68, 70–71). Considering the conditions and time involved in such voyages, a merchant would almost certainly need trusted individuals to manage his affairs while he was away.
 59. Matthaios Dim. Los, *Aiones Akmis: Syntomi Istoria tis Ellinikis Emporikis Naftilias* (Athens, 1987), 81; N. A. Kefalliniadis, *Taxidia sto Eigaio, 18os–20os Aionas* (Athens, 1989), 37, 116.
 60. Francois Rene Chateaubriand, *Odeiporiko ek Parision eis Ierousalim kai ex Ierosolymon eis Parisiou*, vol. A (Athens, 1979), 106.
 61. Chojnacki, “Dowries and Kinsmen,” 591–592. Even in Venice, however, as Chojnacki has discovered, the “widening circle of dowry contributors encouraged a patrician social orientation in which the traditional emphasis on lineage was increasingly complemented by nonlineage ties of affection and interest” (*ibid.*, 575).
 62. Catherine Frances, “Making Marriages in Early Modern England: Rethinking the Role of Family and Friends,” in *The Marital Economy in Scandinavia and Britain, 1400–1900*, ed. Maria Agren and Amy Louise Erickson (Burlington, VT, 2005), 43.
 63. Amy Louise Erickson, *Women and Property in Early Modern England* (New York, 1997), 85. See also Richard Wall, introduction to *Family Forms in Historic Europe*, ed. Richard Wall, Jean Robin, and Peter Laslett (Cambridge, 1983), 23–24.
 64. Strocchia, “Gender and the Rites of Honour,” 45.

16 Women as Outsiders

The Inheritance of Agricultural Land in the Ottoman Empire*

Colin Imber

Land in the Ottoman Empire fell into three categories. First, there was privately owned land, which was relatively uncommon. Second, there was land belonging to *awqaf* (sing. *waqf*), which were trusts whose revenues went to a charitable cause or institution nominated by the founder. Typically a *waqf* would support a pious or social institution, such as a mosque or a bridge, but a founder could also nominate his or her family as beneficiaries. Converting family property, and especially land, to *waqf* had the advantage of keeping the property intact upon the death of the founder. Islamic law allows a person to bequeath one-third of his or her property at will, while the remaining two-thirds goes to the surviving spouse, descendants, and other relatives in fixed proportions. Unless the total estate was sufficiently large to allow the owner to bequeath a piece of privately owned land as part of the one-third, the land would be divided among the heirs and further subdivided as it passed down through the generations. *Waqf* property, by contrast, was indivisible and held in perpetuity. The conversion of land to *waqf* was therefore a means by which a family could preserve the integrity of its land, regulate the terms of inheritance, and prevent its dispersal down the generations. Since Islamic law places no barriers on women, married or unmarried, owning property, women—especially wealthy members of the sultan's household—were prominent as founders of *awqaf*.

The third category was *miri* land, referring to land not belonging to a *waqf* and not in private ownership, but remaining at the disposal of the sultan, who could convert it to *waqf* or transfer it to an individual as private property (the term *miri* means “related to the ruler”). It was, however, in the sultan's best interest to maintain the *miri* status of the land, so it would remain under his control. From the fourteenth century onward, sultans distributed most *miri* land as service fiefs. Up to the seventeenth century, the majority of these were military fiefs, supporting a *sipahi* (cavalryman) whose tenure of the fief was conditional on his service in the army, the precise level of his military obligation being dependent on the value of the fief. The Ottoman term for a fief of normal size was *timar*. Although the *sipahi* did not own his *timar*, he had the right to collect the taxes from it during the period of his tenure. Neither the son nor sons of a *sipahi* could inherit

their father's *timar*; instead, they inherited his military status and the possibility of acquiring a *timar* in their own name. The sultan could also allocate parcels of *miri* land as tax farms, administered either by a salaried official or by a tax farmer who retained any surplus revenue above the amount that he had contracted to remit to the treasury. The sultan could also use fiefs on *miri* land to provide a living for members of his court, members of his scribal service, and others. Fief holdings on *miri* lands were revocable, with tenure conditional on satisfactory performance of the service required. For example, if a *sipahi* failed to appear on campaign when summoned to do so, he would lose his *timar*.

Ottoman texts use the general term *sahib-i arz* (landholder) to refer to the holder of a fief, and it was these landholders or their agents who, in addition to collecting the taxes due, administered on the sultan's behalf the laws regulating the land and the taxpayers who worked it. The Ottoman term for a taxpaying subject of the sultan, and therefore overwhelmingly applicable to peasant cultivators, is *ra'iyyet* (plural: *re'aya*), the expression *sahib-i ra'iyyet* (holder of the *ra'iyyet*) sometimes substituting for *sahib-i arz* as a designation for the fief holder. In order to acquire *tapu* (title to a plot of *miri* land), a new entrant had to pay an entrance fee, or *tapu* tax, to the *sahib-i arz*. In Ottoman usage, the concepts of title and entrance fee were so intertwined that the term *tapu* usually referred to the entrance fee rather than simply to title. The term for a plot of land of average size is *chift* (yoke), its etymology indicating that it was the amount of land that a family possessing a yoke of oxen could plow and cultivate in a year. Once a person had title to a *chift*, he had security of tenure, provided he continued to pay the taxes due to the landholder and did not leave it fallow for more than three years. On his death, his son—but only his son—could inherit the land without paying a new entrance fee.

Neither the landholder, therefore, nor the peasants working the fief actually owned the land. The fundamental rule of Ottoman land law was that *miri* land itself was at the disposal of the sultan and not subject to private ownership. However, property that was above the land could be privately owned. Therefore, buildings, vines, and trees descended to heirs according to the normal rules of inheritance in Islamic law. By contrast, arable fields, meadows, and land beneath buildings and trees constituted *miri* land, and different rules of inheritance applied.

The Ottomans most probably inherited the basic laws governing *miri* land in general and *timars* in particular from the regimes that they displaced. It is noteworthy, in particular, that the Ottoman *timar*, both in its basic principle as a revocable military fief and in its associated terminology, shows a close affinity with the *pronoia* of the late Byzantine Empire. These inherited laws and institutions developed to accommodate changing needs. An important stage in this development was the introduction, probably in the late fourteenth century, of the practice of compiling registers showing *timars* and other fiefs in each district, with the names of fief holders alongside

their military obligations, and the names of the cultivators together with the size of their holdings and the taxes they owed. However, the tradition of codifying the law in written form dates only from the late fifteenth century, and grew specifically in the context of the compilation of land-and-tax registers. From 1487, it became customary to preface each new register with a lawbook, setting out the applicable laws within the district covered by that register. Most of the regulations were fiscal, detailing the taxes that landholders were entitled to take from the *re'aya* on their fiefs, and at what rate. However, they invariably included other material relating especially to the relations between landholders and *re'aya* on *miri* land. The general term for this body of law is *kanun*. The word most likely derives from the Byzantine term for the basic land tax (*kanōn*),¹ but the Ottoman word refers to the laws concerning taxation rather than to the tax itself. Furthermore, it acquired a wider meaning, eventually coming to mean the body of Ottoman secular law that was distinct from the *shari'a*. However, it continued for the most part to refer to the laws relating to *miri* land.

A compilation of *kanun* is *kanunname* (lawbook). For about a hundred years from the late fifteenth century, the majority of these were *sanjak kanunnames*—that is, *kanunnames* issued in connection with the land-and-tax surveys of each *sanjak*, or subdivision of a province, summarizing the laws applicable in that district. A new survey of a *sanjak* would be the occasion for the issue of a new *kanunname*. While the organization of the material in these compilations is not entirely haphazard, it is nonetheless less than systematic. Nowhere were the basic principles of tenure on *miri* land laid out; rather, these were known through custom and practice. Nowhere do they give a completely systematic conspectus of the rules governing tenure and taxation, concentrating more on particular and problematic cases. Modifications to *kanunnames* often came about when, at the time of a new land-and-tax survey, the surveyor encountered a problem that he would need to submit to either the sultan or a local authority. The ruling he received as a solution to the problem would then appear in an abridged form as a clause in the *kanunname*.

Despite the rather incoherent character of the *sanjak kanunnames*, the Ottoman government clearly developed the notion that there should be a coherent set of laws relating to *miri* land, applicable as far as possible throughout the empire. This is evident from the reoccurrence of certain clauses, either verbatim or with insignificant variations, in *sanjak kanunnames* for different areas, and from the survival of copies of some *sanjak kanunnames*—such as the 1528 lawbook for Aydin—independent of the land-and-tax surveys that they originally accompanied. These clearly served both for reference and as models for similar compilations. However, the desire for uniformity is clearest from the production of a general *kanunname* intended for application throughout the empire, the first version of which dates from about 1500, with further recensions appearing

until about 1540. This *kanunname* deals in general with the obligations of *timar* holders and *re'aya*, with rates and types of taxation, and with statutes concerning *miri* land in general. It is notably better organized than the *sanjak kanunnames*, with its material fairly systematically arranged under headings. Its survival in numerous copies is testimony to its success in application. Nonetheless, the general *kanunname*, while containing detailed statutes, does not summarize the basic principles of tenure. In the 1540s, however, following the Ottoman annexation of central Hungary and the introduction there of the Ottoman system of land tenure and taxation, the government clearly felt the need for a summary of this sort, and the task of producing one fell to the jurist Ebu's-su'ud.² The statement that he produced was to serve as the basic document on Ottoman land tenure from the mid-sixteenth century until the end of the Ottoman Empire.

The continued acceptance of the authority of Ebu's-su'ud's statement on *miri* land gives a somewhat misleading impression of the continuity of the Ottoman system of land tenure. Events during the late sixteenth and early seventeenth centuries—particularly the war in Hungary between 1593 and 1606 as well as large-scale rebellions in Anatolia during the same period—led to deficits in the treasury and a flight of the peasantry from the land, leading to a dereliction of farms and confusion over who had the right of tenure. Furthermore, a change in the composition of the army during this period, from being primarily a cavalry force to relying more on infantrymen with firearms, produced a change in the pattern of landholding. There was a decline in the number of *timars*, which supported cavalrymen, and an increase in the number of tax farms, which remitted directly to the treasury the funds necessary to support the infantry. After 1600, the government tried to adapt to the new circumstances by changing administrative procedures and laws. A new style of register replaced the old land-and-tax registers with their attached *kanunnames*. New decrees modified the laws of land tenure, affecting, among other things, the right of women to inherit land. The 1620s witnessed efforts to systematize the changes. It was not, however, until the 1670s that a comprehensive new land code—the “New *Kanunname*”—appeared.³ This was to serve as the basic statement of Ottoman land law until the issue of the land code of 1858.

The New *Kanunname* presents a clear and systematic statement of the law, arranged logically under appropriate headings. The compilers did not, however, summarize the law in their own words. Rather, the text is a kaleidoscope of extracts from earlier documents—notably *kanunnames*, sultanic decrees, and *fatwas*—going back to the sixteenth century and opening with Ebu's-su'ud's statement on *miri* land. The sequence of documents presented in the New *Kanunname* makes it an important source for the study of how Ottoman land law developed between the sixteenth and seventeenth centuries, although always with the caveat that the compilers selected texts to suit their own understanding of how the law should be.

WOMEN AND THE INHERITANCE OF *MIRI* LAND

In principle, only a male could acquire title to a plot of *miri* land. On his death, title to the land passed automatically to his son, and to this extent—as a *kanunname* for Georgia dated 1570 observes—it resembled private property: “If one of the *re’aya* dies, his land descends to his son. It is like hereditary private property.”⁴ However, anyone other than a son wishing to occupy the land had to pay an entry fee. This rule also applied to brothers. If the deceased had a brother, he had first claim on the land, but only after paying the *tapu* tax. Daughters could not inherit land, the assumption being that a son would remain on and continue to cultivate his father’s land, while a daughter, on reaching maturity at about the age of twelve, would marry and live with her husband, usually in a different village. This is clearly the supposition behind the marriage tax, which, in the case of a previously unmarried woman, was payable to the holder of the fief where the woman’s father’s land was situated. The *kanunname* for Malatya of 1528 formulates the rule as follows: “The marriage tax for a virgin goes to the person whose *ra’iyyet* her father is, no matter where she moves to.”⁵ The origin of the tax was evidently as compensation to the fief holder for the loss of the bride’s labor.

Despite the prohibition, it is clear that daughters did sometimes claim the right to inherit their father’s land and that, in the first half of the sixteenth century, the government made a systematic attempt to nullify their claims. The general *kanunname* attributed to Selim I (1512–1520) states succinctly: “If a *ra’iyyet* dies leaving no son, but leaving a daughter, and she demands [his land,] saying, ‘It is my father’s land. I’ll look after it,’ it is forbidden for the *sipahi* to give the land to the daughter. He should not give it.”⁶ The same rule also appears in provincial lawbooks. For example, the *kanunname* for Aydin in western Anatolia, dated 1528, contains the following clause, repeated with only insignificant variations in some later *kanunnames*: “If a deceased *ra’iyyet* leaves no son, but only a daughter, and this daughter claims the land left by her father, the *sipahi* is forbidden from giving the daughter her father’s land.”⁷ This clause as it stands leaves the daughter with the option of acquiring the land as an outsider would by paying the entry tax. However, both the general and some local *kanunnames* forbid this, making it clear that the prohibition is not simply on daughters inheriting land from their fathers but more generally on women gaining title to land. The clause on this subject in the general *kanunname* reappears verbatim in the *kanunnames* for Aydin and Bolu in 1528: “If a holding is vacant and a woman says: ‘I’ll pay the tax which an outsider pays,’ it is contrary to the sultan’s command to give land to a woman.”⁸

This clause in the general *kanunname* is repeated verbatim only in *kanunnames* for areas in western Anatolia, but the prohibition on women inheriting land was empire-wide. The 1541 *kanunname* for Çemişgezek in southeastern Anatolia, for example, gives clear rules for inheritance,

including the rights of the deceased's brother. As was standard, it gives a son the right to inherit. If, however, the deceased had no sons but left a brother, "provided his brother pays the *tapu* [tax] which an outsider pays, the *sipahi* may not give [the title to the land] to anyone else. . . . But if he has no son or brother, but a daughter, a wife or paternal uncles, they have no access to [his] cultivable land. In this case the *sipahi* has the choice. He may give [title to the land] to whomever he wishes."⁹

One way in which women could circumvent the prohibition on inheriting land was by sharing it with a brother or brothers. If a man died leaving more than one son, the law permitted them to share their father's land. According to the *kanunnames* of 1541 for Erzurum and Pasin and of 1583 for Yeni İl (Sivas),¹⁰ the procedure in this case was to register the land in the name of one of the sons, and to register the other sons as smallholders or landless laborers, and for the brothers to share the taxes on the land. This provided an opportunity for women. If the land was registered in her brother's name, a woman could enjoy a share while still avoiding the prohibition on women holding title. This, however, was something the government wished to prevent, hence the clause in a mid-sixteenth-century *kanunname* for Karaman: "If a *ra'iyyet* dies, leaving a son and a daughter, his holding goes to his son. His daughter has no share."¹¹ This ruling clearly had a wider application than in Karaman alone, since a decree of 1551 repeats the prohibition. In answer to a question about whether a daughter could share with her brother a piece of land that their father had cleared from the waste, the *mufti* Ebu's-su'ud stated bluntly: "It is a sultanic command. Land descends to [the man's] son. No share is given to the daughter, unless it is recorded in the register as private property. If the deceased leaves no son, but only a daughter, it is not given to the daughter. The *sipahi* should give it for *tapu* [tax] to whomever he wishes. In the year 958/1551."¹² In this instance, however, Ebu's-su'ud did allow the daughter a share, on the grounds that her father had spent effort and money on clearing the land and that, in these circumstances, she should not be deprived. He nonetheless demanded that she pay *tapu* tax to gain access to the land. It was most likely Ebu's-su'ud's ruling in this case that led to a modification of the law.¹³ Some copies of the general *kanunname* attributed to Selim I have marginal notes that the copyist of a manuscript dated 1576 attributes to Chancellor (*nishanji*) Jelalzade (held office 1534–1557, 1566–1567). One of these modifies the general prohibition on daughters inheriting *miri* land: "The deceased cleared land with his own axe and in general expended money and labour. If he dies leaving no son or brother but leaving a daughter, it has now been commanded that [his land] be given to his daughter. But the amount of *tapu* [tax] that would be due from a brother should be paid."¹⁴

The *kanunnames* suggest that during the first half of the sixteenth century, the Ottoman government made a systematic attempt to prevent daughters from inheriting *miri* land. It is possible that this prohibition reflected the personal wish of the sultan, as evidenced in a parallel restriction on

women's opportunities appearing in a decree of 1544, which forbids women from marrying without the consent of a male guardian, and another that prevents a deserted wife from going to a Shāfi'ī judge to obtain a separation from her husband.¹⁵ It may also, however, be part of an attempt to restrict access to *miri* land at a time when a growing population had increased the demand for cultivable plots. The 1530s also saw the issue of several decrees systematizing and limiting the rights of sons of *timar* holders to acquire *timars* in their own name, presumably in an effort to restrict entry to the *timar*-holding class.¹⁶

Nonetheless, the *kanunnames* also make it clear that women did in fact cultivate land registered in their name, and sought to protect their rights against those who sought to dispossess them. As early as 1487, we find in the *kanunname* for Hüdavendgar (Bursa), which served as a model for later compilations, the clause: "Provided a woman does not let the land which she occupies lie fallow, and provided she pays her tithes and taxes, it is contrary to the *kanun* to take it from her."¹⁷ The same rule, with only insignificant variations in wording, appears in later codes. For example, the 1528 *kanunname* for Aydin reads: "If a woman occupies land on a *timar*, provided she does not let it lie fallow, provided she properly manages the land which she occupies, and provided she pays her tithes and taxes to the *timar*-holder, the *sipahi* who comes afterwards may not say: 'There is no land for a woman' and take it from her."¹⁸ The same clause appears in the general *kanunname* of c. 1500, proving that the rule had a wide application. It seems, however, that the intention of the clause was not to protect the rights of women who had acquired land through inheritance from their father or through initial entry but to protect widows who remained on their late husbands' land. This is the implication of two clauses in two separate fifteenth-century *kanunnames*. The first appears in a puzzling compilation headed "This is the *kanunname* of Mehmed [II] son of Murad [II] Khan." The manuscript carries the date 893/1488, but the archaism of the language suggests that the materials the compiler brought together date from the earlier decades of the fifteenth century. A clause in the section dealing with married non-Muslims contains the phrase: "from a widow who does not possess a *chift*, 6 *akches* per year,"¹⁹ implying that widows, or at least non-Muslim widows, could hold land. The second is the clause forbidding *timar* holders from evicting women, which appears in one version of the general *kanunname* of c. 1500. The clause reads: "provided a woman on her husband's land does not leave [it] fallow, and pays her tithes and taxes, it is an injustice to take it from her. They should not do it."²⁰ The clause aims to protect widows and perhaps also women who managed land on behalf of absent husbands.

It seems, therefore, that in law—if not necessarily in practice—the only woman who could inherit the use of a plot of *miri* land was a widow who inherited from her husband. Even then, if a man left a son or sons, it is most likely that they, rather than their mother, would inherit. The prohibition on

inheritance by women, already explicit in the general *kanunname* and in the *kanunnames* of Aydın and Bolu, received confirmation after 1541 when Ebu's-su'ud drew up his general statement of the laws governing *miri* land. Here, too, he restricted inheritance to sons: "[Holders of *miri* land] have the use of it until they die. When they die, their sons occupy their place and have the use of it as described above. If they have no sons, in the manner of other lands in these prosperous realms, it should be given to outsiders who are capable of cultivating it."²¹ In later rulings, however, Ebu's-su'ud modified this basic law of inheritance: "[Holders of *miri* land] sow and reap, . . . and when they die, if they have sons, the land remains in their sons' hands. But if [the deceased] leaves no son, but leaves a daughter, it has been commanded to give it to her for the *tapu* [tax] which an outsider pays."²² The date of the command in question was April 28, 1568, about a year and a half after the death of Süleyman I and the accession of his son Selim II, and was evidently issued in the context of a general land-and-tax survey, which marked the new sultan's accession. It was perhaps the death of the old sultan that enabled the easing of the ban on land passing to daughters.

The implementation of the decree was not, however, immediate. As an appendix to the new survey of Macedonia, Ebu's-su'ud restated the general principles of tenure on *miri* land but made no reference to the rights of daughters to inherit. Nor does the new *kanunname* of 1568–1569 for the island of Evvoia, which recognizes the claims of a brother but not of a daughter: "If the deceased has no son, but leaves a brother, when the deceased's brother has paid whatever amount of *tapu* [tax] disinterested persons determine, the *sipahi* may not give the land to anyone else."²³ Nonetheless, in the years after 1568, the rule did begin to take effect. In *fatwas* issued between 1568 and his death in 1574, Ebu's-su'ud recognizes the right of daughters to inherit on payment of *tapu*. The *kanunname* for Karaman dated 1584 also recognizes this right, and cases on this point appear in land registers.²⁴ On Samos in 1581, when a certain Nikolas Japeles died, his daughter received his land on payment of a *tapu* tax of 1,500 akches.²⁵ By the end of the century, the principle was well established. Pir Mehmed (d. 1611), a provincial *mufti* who gave a number of rulings on land disputes, gives a daughter a prior claim to her father's land, ahead of her father's full brother and half brother by the same father,²⁶ and he upholds a daughter's claim to retain title to land following the death of her husband, who had worked the land on her behalf.²⁷ He also favors the claim of a man's posthumous daughter against the claim of a paternal uncle who had acquired the title in the interim. In this instance, however, he rules that the case should be referred to the authorities, as there is no sultanic ruling to cover precisely those circumstances.²⁸

The new rule giving daughters the right to inherit their father's *chift* reflected their status as outsiders, who, on reaching puberty, would normally marry into a different household and move to another village, since it is presumably as outsiders that the law places on them the burden of paying the *tapu* tax—a burden that was to give rise to a new problem.

In the sixteenth and early seventeenth centuries, the formula for fixing the amount of *tapu* tax payable amounted to a vague phrase—"the value which disinterested Muslims determine"—suggesting that local custom and the value of the land in question were the deciding factors. However, the sum payable must have been substantial. A new law of 1632 fixed the amount at one year's revenue from the land: "According to the new law, the *sipahi* should take from the daughter one year's revenue from those places. He should not pursue her for more."²⁹ This is a substantial amount to pay in advance of occupancy, and the wording of the law suggests that before 1632 it had been common to demand more.

This seems to have been the reason for a problem that emerged after 1568. A petition to the sultan dated April 29, 1596, reports on difficulties that had arisen because the law did not put a time limit on the period following a father's death during which a daughter might claim his land. For this reason, "the *re'aya* take the land from the land-holder for *tapu* [tax], it passes from hand to hand and, when a period of time has elapsed, the daughters of the deceased come and claim it. In these circumstances there have been numerous disputes among the *re'aya*." The petitioner requested the sultan to put a time limit on a daughter's claims. He received in response a decree setting the limit at ten years, which became the standard.³⁰ One of the reasons for delayed claims must have been the inability of some daughters to pay the *tapu* tax due on the land at the time of their father's death.

The possibility, after 1568, of a daughter inheriting her father's land raised the new question of whether, and on what terms, her children could inherit from her. The assumption, and probably also the practice, between 1568 and the early seventeenth century was that a son could inherit from his mother without paying the *tapu* tax. In a summary of land regulations made by Okchuzade in 1622, he comments: "The analogy was that land descends from the mother in the same way as it descends from the father."³¹ To this, however, he adds: "But a noble decree that it should not [so] descend has been issued." The command to which he refers is dated March 17, 1604, and stipulates that the land in question "be given for the *tapu* [tax] that disinterested Muslims determine," the understanding being that it should descend to her son on condition of his paying the *tapu* tax.³² This put a son inheriting from his mother in the same position as a daughter inheriting from her father. The new law seems to have been a source of confusion. In reply to a question as to who had priority when a mother died, leaving a son and two daughters, Pir Mehmed was able to state that it would pass to the son only if he paid the *tapu* tax. He added, however, that since he had seen no decree on the matter, only the authorities could distinguish between the rights of males and those of females in such cases, and the questioner should therefore refer the matter to them.³³ By the 1620s, however, the rule was established that only sons could inherit from their mother. The *fatwas* of Yahya make it clear that a son, on payment of the *tapu* tax, had prior right of inheritance from his mother, but that a

daughter did not.³⁴ This was the rule that the compilers of the New *Kanun-name* were to confirm: “The deceased [mother’s] vacant lands are given by *tapu* only to her son.”³⁵

The decree of 1604, regulating the inheritance of land from a mother, is one of several from the early seventeenth century governing the inheritance of holdings on *miri* land. The promulgation of new land regulations during this period was a small part of a wider effort to restore order in the countryside of Anatolia, which in the early seventeenth century was a scene of rebellion, brigandage, and consequent flight from the land. A feature of the regulations that emerged during this period is a greater generosity toward female heirs, a development that suggests that there was a shortage of men to work the soil. During this turbulent time, men left their villages to join rebel bands in Anatolia, to fight in the Ottoman armies against them, or to take refuge in the towns and cities. More men departed to join the armies fighting in Hungary between 1593 and 1606, and against Iran from 1603 onward.

It must, therefore, have been a shortage of male labor that prompted the issue of a decree in February 1602 allowing a deceased man’s sister, in certain limited circumstances, to inherit his plot. The conditions were, first, that the sister pay the *tapu* tax; second, that the man had left no son, daughter, full brother, or half brother with whom he shared a father; and third, that the sister must be living in the same settlement as her deceased brother.³⁶ A petition in the following year asked the sultan to drop the third requirement: “Most sisters are not resident in his place and, since it is an injustice to give it to anybody else, it should be given to his sister without restriction.” The response, in a command of June 30, 1603, was to modify the original command but only slightly, now restricting the right of inheritance to sisters living “in the region” rather than strictly in the brother’s place of abode.³⁷

A petition of 1608 provides clear evidence that the reason for extending the right to inherit *miri* land to the wider family, and to women in particular, was shortage of labor. This was the year in which a military campaign under Kuyuju Murad Pasha suppressed the most serious rebellions in Anatolia and saw the beginning of a series of decrees concerning the resettlement of abandoned lands. The petition in question asks the sultan to extend to parents the right to inherit their deceased son’s land in order to prevent its abandonment: “The plots and meadows of deceased sons have not previously been given to fathers and mothers. Because fathers and mothers have been deprived of their sons’ plots, farms have fallen into disuse.” A decree of February 1609, issued in response to the petition, permitted inheritance by a father on payment of the *tapu* tax, provided the son left no son, daughter, full brother, or half brother sharing a father. If he left no father, then his mother inherited.³⁸

The issue of the decree of 1609 completed the process, begun in 1568, of extending the right to inherit *miri* land to relatives other than sons, resulting in Okchuzade’s summary of the new rules in 1622. As had been the

case in the fifteenth and sixteenth centuries, sons could inherit their father's land without the payment of the *tapu* tax. For all other relatives, entry to the deceased's land required payment; however, provided that payment was forthcoming, the landholder could not give the land to anyone else. On fulfillment of this condition, inheritance was subject to a strict hierarchy, which Okchuzade summarized as follows: "A deceased person's land is given by *tapu* to his daughter; if he has no daughter, to a brother by the same father; if he has no [brother by the same father], to his sister living in that place; if he has no [sister living in that place], to his father; if he has no [father], to his mother. Apart from these, no other relatives have a right to *tapu*. The rules for summer and winter pasture are the same as for other lands."³⁹

Although this hierarchy had developed haphazardly, it displays some consistent principles. First, all relatives apart from sons have the status of outsiders and so cannot inherit without paying the *tapu* tax. Second, males take precedence over females in the same degree of relationship—brothers over sisters, fathers over mothers. Third, descent is patrilineal, hence the exclusion both of half brothers sharing a mother with the deceased and of a woman's heirs—apart from her son on payment of the *tapu* tax—from inheriting her land.

CONCLUSION

The change between the sixteenth and the seventeenth centuries is striking. The law in the sixteenth century prevented all women, apart from widows, from inheriting *miri* land. In 1568, daughters acquired the right to inherit on payment of a *tapu* tax, and in the early seventeenth century, sisters and mothers acquired that right. The primary cause for the exclusion or inclusion of women as heirs to *miri* land seems to have been the changing demography of the empire. For much of the sixteenth century, the population was growing, with the result, one may speculate, that the demand for land was greater than the supply. In these circumstances, the government restricted inheritance to sons. The mid-sixteenth century laws, which attempt to enforce this restriction, have a parallel in a series of decrees from the 1530s that regulate the access to *timars* of sons of existing *timar* holders, suggesting that during this period the demand for *timars* was greater than the supply. In the late sixteenth and early seventeenth centuries, by contrast, population fell and there was a flight from the land. In these circumstances, the supply of land was greater than the demand; thus, in order to keep land under cultivation, the government opened the right of inheritance to a wider family group. At the same time, by insisting that all heirs apart from sons pay a *tapu* tax in order to gain title, the decrees seek to maintain the flow of revenue from the land.

The chaos and depopulation that occurred in Anatolia did not, however, affect the European provinces of the empire, at least those that were outside

the war zone in Hungary, and it is uncertain whether the decrees extending the right of inheritance to daughters, brothers, sisters, and parents were also applicable in these areas. The *kanunname* for Avlonya (Valona, Vlorë) in Albania, dated 1583, repeats the old law, allowing only a son to inherit a plot of *miri* land, or a brother on payment of the *tapu* tax: “a *bashtina* does not descend to his sister or to any other relative.”⁴⁰

Nonetheless, an additional clause makes it clear that daughters and other excluded relatives did in fact inherit land and even grants them title retrospectively: “If a *ra’iyyet* dies leaving no son and his *bashtina* is for a while in the possession of his daughter, sister or other relatives, it is not permissible for a *sipahi* who comes afterwards to say: ‘You have no title-deed (*tapuname*) for this *bashtina*. I’ll take it from you and give it to someone else by *tapu*.’ Provided they pay *jizya* and *ispenje* in full, in this case it is forbidden to take it from them.”⁴² However, a *kanunname* of 1613 for Ohrid (Bitola) in Macedonia makes no such concessions. The principle that a son may inherit a holding without paying a *tapu* tax remains: “If a *ra’iyyet* dies leaving a son, his *bashtina* descends to his son in accordance with the old *kanun*. The *sipahi* cannot demand *tapu* money from him.” However, the rules that had come into force allowing daughters and other relatives to inherit on payment of the *tapu* tax are absent. The *kanunname* continues: “But if he leaves no son, but leaves brothers, sisters and other relatives, the *bashtina* does not descend to them. It is up to the *sipahi*. If his brother pays the *tapu* tax which an outsider pays, the *sipahi* cannot give it to anybody else. But if he does not give it [to the brother], he has the choice. He can give it to whomever he wishes.” The final sentence specifically excludes daughters and sisters: “The *bashtina* does not descend to his daughters, sister and other relatives.”⁴³ Whether the *kanunnames* for Avlonya and Ohrid, which specifically exclude women from inheritance, were typical of the European provinces of the empire in the late sixteenth and early seventeenth centuries is a matter for further investigation.

NOTES

- * I owe thanks to Eugenia Kermeli for commenting on the draft of this essay and drawing my attention to a number of important references.
- 1. The Byzantine term is *dēmosios kanōn*, sometimes abbreviated to *kanōn*. See Michael Hendy, *Studies in the Byzantine Monetary Economy* (Cambridge, 1985), 286.
- 2. Ebu’s-su’ud (c. 1490–1574) was the senior judge in the Ottoman Empire from 1537 to 1545, and chief *mufti* from 1545 until his death.
- 3. Printed text of the New *Kanunname*, in *Millî Tettebbü’ler Mecmu’ası* [Hereafter MTM] 1, nos. 1–2 (1913): 47–112, 305–348.
- 4. Ö. L. Barkan, *Kanunlar* (Istanbul, 1943), 197.
- 5. *Ibid.*, 111.
- 6. The surviving recensions of this *kanunname* appear to date from the reign of Selim I’s successor, Süleyman I (1520–1566).

7. Barkan, *Kanunlar*, 10.
8. *Ibid.*, 10, 13; Ahmed Akgündüz, *Osmanlı Kanunnameleri ve Hukuki Tablilleri*, vol. 3 (Istanbul, 1991), 81; A. S. Tveritinova, *Kniga Zakonov Sultana Selima I* (Moscow, 1969), facsimile, f. 10b.
9. Barkan, *Kanunlar*, 189.
10. *Ibid.*, 78, 535–36.
11. *Ibid.*, 46.
12. MTM, 68.
13. During his period as chief *mufti*, Ebu's-su'ud made it a practice to submit to the sultan problems in the law that he encountered in his day-to-day work. He usually accompanied his submissions with suggestions for legislation that would rationalize the law and solve the problem in question. This seems to have happened in this case.
14. Akgündüz, *Osmanlı Kanunnameleri*, vol. 3, 81; Tveritinova, *Kniga*, f. 10b.
15. Paul Horster, ed., *Zur Anwendung des Islamischen Rechts im 16. Jahrhundert* (Stuttgart, 1935), 29, 30–31. The Ottoman sultans sponsored the Hanafī School of Islamic law, which denied the right of a deserted wife to seek a judicial separation from her husband. However, Hanafī jurists permitted deserted wives to seek a separation from a judge who adhered to the Shāfi'ī School, which permitted a judicial separation in cases of desertion. A decree of Süleyman I, however, forbade the practice, leaving deserted wives without a legal remedy.
16. M. T. Gökbilgin, "Kanunî Sultan Süleyman'ın timar ve zeamet tevcihi ile ilgili fermanlar," *Tarih Dergisi* 22 (1968): 37–43.
17. Barkan, *Kanunlar*, 18.
18. *Ibid.*, 10.
19. F. Kraelitz-Greifenhorst, "Kanunname Sultan Mehmeds des Eroberers," *Mitteilungen zur Osmanischen Geschichte* (1921–1922; repr., Osnabrück, 1972), 28. On the six *akche* tax payable by widows, see Dušanka Bojanić-Lukač, "De la nature et de l'origine de l'ispendje," *Wiener Zeitschrift für die Kunde des Morgenlandes* 68 (1976): 9–30.
20. M. Arif, ed., "Kanunname-yi Al-i Osman," *Tarih-i Osmani Encümeni Mecmuası*, supplement (1911), 51.
21. Barkan, *Kanunlar*, 297.
22. MTM, 66.
23. J. C. Alexander, *Towards a History of Post-Byzantine Greece: The Ottoman Kanunnames of the Greek Lands, circa 1500–circa 1600* (Athens, 1985), 165.
24. Suraiya Faroqhi, "Land Transfer, Land Disputes and *askerî* Holdings in Ankara," in *Mémorial Ömer Lûtfi Barkan* (Paris, 1980), 97.
25. Sophia Laiou, *Samos during the Ottoman Period* (in Greek) (Thessaloniki, 2002), 44.
26. Pir Mehmed, *Zahir ül-kudat*, in Ahmed Akgündüz, *Osmanlı Kanunnameleri ve Hukuki Tablilleri*, vol. 9 (Istanbul, 1996), 399–400.
27. *Ibid.*, 400.
28. *Ibid.*, 402.
29. MTM, 69.
30. *Ibid.*, 66.
31. MTM, 60. Okchuzade (1562–1630) was an Ottoman chancery official (1622–1623, 1625–1634) and litterateur. He made his summary of Ottoman land law during his final period in the office of chancellor, at the request of chief *mufti* Yahya.
32. *Ibid.*, 63.
33. Pir Mehmed, *Zahir*, 400.

34. Akgündüz, *Osmanlı Kanunnameleri*, vol. 9, 431.
35. MTM, 63.
36. *Ibid.*, 71
37. *Ibid.*
38. *Ibid.*, 72.
39. *Ibid.*, 59.
40. *Bashtina* is a Slavonic term referring to a peasant holding in parts of the European provinces of the Ottoman Empire.
41. *Jizya*: a poll tax payable by non-Muslim subjects; *ispenje*: the annual tax on land payable by non-Muslims.
42. Barkan, *Kanunlar*, 294.

EDITORS

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