Equal but not identical. Modes of partible inheritance in early-modern Schlanders (South Tyrol) and medieval Lambach (Upper Austria) compared

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**ABSTRACT**

After centuries of discussion about inheritance models and their advantages and disadvantages, it is now generally accepted that the traditional dichotomy of partible and impartible inheritance cannot represent the existing spectrum of inheritance practices and their effects. This article analyses two regions with partible inheritance to illustrate the range of ways in which this inheritance practice could be realised and how different the potential consequences could be as a result. Early modern Schlanders is contrasted with medieval Lambach to examine differences in legal basis, practical implementation, but also in the basic concept of equality between heirs. The example of Schlanders shows how even in a region declared as partible inheritance many logics traditionally associated with impartible inheritance can exist. Lambach, in turn, illustrates how even in the case of widespread division of land, effects such as fragmentation could be counteracted. The analysis makes it possible to identify factors that can have a particularly strong impact on the economic, but also social consequences of this inheritance practice. These are to be found both in the way the inheritance is divided and in other institutional factors, especially the matrimonial property regime. The results of the analysis underline that the inheritance practice of a region should neither be viewed through the lens of traditional schemes nor isolated from local socio-economic conditions.

The topic of inheritance and its associated inheritance models have undoubtedly been one of the key issues of economic and social history since its beginning. Correspondingly, extensive are the related publications and accordingly large the developments that can be identified in a historiographical examination of this research. One of the oldest and most influential concepts is that of the dichotomy between the two inheritance models of impartible and partible inheritance. The prevailing inheritance system was declared to be the main explanation for a whole range of social and economic circumstances, and countries were divided into different regions based on the predominance of the respective model. The southwest and west of Germany was labelled as a region of partible inheritance in contrast to undivided inheritance in the north and east (Fertig & Fertig, 2006, pp. 165–166), partible inheritance in the north of France was contrasted with
impartible inheritance in the south (Berkner & Mendels, 1978, p. 221). The age at first marriage was attributed to this factor and, in relation to it, also to a large extent the demographic development in these regions. Partible inheritance is said to have led to increased marriage opportunities and thus to more families and consequently to more children and a higher population. Impartible inheritance on the other hand is seen as a way to ensure a stable population with simultaneous emigration of all siblings who did not inherit the farm (Zeithofer, 2014, p. 14).

Economically, partible inheritance was attributed to destructive fragmentation of property including impoverishment of the population due to insufficient landholdings (Habakkuk, 1955; Maegraith, 2013, p. 139; Young, 1969, p. 317), while larger farm sizes obtained through impartible inheritance were considered the cause of an efficient, successful economy (Fertig & Fertig, 2006, pp. 165–166). As early as the eighteenth century, contemporaries argued against the ‘harmful division’ of land (Mathieu, 2018, pp. 152–153). Correspondingly, early research on inheritance systems was also accompanied by an explicit moral judgment. Frédéric le Play described partible inheritance, which was established by the Code Civil for all of France, as a disaster for France’s agricultural economy and society, which would lead to instability for households and families (Le Play, 1864, 1871; as cited in Béaur, 2004, pp. 31–32). In Germany, too, arguments were made against partible inheritance (Miaskowski, 1882; Sering, 1897–1908). The economist Friedrich List described it as ‘Zwergenwirtschaft’, dwarf economy (List, 1842). Sometimes – following the zeitgeist – there were also ethnic arguments. In 1933, Gunther Ipsen, for example, saw impartibility as a ‘Germanic’ characteristic while partible inheritance was ‘Slavic’ (quoted Zeithofer, 2014, pp. 20–21).

These often still very rigid ideas about the character and effects of the two inheritance models were increasingly dismantled over the course of the following decades. The most fundamental influence on younger research has been the acknowledgement that one must distinguish between inheritance law and inheritance practice, which in turn could vary widely across regions and time. By recognizing that inheritance practices cannot be reduced to legal or custom-based laws, but are a consequence of peasant goals and family compromises (Fertig & Fertig, 2006, p. 166), researchers broke away from the notion of rigid inheritance practices that were unchanging over time and region, a view that persisted well into the second half of the twentieth century (Zeithofer, 2014, p. 17). This was accompanied by the insight that only limited conclusions can be drawn from inheritance models to the structuring of society as a whole, since differences in actual inheritance practices can be large (Lanzinger, 2015, p. 335; Fertig, 2016, p. 9). Beginning in the 1970s and intensifying from the 1990s onwards, researchers looked at inheritance models in a noticeably more nuanced way and began to take into account many factors that had hitherto often been ignored. Lutz Berkner and Franklin Mendels defined them as ‘the combination of laws, customs, land tenure rights and settlement restrictions that regulate the partibility of the land at a succession. These inheritance systems may be ranked along a continuum from strict impartibility, when there is only one successor for each holding, to strictly equal partibility when all the children receive an equal fraction of their parents’ real property. In between is a wide range of possibilities which we call preferential partibility, when the land may be divided among several of the children, but one of them receives a larger or preferred share of the patrimony’ (Berkner & Mendels, 1978, p. 212).
For this contribution, the emphasis is on ‘ranked along a continuum’ and ‘a wide range of possibilities’. This statement, used by Berkner and Mendels to compare imparible and partible inheritance, is just as true when analysing the differences within the two models. Regions with partible inheritance have been studied less frequently compared to those with imparible inheritance. Gérard Béaur has attributed this to negative prejudices against this inheritance practice as well as to a very pragmatic reason, namely that they are simply more difficult to analyse. The ongoing divisions of property among multiple heirs and what subsequently happened to their property shares can only be traced with great effort over several decades or centuries and poses a far greater methodological challenge than the much less fractured farm transfers in regions with imparible inheritance (Béaur, 2004, p. 32). Exceptions to this general trend, however, are the German Duchy of Württemberg and France after the introduction of the Code Civil, both of which have been extensively researched. In Württemberg, partible inheritance was established in the sixteenth century and implemented throughout the duchy by the national Law Code (Landrecht). Resulting economic and social conditions in the duchy have been examined, with different focuses, in many studies (Hippel, 1977; Maegraith, 2013; Maisch, 1992; Ogilvie, 2003), including the well-known and comprehensive analysis of the village of Neckarhausen by David W. Sabean (Sabean, 1997, 1998). The nationwide introduction of partible inheritance in France through the Code Civil is considered a radical change and has also generated a particularly extensive body of research with regard to this inheritance practice (Béaur, 2004). As a result, the differences found between the partible inheritance practiced in different regions also came to the fore. For France it was found, among other things, that the situation in areas with partible inheritance was sometimes not radically different from those with imparible inheritance and that equality between the sexes often did exist (Béaur, 2004, p. 38).

Building upon these findings, the article will compare two case studies from German-speaking countries: the court of Schlanders in South Tyrol in the early modern period and the estate of the monastery of Lambach in Upper Austria in the fifteenth century. The choice of these case studies is first of all due to my personal research biography. Both were the subject of two research projects I was involved in. In the case of it was: ‘The Role of Wealth in Defining and Constituting Kinship Spaces from 16th to the 18th Century’ (Schlanders)\(^1\) and ‘Busy Tenants: Rural Land Markets North and South of the Alps in Late Medieval and Early Modern Times’ (Lambach).\(^2\) My research has revealed major differences in the practice of partible inheritance, which can be fruitfully developed into a systematic comparison. The large chronological difference between the case studies – with a focus on the seventeenth and eighteenth centuries in the Schlanders case and on the fifteenth century for Lambach – does not pose a problem for the comparison. Its aim is to work out different conditions and influencing factors that can and have occurred independently of time and place.

The aim of this contribution is to analyse the two case studies from the perspectives of equality of heirs and gender equality, as well as with regard to the effects of the observed differences in inheritance practices on the property structure. The matrimonial property regime will be included in the analysis as it is crucial when studying intergenerational
transfers of wealth. The hypothesis is that the objective in both Lambach and Schlanders was equality among the heirs, but different paths were taken to reduce land fragmentation, which could lead to inequality among heirs.

1. The legal situation in Schlanders and Lambach

The village of Schlanders, or Silando in Italian, is located in the Vinschgau valley in the western part of today’s South Tyrol. In the centuries studied, the region was entirely dependent on agriculture. Grain cultivation with supplementary livestock farming dominated. The only existing crafts were those related to agriculture (Noflatscher, 1999, pp. 68–75). In the early modern period, Schlanders was a princely possession, with the court under investigation being pledged continuously (Noflatscher, 1999, p. 342). Like the other Tyrolean territories, it was subject to the Tiroler Landesordnung (TLO), the Tyrolian law code. The first version of this law code was drawn up in 1526. In 1532 and 1573 it was extended and remained valid until the end of the eighteenth century. The Tyrolean law code represents a regulation of broad parts of civil law, which includes not only inheritance but also marital property and all transactions connected with the transfer of land. Regarding partible or impartible inheritance, there was no specific regulation in the Tyrolean law code. On the one hand, it was specified that each child and thus also daughters should inherit the same share, on the other hand, however, this equality was weakened by granting sons the possibility of a Mannsvorteil, that is a higher inheritance share for male heirs. This was justified by referring to the preservation of the family stems (TLO, 1573, 3.9). Thus, the Tyrolian civil law did not specify a particular model of inheritance, but it did create the basis for gender inequality (Lanzinger & Maegraith, 2017a, pp, 14–34).

However, there was a restriction regarding the partition of properties. Farms could only be partitioned among several heirs if the landlord agreed and the farm was large enough to be economically viable even partitioned. An exception was land that already consisted of several originally separate plots or was under the control of different landlords (TLO, 1573, 5.3). If a farm became economically unstable as a result of partitioning, the court was tasked to appoint one of the heirs as the sole heir to the farm, who would then have to compensate the other heirs (TLO, 1573, 3.19). This approach was not only applied to farms, but also in some cases to other properties in a similar way. In a partition of inheritance in 1670, for example, the daughter already owned half of a pasture. When the other half was assigned to another heir, it was stated that the halves nit woll einander sepaeriert warden, that they should not be separated. So the second half was to be sold to the daughter, and the heir received the money instead. The fact that the pasture was apparently not yet considered partitioned, even though the two halves had already been owned by different people before that – the daughter and her father – could be taken as an indication that they were used in their entirety either jointly or by one of the parties. This would be similar to the practice in Lambach, as described below.

Regarding testating land, a distinction was made in Tyrol between inherited and acquired property. Of inherited estates, only one third could be bequeathed to others by means of a will; of acquired estates, it was half (TLO, 1573, 3.3). The properties were held in Baurecht, a form of hereditary land tenure which allowed for the whole
spectrum of sales, mortgages, etc. (Hagen et al., 2018, p. 100; Palme, 1994, p. 29). With regard to codified inheritance law, therefore, there were no strict rules in Tyrol. Accordingly, there were regions within the country which are considered to practice impartible and others with partible inheritance, the latter being especially the case in the western regions, such as Schlanders (Palme, 1994). More specific legal regulations existed for the inheritance of movables. These were transferred from parents partly according to gender. Sons were to receive clothing, weapons, etc. of the father, daughters clothing and other items of the mother (Lanzinger & Maegraith, 2017b). Only if the total of assets was so small that the movables accounted for more than one third of the value was it to be partitioned equally among the children, regardless of gender (TLO, 1573, 3.9).

The Lambach estate was property of the monastery of the same name, founded in 1056, and was situated in the central region of what is now Upper Austria. It was a rural area with larger settlements generally being divided between different lordships. Lambach was located near important transport routes and became involved in the salt trade as reloading point for transports on the river Traun. The town Wels, only 14 kilometres away, was therefore within the range of Lambach’s properties. Due to its role in the salt trade and its location near important roads, Lambach was more involved in supra-regional trade than Schlanders and not exclusively dependent on agriculture. The legal situation in medieval Lambach was not only different from the one in early modern Schlanders but is also more difficult to determine. Neither for Lambach nor for the historical province of Österreich ob der Enns are there any extant written regulations or laws for the time under investigation, and to this day no academic study exists on the regulations of the provincial law of that time.6 Its existence and its impact on the population is certain since the deeds refer to it. However, as its regulations have not yet been reconstructed, the consideration of the legal situation in Lambach is dependent on an analysis of the practice to be observed. As a landed estate, however, the policy of the landlord is the more decisive influence. Especially factors such as the divisibility or indivisibility of land are generally attributed to the will of the landlord (Berkner & Mendels, 1978, p. 212; Fertig & Fertig, 2006, p. 165; Goody, 1982, p. 104). Since the monastery held lordship over the land, any transfer of ownership became valid only when the land was bestowed to the new owner by the landlord. Therefore, every transaction had to be carried out through the monastery’s administration and could also be refused by the abbot. Only those properties which were held in Erbrecht, hereditary tenure, could be transferred by the tenants. In the Lambach estate the majority of properties were still held in Freistift, at the will of the lord.7 In the case of Erbrecht there were few restrictions. They could be freely traded, encumbered and inherited, and could also be divided. Intervention by the landlord was very rare. Following these vast possibilities, the inheritance practice was partible inheritance. Every child had equal rights with regard to inheriting landed property and daughters were equal to sons. Since no sources such as the inventories and documented divisions of inheritance in Schlander’s court books (Verfachbücher) exist in Lambach and the analysis is based on land transfers, no reliable conclusions can be drawn regarding the inheritance practice of movables. However, cases where heirs surrender their claim to landed property as well as to its movables prove that this claim existed in some form.8
2. Partible inheritance in Schlanders and Lambach

The case studies used in this paper not only differ in location and time but also in their sources and thus possible analysis and evaluation methods. In the case of the court of Schlanders, the main sources are so-called Verfachbücher.9 These court books, written in German, contained a wide range of civil law cases and related documents. They not only document land transfers but all legal transactions somehow related to land and money including sales, transfers, exchanges, leases, wills, widowhood endowment contracts, marriage contracts and also inheritances, which are the focus of this paper. Today, the Verfachbücher of Schlanders are kept in the Südtiroler Landesarchiv (SLA), the provincial archives of South Tyrol. While the study on Lambach was a detailed analysis of land transactions within a (source-wise) limited period of about thirty years, the investigation period of the Schlanders case study covered three centuries. One year from each of the sixteenth, seventeenth, and eighteenth centuries was selected, namely 1570, 1670 and 1770. This sample was analysed in the corresponding Verfachbücher, focusing on inheritance divisions and wills. The selection resulted in 183 entries relevant for this paper, including divisions of inheritance, wills and marriage contracts. In contrast to the Lambach case study, no relational database was used, but the cases were analysed primarily qualitatively. The focus of the analysis was to identify different logics in the intergenerational transfer of wealth.

In the court of Schlanders, the process of partitioning a parental estate followed a rigid order. After the death of a bequeather, all movable assets were inventoried, and the landed property was determined and valued. This corresponds to a procedure that has also been carried out in other areas with partible inheritance, such as Württemberg in Germany or Grisons in Switzerland (Maegraith, 2013; Mathieu, 2018; Ogilvie et al., 2012). After this was completed, the formal process of partitioning the inheritance began, the order of which is shown in the court documents as follows: at the beginning of the process, all heirs among whom the inheritance was to be partitioned were named. Then the assets were listed, starting with movables and their value. This was followed by the landed property, again listed with its value. After the material assets the monetary claims of the decedents were listed, it followed a list of all their debts. All assets already awarded to heirs, such as marriage portions (Heiratsgüter), were considered claims of the decedent, and were therefore taken into account. From all these values, the sum of the total assets to be distributed was calculated. Then this sum was simply divided by the number of heirs. This resulted in the same inheritance portion for all heirs. This procedure corresponds to the one in Württemberg, where all inter vivos transfers were also included in the inheritance estate, which was then divided again by calculation (Maegraith, 2013, p. 151; Sabean, 1997, pp. 188–189). In South Tyrol this could only be deviated from by granting the aforementioned Mannsvorteil to the sons or at least one of them. In Schlanders this did not always occur, nor was this Mannsvorteil excessively large.10 Therefore, except for a possible Mannsvorteil, every heir had exactly the same claim in terms of value. Equality regarding the inheritance claim was thus achieved by a simple arithmetic division. However, this equality was more a theoretical one. After the amount of the individual inheritance shares had been calculated using the procedure described, the distribution of the specific assets followed. All individual items of landed property, movables, monetary claims and debts were distributed among the heirs. The aim of this distribution was that in
the end all heirs should receive an inheritance of the same value, but not necessarily of the same type of assets. Accordingly, the composition of the inheritance could differ vastly.

An example from 1770 illustrates this equalizing distribution calculated over the lifetime.\textsuperscript{11} It may not be the most representative case in terms of value, as the deceased was rich, but it demonstrates many of the inherent characteristics of the practice in Schlanders well. On 17 December 1770, the estate of the deceased Johann Trogner was to be partitioned between his five inheriting children, four sons and one daughter. His estate was calculated according to the scheme described. Regarding landed property, however, it turned out that at the time of his death, only some was still in his possession. Instead, the properties that were handed over to three of his four sons during his lifetime were listed. These were a farm, a Lehen, as well as a dwelling with adjoining arable land. They were all properties that could be used as a residence, of a value between 1,300 and 2,300 Gulden. This underlines Johann Trogner’s position as a wealthy man. However, this value also included the liabilities that the sons had assumed with the \textit{inter vivos} handover. There was another deduction for one of the sons, who received 100 Gulden because he had served his father well for so long. The claims of the father, on the other hand, list the marriage portions handed out to his children. Furthermore, we learn something about the documentation of all these debts. The father had noted down a marriage portion, \textit{Heiratsgut}, of 300 Gulden for each of his children in a \textit{Hausbuch}, a house book. Such a \textit{Hausbuch} is also mentioned in other cases, for example, one from the same year, where a debt of one daughter to her late father was noted in his \textit{vatterlichen Haußpuech}.

Since in reality the Trogner children received different amounts, they discussed this and determined the true amount. The estate was finally partitioned as follows:

The inheritance portion of three of the sons was 725 Gulden, while Son 2 was to receive 775 Gulden and the only daughter 675 Gulden (see, Figure 1). All of them received the same amount of movables worth 55 Gulden, and the marriage portion each had received was taken into account. The marriage portion amounted to 300 Gulden each for three of the sons and 250 Gulden each for the third one and the daughter. Likewise, the value of the land the three sons had received was included in their share. Son 1, who had received fewer properties than Son 3 and 4 before, now got additional meadows. With this, three of the sons had received much more than their actual inheritance portion, so they had to pay most of their father’s debts correspondingly. Son 2, who had not yet received any land, now got at least some arable land. Combined with his marriage portion and movables, this accounted for his inheritance share, which was 50 Gulden higher than the one of his brothers. This, as well as the reason for him not having received properties until now, is also explained in the documents. Son 2 had been bedridden for a couple of years already and was unable to work. The daughter did not receive any land, but only movables and claims against one of her brothers as well as a cow. And yet she also had to pay a small debt. The fact that the daughter did not receive any landed property can be explained by her being married and living in Tschars, around 14 kilometres away from Schlanders. Therefore, she had already established her own household and she and her husband would not have been able to cultivate any property in Schlanders. The latter can be seen as a possible factor regarding the allocation of the properties, since Son 2, who was also not able to work the land due to his impairment, was also discriminated regarding landed property.
However, the model of partitioning applied in this case is not the only one that can be observed in Schlanders, even if it is the one that occurs most frequently overall. The differences manifest themselves in the way the properties are partitioned. Characteristic of the local inheritance practice was that one of the heirs, and in this case usually a son, inherited the majority of the landed property, the farm with its associated farmland. The other heirs usually received individual plots of land, and here, too, sons were favoured. In cases like that of Johann Trogner, where the landholdings were so large that several independent farming units or residences could be formed even after the partitioning, it was also possible for the other heirs to obtain large farming properties. Under special circumstances, daughters could also become the main heirs of the landed property, even in the presence of brothers. One of these circumstances was when their brother had embarked on a clerical career. However, in such cases clergymen could still inherit considerable real estate, even if the larger part and especially the dwelling went to the daughter. That even such cases could be settled differently is shown by a case from 1770, where two brothers, who were both clergymen, became the joint heirs of the farm, while their three sisters received only individual parcels of land.

If the testators intervened in the partitioning of the inheritance by means of a will, mothers in particular specifically left plots of land to their daughters. Over time, there was a tendency towards a more even partitioning of land. While it was still common in the sixteenth century for ceding heirs, especially daughters, to receive no land at all, this was already changing in the seventeenth century and became the exception in the eighteenth century. It should be noted, however, that the chance of obtaining land increased with the number of individual plots in the estate and thus with the general prosperity of the family. Where there was a lot to distribute, more heirs got something. Most of the time, the plots distributed to the other heirs were only individual pieces of arable land of much lower value than the land held by the main heir.
Rarely observed is what is commonly associated with partible inheritance: the actual division of landed property. Farms actually being divided between heirs was the exception, which can also be explained by the legal restrictions mentioned above. Nevertheless, it did happen and it was not limited to dividing a farm into halves. In an inheritance division of 1670, where the inheritance already amounted to only half a farm, this farm was once again divided between the two heirs. This case is also an example of equal inheritance of land by women, since here son and (married) daughter received the same share, a quarter of the whole farm.\textsuperscript{15} In another case of the same year, the real estate was divided between two sisters, although one of them was still a minor and represented by a guardian, while the other was already married. The future needs of the minor sister regarding landownership were thus taken into account.\textsuperscript{16} Deviding a farm to one quarter of its original size is the most that can be observed in the Schlanders sample. The fact that land was not necessarily divided into too small properties, despite the opportunity to do so, can also be observed in other areas of partible inheritance, such as in the Swiss Grisons (Mathieu, 2018, p. 153).

In individual cases, two brothers also inherited the farm together. In these cases, they were treated as a single entity when the inheritance was partitioned. Although they inherited assets in the amount of two heirs, it was not allocated between them. Even in these cases, however, the other heirs were able to obtain land. For example, in a case from 1670, where two brothers henceforth managed the farm jointly, their sister received two plots of land in addition to monetary claims.\textsuperscript{17}

The study of partible inheritance in medieval Lambach poses different challenges than the one of Tyrolean Schlanders in the early modern period. As so often, it is the lack of sources that makes precise insights difficult. It has already been mentioned above that a provincial law existed in medieval Upper Austria, but its specific content is no longer known today due to a lack of written records. The regulations of the landlordship itself have also not been preserved. All that is known about Lambach’s inheritance practice in the Middle Ages is therefore based on a detailed analysis of extant property transactions. In contrast to Schlanders, therefore, no statements can be made about the distribution of movables and other assets, and one must confine oneself to the core element of the subject of partible inheritance, the partitioning of land. For the partitioning of land or land transactions as such, there is an exceptional source, at least for medieval Austria. For the period between 1442 and 1461, three \textit{Briefprotokolle} or \textit{Herrschaftsprotokolle} are extant.\textsuperscript{18} These registers contain all deeds issued by the landlord during this time, and they were also used to draft the deeds and other documents concerning landed property, such as mortgages and land-based marriage portions. As part of the Busy Tenants project, the entries, amounting to a total of 937, were recorded in a relational database. This allows for the evaluation of the source based on the type of transactions, properties and persons involved. A special focus was also placed on the kinship of the participants.\textsuperscript{19}

At the bequeather’s death, all of the children had equal claim to the landholdings. It is likely that during the time between the bequeather’s death and the bestowal of the land to the heirs, the heirs agreed on a specific partition of the inheritance. Once they agreed, they went to the landlord and had him bestow the land accordingly. At this point it was possible for the landlord to intervene. If land was bestowed to just one or only some of the heirs, the others’ renunciation of their claim had to be documented in writing. Otherwise, they could have made subsequent claims to their share of it. If heirs
were not present at the time of the partition of the inheritance, for example, because they were not in the region, their claims were documented and sometimes arrangements were made as to how to deal with them as soon as they returned and claimed their shares.  

Noticeable differences to Schlanders can be seen in the way the land was partitioned. The deeds show that great importance was attached to the equal rights of heirs with regard to landownership. The whole range of possibilities of partition was used. On the one hand, there could be a distribution of individual plots of land to heirs, as already described for Schlanders. However, in contrast to the Tyrolean village, a partition of inheritance by division was common in Lambach. Plots of land were thus often divided and each heir got a part of it. This possibility was used much more often than a joint tenancy where the heirs shared the land but did not divide it. The most common method of dividing land, however, was a model more akin to a tenancy in common (Kaska, 2021). In essence, this was a model of common ownership of a plot of land which was not divided in cultivation, but was cultivated by one of the heirs or part of them or by a third party, who compensated the other proprietors. These shares of property were equal to independent plots of land regarding their economic possibilities, that is they could be freely traded, encumbered, etc. There was neither a right of preemption nor an inheritance claim by the other proprietors of shares. This way, the inheritance process in Lambach led to a rather egalitarian distribution of landownership where daughters were equal to sons. Thus, in contrast to Schlanders, the inheritance process itself did not result in a main heir of the parental property.

3. Different modes of partible inheritance

In order to better assess the consequences of the models of partible inheritance presented above, it is first necessary to analyse and categorize them based on their characteristics. It is generally accepted since quite some time that the strict duality of impartible and partible inheritance and the characteristics and effects attributed to them are no longer justifiable because of numerous intermediate forms and sometimes completely different conditions in areas of partible inheritance (Berkner & Mendels, 1978, p. 212; Sabean, 1997, p. 185). And yet, a feasible alternative model of analysis effectively replacing the principal notion of this duality has not yet been developed, although attempts of new analytical models for inheritance practice have been made. What they have in common is that the analysis goes far beyond the actual inheritance process and takes into account a multitude of other factors (see, Albera, 2011; Sabean et al., 2007). At least currently, however, these are only proposed models that have not yet replaced the basic idea of the dual model of partible and impartible inheritance in the general discussion.

This paper will not try to create an all-encompassing model of analysis. I will attempt a structured comparison of the two case studies discussed, using common variations in partible inheritance as a framework for analysis. The aim is to highlight what I see as central factors influencing the (economic) impact of partible inheritance. In view of the often lacking sources, these are also factors which in most cases can be determined even for early centuries with comparatively few sources.
As a starting point for the differentiation of practices of partible inheritance, I am referring to a model which emerged in French research. Jean Yver divided the models of partible inheritance practiced in northern France into three groups (Yver, 1966) which are as cited in Béaur (2004) as follows: first, gendered partibility. This is understood as the sharing of the land among the sons, with the extensive exclusion of the daughters. This practice was dominant in Normandy. Daughters received their share of the property as dowry, while sons managed the farm in joint tenancy (Béaur, 2004, p. 33). The second form, optional partibility, refers to a practice in which a portion of the family estate was given to each child on the occasion of their marriage. Depending on the region, it was sometimes considered a dowry and sometimes an advance on the inheritance. The central point of the different variants was whether this property transferred *inter vivos* had to be returned in the course of the later inheritance proceedings or at least was accounted for. There were noticeable differences regarding this point. In some cases, the *inter vivos* transfers were not included in the inheritance division. This gave the impression of an equal distribution in the context of the partitioning of the inheritance, but the reality could be noticeably different due to previous *inter vivos* transfers. In central France, in contrast, it was common for all heirs who had received *inter vivos* transfers to be given the choice of either keeping them but giving up the right to exclusive ownership of them or returning them and then receiving the same inheritance share as everyone else (Béaur, 2004, p. 34). The third form is that of strict equality. Here, all heirs who had received *inter vivos* transfers had to return them upon the death of their parents. Alternatively, they were included in the share to which they were entitled when the inheritance was partitioned. Within Strict Equality, however, there were also different variants. The family estate could be divided into as many parts as there were heirs. In another variant the heirs received land of the same size, but not of the same production quality. It was also possible that they received their inheritance share both in land and in money, with money serving as compensation for differences regarding landownership. Finally, there was a variant in which heirs received either land or money. In general, strict equality was common in the west of France, in Anjou, Poitou and Brittany. In Brittany, all four of mentioned variants of strict equality were practiced (Béaur, 2004, p. 35).

Based on this model, central questions can be formulated that must be asked of any practice of partible inheritance: is the inheritance share of all heirs equal? Do daughters receive the same amount as sons? Is the inheritance composed equally among all heirs, or is the value the same? Were *inter vivos* transfers made and if so, are they taken into account? Is there a main heir to the landed properties? How are the landed properties distributed?

Following the French model, the form of partible inheritance in Schlanders can be classified as strict equality, more precise as the variant where the primary goal was the equal value of the heirs’ shares, rather than equal landownership, and where *inter vivos* transfers were included. Lambach, in contrast, cannot be precisely categorized. While a strict equality in land distribution can be ascertained, apparently *inter vivos* transfers were not necessarily taken into account when partitioning the inheritance. This would place the Lambach practice more in the realm of optional partibility, but it cannot be determined that here each child was automatically given a part of the family property upon marriage.
However, a categorization of inheritance practices alone is not sufficient to make statements about the situation in the regions where they were practiced. Inheritance practices are only one part of a large structure of different factors that influence each other and can lead to noticeably different results depending on the constellation. Thus, inheritance practice has already been used as an explanatory factor in the analysis of the demographic development of a region. In this context, partible inheritance has been identified as a cause of population growth through the creation of new households that it enabled, as well as of population stagnation in that the fear of family land fragmentation is said to have led to a restriction on the number of children (Berkner & Mendels, 1978, p. 210). More far-reaching approaches see inheritance practices as a major factor to be used to differentiate societies, closely linked to forms of settlement and cultivation, social hierarchy, interaction with neighbours and political participation (Albera, 2011, pp. 145–160).

Matrimonial property regime, as an example of intergenerational transfer of wealth is a central aspect of inheritance practice that has often been overlooked. Alongside inheritance practice, the matrimonial property regime had the greatest impact on intergenerational transfer of wealth and thus on the material situation of those involved (Lanzinger & Maegraith, 2017a, p. 18).

Based on a systematized comparison of Schlanders and Lambach, the next section will identify differences in their inheritance practices and how these, in combination with the matrimonial property regime, could have different consequences for those involved. A full

| Table 1. Comparison of factors relevant for partible inheritance in Schlanders and Lambach. |
|---------------------------------------------------------------|
| Schlanders | Lambach |
| Legal basis | Tiroler Landesordnung (TLO) | Regulations by the landlord; Landrecht Österreich ob der Enns |
| Property rights | Baurecht. Allows for inheritance, transfer, mortgage and division. | Erbrecht. Allows for inheritance, transfer, mortgage and division. |
| Equal inheritance rights for all heirs? | Yes, but possible Mannsvoorteil for sons. | Yes |
| Possibility of partitioning in the case of property complexes? | Yes, but legally limited by preservation of economic viability of the farm. | Yes |
| Possibility of dividing individual plots of land? | Yes, but legally limited by preservation of economic viability of the farm. | Yes |
| Predominant type of inheritance partition | Distribution | Division |
| Predominant ownership model in the case of joint ownership | Joint tenancy | Tencancy in common |
| Equal distribution or division of land among heirs? | No, usually one main heir for the farm. Distribution of individual plots among the other heirs. Women tend to be disadvantaged. | Yes, land is distributed or divided among all heirs equally. |
| Consideration of inter vivos transfers when partitioning the inheritance? | Yes, transfers as well as marriage portions are taken into account. | No evidence of systematic consideration in the sources. Verifiably only in individual cases. |
| Matrimonial property regime | Separation of property | Community of accrued gains |
| Provision for surviving spouse | No legal right for surviving spouse to property of the deceased or right of residence in marital home. Entitled to one-third of the communal movables. | No legal right for surviving spouse to property of the deceased or right of residence in marital home. No information on entitlement to movables. |
analysis of the effects would not only go beyond the scope of this paper, it is also impossible based on the available data. Therefore, the analysis will focus primarily on the fragmentation of the land from an economic point of view and on the material security of the people involved, especially women.

First, the tabular comparison of the conditions in Schlanders and Lambach below is based on both the distinctive features mentioned in the French categorization model and other aspects that are considered central, above all from the practice of marital property Table 1.

The categories provide a more systematic and also more comprehensive comparative grid for regions with partible inheritance, broadening the focus to include other factors which are inextricably linked to inheritance practice and which can be ascertained in most case studies. The first broad category is the legal framework for inheritance practice. This includes both the applicable laws and their regulations and, as in the case of Lambach, the landlord’s regulations or practice. In the case of land, the legal framework extends to the ownership rights in which the land in question was held and therefore which options were open to its owners. In this grid, the existence of partible inheritance is no longer represented by a single aspect, but is distributed among several factors characterizing its manifestation. The various modes of partitioning, transfer and cultivation types as well as influencing factors from the marital property regime are taken into account.

The table starts with a fundamental question regarding partible inheritance: is it possible to partition land in the sense that a coherent complex of land like a farm can be divided? The second question specifies this by asking whether partition only applies to large property complexes like farms, therefore being what I call distribution of plots, or whether individual plots of land can also be divided. The importance of this distinction becomes apparent in the subsequent point that concerns the predominant type of property partitioning. As already briefly described above for Lambach and explained in more detail in Kaska (2021), different models with different consequences could be applied here. Related to this is the tenure model in the case of joint ownership where joint tenancy and tenancy in common had different consequences for the owners, especially in terms of reciprocal succession and prohibitions on alienation.

Up to this point, the table characterizes different ways of partitioning landed property, without touching the question of equal partition of land. As the French model has already shown, the existence of partible inheritance did not yet mean that all heirs actually received equal amounts of land. It is useful to limit the question of equality to the partition at the time of inheritance and, as a next point, to determine whether *inter vivos* transfers were taken into account in this partitioning of inheritance. In this way, cases such as Schlanders (no equal inheritance of land, but inclusion) as well as Lambach (equal inheritance, but no systematic inclusion) can be represented.

The last two points concern the matrimonial property regime, which, as has already been stressed, must always be seen in the context of inheritance practice with regard to the distribution of property and land. The research project that involved the Schlanders case study considers intergenerational inheritance and matrimonial property regimes as being linked (Lanzinger & Maegraith, 2017a, p. 15). Marriage or marriage contracts could influence the transfer of inheritance and represented a key moment in the transfer of property (Béaur et al., 2011, p. 99; Boudjaaba, 2011, p. 122; Lanzinger, 2010a). Additionally,
the marriage of those entitled to inheritance shares could be the occasion for a partition of property (Gonod, 1995, pp. 77–78). In line with these findings, the following analysis of the impact of local conditions on fragmentation and land distribution not only considers inheritance practice but also takes into account the shifts in wealth and property through the prevalent matrimonial property regimes. As will be shown, the latter is of particular importance when it comes to the situation of women.

4. Fragmentation and impact on land distribution and transactions

Any analysis concerning land must first consider the ownership rights in which it was held. Regarding these legal conditions for partible inheritance, there were few differences between Schlanders and Lambach. The Tyrolean hereditary land tenure Baurecht is comparable to the Upper Austrian Erbrecht as far as its legal quality is concerned. Both rights made it possible to bequeath land, but also to pass it on or sell it during one's lifetime. More decisive for the practice of inheritance were the legal stipulations regarding impartible or partible inheritance. As already mentioned, the Tyrolean law code did not specify and allowed both, which also was the basis for the often stated division of Tyrol into the west with its partible inheritance practice and the east with variants of impartible inheritance. However, the aforementioned provision that the economic viability of the farm was not to be endangered by a division, must be regarded as a serious restriction. For Lambach, no written laws have been handed down for this time regarding the estate or the province of Upper Austria. However, it can be clearly deduced from the practice that partible inheritance was allowed and dominant in Lambach.

Therefore, the preconditions regarding the possibilities were similar, but the practice was very different. The potential extent of land fragmentation through the inheritance process was determined by the question of whether the inheritance practice envisaged that all heirs should receive landownership on an equal basis. Although there may still be distinctions as to whether this should be of equal size or value (Béaur, 2004, p. 35), in both cases there was extensive fragmentation in the event of equal entitlement. However, not only the ‘if’ of a fragmentation is decisive but also the ‘how’. These two factors cannot be considered separately, since one necessitates the other to a certain extent. In areas such as Schlanders, where in most cases there was one main heir to the land and thus no equal distribution of land was intended, it was easier to carry out a partition of inheritance by distributing existing plots and avoiding a division of individual plots like in Lambach. In this practice, one heir received the farm and most of the land, which formed a sustainable economic unit with the latter. The other heirs only received individual plots of land that could either be separated from the farm without great loss of economic viability or located elsewhere altogether. However, the stronger the claim for an equal distribution of land, the higher the necessity not only to distribute the landed property but also to divide the plots of land in order to give each heir plots of the same value. The fact that in Lambach, in contrast to Schlanders, the division of land prevailed, can therefore also be explained by this. Thus, the conditions in Lambach clearly correspond more closely to the general ideas of the economic consequences of partible inheritance, since they led to a greater fragmentation of the plots. However, this matter must be viewed in a more nuanced way (Kaska, 2021).
Analysis of the transactions in Lambach suggests that the majority of the land was owned in form of a tenancy in common. Negative effects of fragmentation, such as the lower economic efficiency due to dispersed landownership, were apparently circumvented by the fact that in many cases the shares of property continued to form a common cultivation unit, which was managed by some of the owners in its entirety. At the same time, however, the shares of the property were free to be traded. This also represents the big difference to the joint ownership of farms by brothers, which was also found in Schlanders and which amounted to a joint tenancy and thus limited the economic freedom of the owners to sell their shares in favour of maintaining the cultivation unit. Accordingly, attention must also be paid to the prevailing ownership model regarding joint ownership, as this can have a strong impact on the cohesion of land units in the longer term. Also central to the long-term cohesion of land is a land market: options to trade land can counteract fragmentation, especially in regions with partial inheritance, by reuniting divided properties.

Regarding the impact on the land market, it can be stated that overall the practice of partible inheritance prevalent in Lambach favoured the property ownership for a broader group of persons, since normally all heirs had some land, and it also led to a high number of smaller property units that were easier to trade. Both are regarded as classic arguments for partible inheritance favouring a land market (Bavel, 2008, p. 40; Brauneder, 1988, p. 170; Draper, 2005, p. 26). As far as the number of landowners is concerned, Schlanders had less due to its type of partible inheritance, but as most heirs still received some land, landownership was also widespread. And since, apart from the possible principal heir, mainly smaller plots of land were allocated, there was also a sufficient number of easily tradeable plots available. Overall, however, a higher fragmentation of land, as in Lambach, inevitably leads to a higher number of transactions, since there are not only more plots available, but the fragmentation caused by the inheritance process is subsequently partly compensated for by rounding-up transactions. In addition to the number of transactions, the type of partitioning land also has an impact on the transaction partners. In the case of a division practice like the one that prevailed in Lambach, the heirs became neighbours. Therefore, if they wanted to increase or sell their properties afterwards, the other heirs would automatically become one of the most likely trading partners, as their properties were adjacent to another. This is particularly true in cases of tenancy in common where the property parts continued to form a cultivation unit. In this model, over time, the majority of the property parts were reunited in one or a few hands: that of the cultivators (Kaska, 2021). A similar effect cannot be observed in Schlanders. In contrast to Lambach, there was not such a great need for rouding-up transactions and its type of partible inheritance did not especially favour heirs becoming neighbours. When analysing the land markets, not only partible inheritance per se is important for the interpretation of the figures but also a more precise differentiation of the form in which this took place.

The same can be said when looking at the material provision of the heirs, including inter vivos transfers. Especially the detailed records in Schlanders show that the material provision of children during the lifetime of their parents is to be seen as part of the inheritance practice. For this reason, all assets allocated to the children were included in their inheritance portion when the inheritance was partitioned. The connection between marriage of children and material provision by parents is also shown by the fact that the unmarried status of heirs could be taken into account in the division of inheritance. In one
case from 1670, two unmarried sons each received an additional 20 Gulden for their future marriage. Their sister, who was apparently mentally disabled (nicht [..] weileiffig) and who was assumed to never get married, received an additional 57 Gulden for extra support.\textsuperscript{21}

The model for France has already shown that there could be different regulations on this as well. Nothing similar can be determined for Lambach, although the distribution of mobile assets cannot be determined due to a lack of sources. The analysis of Lambach’s land transactions suggests that it was less common for land to be transferred to children during their parents’ lifetime. There are only a few cases where children were given land when they got married.\textsuperscript{22} Slightly more common was that parents retired and went into Ausgedinge, that is handed over the farm to one of their children in return for care in old age.\textsuperscript{23} At the same time, the absence of a reference to inter vivos transfers in post mortem partitions of inheritance suggests that here, in contrast to Schlanders, no systematic accounting of such transfers occurred when partitioning the inheritance. Thus, while in Lambach there was equality in the partition of inheritance after death, preferential treatment of individual heirs through inter vivos transfers was apparently possible. However, a surviving case indicates that such unequal treatment could also be subsequently successfully disputed, even by the children of the original heirs.\textsuperscript{24}

Inter vivos transfers of single pieces of land were easier in regions with partible inheritance than with impartible inheritance. Differences in ownership structure, most notably the increased presence of smaller land units, favoured these transfers. Areas with impartible inheritance generally had fewer of these freely transferable properties, even though they usually existed here as well, at least to some extent (Heinzle, 2021). An example of this would be the so-called Überländgründe in eastern Austria, which did not belong to the farm and often resulted from the reclamation of new parcels of land (Langer-Ostrawksy, 2011, p. 97; Feigl, 1967, p. 167). A higher number of freely transferable properties often resulted in a more even transfer or reception of wealth over a lifetime as opposed to the more concentrated one when an undivided farm was inherited (Béaur, 2004, pp. 39–40; Zeithofer, 2014, p. 24; Lünemann, 2006, p. 140). However, it has already been pointed out that differentiations are also necessary in this more concentrated transfer of ownership (Fertig, 2003). In both inheritance practices, marriage was one of the key events. At the time of marriage, the transfer of property could not only be intergenerational, through provision of the dowry by the parents, but also occurred between the spouses. The transfer of property, as well as the formation of other entitlements, represented, along with inheritance practices, the main factor in providing for broad segments of the population and their material security. In turn, the claims of spouses could massively interfere with the inheritance process. Accordingly, the effects of inheritance practice can never be considered separately from matrimonial property regimes.

In contrast to the practice of inheritance, the Tyrolean law code was firm on the subject of the matrimonial property regime, specifying separation of property (TLO, 1532, 1573, 3.38–45.) Thus, in the course of marriage, in contrast to regions with a joint property practice, there was no general transfer of property through the unification of individual assets into a common matrimonial one. Property transfers in the sense of a transfer of ownership were limited to the husband’s morning gift (Morgengabe) to his wife and a claim by the wife to one third of the movables. If
one of the spouses died, the surviving partner received back only their own property brought into the marriage or, in the case of women, increased by the *Morgengabe* and a third of the movables. It is characteristic of Tyrolean conditions that not only was there no general transfer of property in the course of marriage, but the surviving spouse also had no claim to further use of the deceased spouse’s property or further provision by his or her heirs. This provision hit widows especially hard, since it meant they were usually at risk to lose their residence (Hagen et al., 2018, p. 100–101; Lanzinger & Maegraith, 2016, pp. 20–23). Widowers, on the other hand, were normally not only the owners of the marital residence but were also allowed by law to hold onto the *Morgengabe* they had bequeathed to their late wife, which only fell to her heirs after the widower’s death. However, this was only the basic legal regulation. It was possible to bequeath a life-long usufruct of the entire property by will or to let one third of the inherited property or half of the acquired pass into the hands of someone other than one’s blood relatives (Hagen et al., 2018, p. 109). The spouses were by far the most frequent recipients of such bequeathings. The wills in Schlanders show that when the spouses made provisions for another, the mutual transfer of the lifelong usufruct to the property of the other was the most common. This is also consistent with observations from other regions of Tyrol, where this could also be limited to a certain age of the children and often included a right of residence plus heating in the house (Lanzinger, 2006, pp. 247–248, 2010a). Unfortunately, there are currently no studies for Schlanders on other factors concerning marriage, such as the age at first marriage or the level of celibacy in the population. Knowledge about these factors could provide further insights into how the population dealt with partible inheritance.

As with inheritance practice, there were no written laws for the matrimonial property regime in Lambach, and once again we must rely on the analysis of cases recorded in the database. Accordingly, no further demographic information on marriage practice is available for Lambach. The recorded cases clearly show that a community of accrued gains existed between the spouses. Each spouse retained sole ownership of the land brought into the marriage, but all land acquired during the marriage belonged to the couple in equal shares. If one of the spouses died, the other had no inheritance rights to the other half. This was partitioned among the heirs of the deceased. As in Schlanders, however, it was possible to bequeath usufruct to one’s own half to the marriage partner. This was usually done as a *Leibgeding*, limited to their lifetime, and was usually bequeathed directly after the acquisition of a property. Furthermore, wives in Lambach, like those in Schlanders, received a *Morgengabe* from their husbands, which became their property. This took the form of a sum of money secured by a piece of land, that is a mortgage. Due to the lack of sources, no definitive statements can be made regarding the surviving spouses’ claim to the movables. The fact that women were occasionally bequeathed a claim to part of the movables – usually half – in the course of marriage may indicate that this claim was not established per se.25

Both in Schlanders and in Lambach, the transfer of property was principally oriented to the bloodline. However, there was a noticeable difference in the strength of this orientation due to different matrimonial property regimes. In both cases, the spouse had no right to the property of the other, which instead was to go to the blood relatives. The community of acquisitions, however, caused a noticeable difference in the material
provision of the spouses and a softening of the bloodline-centredness, from which especially women benefited. As a result of receiving half of the new property acquired during the marriage, widows generally had at least individual plots of land after their husband’s death, in addition of those inherited by themselves. This effect was favoured by the inheritance practice in that the plots of land divided during the partition of the inheritance in the majority of cases were – either in whole or at least in parts – reunited again by transactions later on. Half of each part of the formerly divided property acquired in this way during marriage belonged to the spouse, which meant that in the case of a complete remerging of the previously divided property, half of the property could be alienated to another bloodline. Women in Lambach were thus not necessarily dependent on their husband bequeathing them at least a Leibgeding on his land, even if this was often added as a supplement. The community of acquisitions therefore created a certain balance between the interests of the bloodline and those of the spouses (Lanzinger, 2010b, p. 462).

The situation of women in Schlanders was noticeably more insecure. They were disadvantaged in two ways. The separation of property meant that they had no claim to their husbands’ property and were dependent on them actively bequeathing its usufruct to them.26 At the same time, although they were entitled to the same amount of inheritance as their brothers, in practice daughters inherited less land and were main heirs only in exceptional cases. After the death of their husbands, women’s risk of losing their homes was significant and they were often dependent on the heirs’ generosity and the availability of sufficient liquid assets of their own. Wills, however, often cushioned these harsh legal provisions and provided the widows with usufruct rights.

For remarriage, the two practices could mean noticeable differences. Widows in Lambach often had considerable property at their disposal when looking for a new husband. From their inheritance and first marriage they often had acquired land and their property was also increased by the Morgengabe from the first marriage. It often happened that at the time of remarriage the first husband’s heirs had not yet paid out the Morgengabe and the widows transferred it – or parts of it – to their new husbands as their own Morgengabe. An analysis of the Lambacher deeds suggests in this context that the spouses also had the right to use the land with which their Morgengabe and marriage portions were secured until their claim had been settled by the heirs.

By stipulating the separation of marital property, the Tyrolean law code followed two of its basic characteristics. On the one hand, to concentrate transfer of property on the bloodline, but on the other hand to preserve the economic viability of the farms. Separation of property aimed at preserving the properties in one’s own bloodline. At the same time, it counteracted a separation of the landed properties as the spouse had no claim to ownership of any part of them. In Lambach, a similar correspondence of the matrimonial property regime with the characteristics of the inheritance practice can be observed. The community of accrued gains caused, parallel to partible inheritance, a partition of the property and could therefore also lead to a division of a plot of land. It promoted landownership for a larger group of people, but in the process also encouraged fragmentation of land. However, arrangements such as tenancy in common could counteract this in both cases and property division based on community of accrued gains
had the effect that the shares of the surviving parent normally fell to the common children after their death, or the surviving parent often relinquished them in their favour during their lifetime.

5. Conclusion

In Schlanders and Lambach, two different concepts of equality between heirs can be identified. The conditions in Schlanders were characterized by equal entitlements to the value of an estate. Equality, however, did not have to prevail with regard to the distribution of the properties. Rather, the preservation and economic viability of the farm holding was considered. This consideration was already laid down in the Tyrolean law code but was further strengthened by the legal provisions on matrimonial property regime and limitations regarding allocating properties by will. The inheritance practice observed in Schlanders thus followed the basic tendency of the property law provisions of the Tyrolean law code, but also made use of the freedom it gave the inhabitants with regard to the partition of inheritance. The way and the extent of the use of this freedom makes Schlanders appear as a region of partible inheritance, in contrast to central eastern Tyrolean regions. However, comparisons with regions with impartible inheritance show that the transitions were fluid. Within regions labelled as impartible inheritance, a similar wide range of practices can be observed, some of which no longer showed significant differences to regions classified as partible inheritance (Maegraith, 2021). Economically, the observed inheritance and matrimonial property practices meant less fragmentation of the land through the predominantly undivided transfer of farms. However, the distribution of individual plots among heirs still encouraged a market in single plots of land. This and the still existing division of landed property over the centuries had the effect of creating a large group of – economically surviving – smallholders in Schlanders by the end of the eighteenth century (Noflatscher, 1999, pp. 68–69). In terms of material security, however, the observed practice increased the risk, especially for women, of being without sufficient provisions in old age.

In Lambach a very different picture emerges with regard to the partition of land. The equal claim of all heirs to land, in combination with the mode of division of land, laid the foundation for an increasing fragmentation. Like Schlanders, the practice of marriage property in Lambach corresponded to the practice of inheritance, except that here it further promoted fragmentation through the practice of community of accrued gains. Both brought noticeable advantages, especially for women, in terms of material provision in old age through landownership, but also regarding the chance of remarriage. The management of land by tenancy in common could counteract excessive fragmentation and favoured the consolidation of land divided by inheritance. Lambach thus underlines the importance of the land market as a balancing instrument, but at the same time it is an example of flexibility and extreme diversity of methods that could occur in inheritance practices within a single estate.

The comparison of Schlanders and Lambach illustrates the complexity and diversity in the field of partible inheritance practice, or inheritance practice in general. It is a complexity that has been known and recognized in research for some time now and has already led to some new models of categorization. However, these could not stop the dual model of partible and impartible inheritance from remaining the dominant
framework of thought into which case studies are placed. Apart from the fundamental difficulty of defining a generally valid new model, one of the reasons for this is probably that the more extensively new categorization models are formulated and the more factors need to be known in order to apply them to one’s own case study, the more difficult their practical applicability becomes.

Given the diversity observed internationally regarding inheritance practices, the need for an extended, systematic model of analysis is beyond question. Without a more comprehensive analysis of inheritance practices, local conditions can only be inadequately described and therefore only inadequately compared with each other, thus preventing them from becoming the basis for new categorization models. Regarding a similar problem, the (international) diversity of property rights in land, it has already been suggested to fall back on the classical notion of them being a ‘bundle of rights’ to cope with their diversity (Congost & Santos, 2010). Viewing inheritance practices as a ‘bundle of options’ would be far more consistent with the situation observed in case studies. In this paper, I have designed a corresponding analytical framework based on central questions of economic history. In order to compare not only inheritance practices per se but also their consequences, the grid was extended by the factor of matrimonial property regimes. This arguably represents the most important factor directly linked to inheritance practice. Factors such as regional supply of off-farm employment or population mobility had to be left out of consideration here, but must be regarded as significant as well (Albera, 2011; Derouet, 1989; Fertig & Fertig, 2006, pp. 181–182; Zeitlhofer, 2014, pp. 15–16).

Research on inheritance practices has reached a point where the observed diversity can no longer be satisfactorily represented by the established models. But even without new, widely used categorization models, the first step is to increase the level of analysis of inheritance practices and their impact by conducting a deeper, systematic study and description of certain central factors. This need is all the greater as the importance of quantitative analysis and comparisons is on the rise. Schlanders and Lambach are only two examples, though they illustrate both the challenges and the value of such an analysis of regional inheritance practices.

Notes

1. https://kinshipspaces.univie.ac.at/en/, funded by the FWF, P29394-G28, 2016–2020.
2. https://busytenants.univie.ac.at/en/, funded by the FWF, P 26071, 2013–2018.
3. Printed in Pauser and Schennach (2018).
4. In the following, a conceptual distinction is made between different types of partitioning an inheritance or landed property. ‘Partition’ stands for the general process without further specification. ‘Division’ refers to a form of partition in which landed property units are divided into smaller units. ‘Distribution’ refers to a form of partition in which existing units of land are distributed to the heirs, i.e. are not first divided into smaller units for this purpose.
5. Südtiroler Landesarchiv (SLA), Verfachbuch (VfB) Schlanders 1670/2, fol. 78 v–79 r, 24 April 1670.
6. Since the province of Österreich ob der Enns, Austria above the (river) Enns, was created when Austria was separated into 'above the Enns' and "below the Enns", research focused less on the regulations than on the emergence of an independent provincial law "above the Enns". See, for example, the research of Othmar Hageneder, such as Hageneder (1982).

7. It is assumed that the share of Erbrecht at that time accounted for about one third, although the exact share cannot be determined due to the lack of respective information in the sources, especially the estate registers.

8. For example, Stiftsarchiv Lambach (StAL), Urkundensammlung, no. 1196, 6 February 1455; Oberösterreichisches Landesarchiv (OÖLA), Herrschaftsprotokolle, L879, fol. 10 v, No. 270, 14 March 1446.

9. Occasionally, other similar sources exist, such as the Protokollbuch of Schlanders from 1575: SLA, Protokollbuch Schlanders 1575.

10. A Mannsvorteil as in the example below can be considered representative for Schlanders.

11. SLA, VfB Schlanders 1770/2, fol. 555 v–577 v. 17 October 1770.

12. SLA, VfB Schlanders 1770/2, fol. 510 v, 23 September 1770.

13. SLA, VfB Schlanders 1770/2, fol. 542 r–549 r, 30 June 1770.

14. SLA, VfB Schlanders 1770/2, fol. 288 r–323 r, 9 July 1770.

15. SLA, Vfb Schlanders 1670/2, fol. 189 r–197 v, 21 June 1670.

16. SLA, VfB Schlanders 1670/2, fol. 77 r–106 r, 24 April 1670.

17. SLA, VfB Schlanders 1670/2, fol. 67 r–76 v, 21 April 1670.

18. 1442 to 1445, 1446 to 1451 and 1457 to 1461. Oberösterreichisches Landesarchiv (OÖLA), Herrschaftsprotokolle, L878–L880.

19. More information on Lambach’s land transactions, as well as an even more detailed description of the local practice of partible inheritance and its consequences, can be found in Kaska (2021). Its land administration is described in more detail in Kaska and Nussbaum (2019).

20. These arrangements were sometimes also accompanied by agreements on the future divisibility or indivisibility of the property as well as preemption rights (see, Kaska, 2021, pp. 33–34).

21. SLA, VfB Schlanders 1670/2, fol. 100 r–100 v, 30 May 1670.

22. For example: OÖLA, Herrschaftsprotokolle, L880, fol. 20 v, no. 687, 11 December 1457; fol. 44 v, no. 7 April 1459.

23. In these cases, there was unequal treatment of the heirs regarding landed property. A single heir took over the farm and thus both the care of the parents and that of possible minors or unmarried siblings. The claims of the other heirs were usually settled at the same time as the farm was handed over. For example: OÖLA, Herrschaftsprotokolle, L880, fol. 5 v/6 r, no. 605/606, 22 March 1457.

24. OÖLA, Herrschaftsprotokolle, L878, fol 4 r, no. 11, 22 February 1443, fol. 4 v, no. 12, 22 February 1443 and fol. 5 r, no 13, 22 February 1443.

25. See ÖÖLA, Herrschaftsprotokolle, L879, fol 49 v, no. 437, 30 August 1448; fol. 65 r, no. 501, 31 August 1449 and L880, fol. 2 r, no. 592, 3 March 1457.

26. However, the marriage portion could be the widow’s bargaining chip. Thus, arrangements were possible that the widow waived its payment and received usufruct rights or lodging in return.

**Disclosure statement**

No potential conflict of interest was reported by the author(s).

**Funding**

This work was supported by the Austrian Science Fund (FWF) [P29394-G28].
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