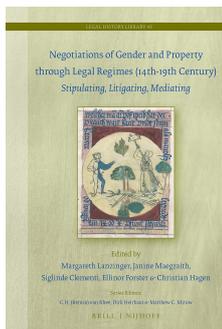


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Margareth Lanzinger, Janine Maegraith, Siglinde Clementi, Ellinor Forster, Christian Hagen (eds.)

Negotiations of Gender and Property Through Legal Regimes 14th-19th Century

Review by: Martha Howell



Editors: Margareth Lanzinger, Janine Maegraith, Siglinde Clementi, Ellinor Forster, Christian Hagen

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This collection of essays is the product of a conference that took place in 2015 at the University of Bozen/Bolzano under a similar title. It is an ambitious and largely successful attempt to expose how, within given legal structures, families worked or could work to settle claims to family property among their many members, with the goal, usually implicit, of preserving the productive capacity of the family assets and assuring rough justice to legitimate claimants to the property or the income it yielded. The thirteen case studies included range in period from the late Middle Ages to the nineteenth century, examine different moments in the dramas of inheritance, marriage arrangements, succession, divorce, retirement, and so on, look at different sectors of society – from the low nobility to artisans and entrepreneurs to peasants – and move between city and countryside. The principal geographic focus is the southern Germanic and northern/central Italian region where two different conceptions of marital property law (one «separatist» and another «communal» in inspiration) sometimes collided or were creatively mixed, although there is also a contribution examining Nordic regions, another treating the western Pyrenees, and a third looking at early modern England.

The collection is a valuable one. Above all, the authors fulfill the editors' promise to show that marital property regimes anywhere must be considered alongside testamentary law and practices, inheritance laws, and – a particular virtue of these studies – the availability of formal and informal mechanisms for altering structural elements of this legal complex, such as contracts, court rulings, out-of-court settlements, and so on. Each of the studies in the volume works hard to do so, often providing fascinating stories of how women and men, along with their children, other kin, neighbors, and officials «negotiated» (to borrow a word from the subtitle of the book) the complexities of the legal regimes that contained, and sometimes failed to contain, them. Thus, collectively, the authors do more than show how law was structured to connect people to one another through property but also the inherent tensions in those arrangements, the tools people had (and used) to adjust those relationships. There is not space here to review each of the contributions, but the introduction and epilogue to the volume will help direct attention to issues of particular interest to individual readers.

Another virtue of the volume is to disabuse us of the notion that any marital property regime, whether «separatist» or «communal» in structure, determines the nature and extent of gender hierarchy. To be sure, many of the case studies demonstrate that in certain circumstances more «communal» regimes positioned wives, and especially widows, to independently manage, even to own, productive assets, but some of the very same studies illustrate how descendants and other kin could and did figure out ways to limit the women's autonomy and lay claim to the property themselves or otherwise assert rights to it. Pursuing a related question about the «gender-effect» of marital property regimes, some studies showed that the dowries given to brides in «separatist» regimes did not always prevent them from claiming an equal share of the parental estate – thus challenging, if not decisively overturning, a rather long-standing agreement that the *exclusio propter dotem* was universal in Italian regions.

Tempting as it is to cite specific studies in illustration of all these points and to demonstrate that they provide readers reliable access to secondary literature treating these subjects in the regions under study, I will use the remaining space here to raise more generally interpretive issues. The editors, in their introduction, and Margareth Lanzinger, in her «epilogue» struggle heroically to draw all the disparate and sometimes fragmentary studies together, and manage to make their central point about how law structures the relationships between people and property but it simultaneously creates tensions that are constantly under negotiation. They also make it abundantly clear, as I have already commented, that marital property law existed and worked alongside testamentary and inheritance law – and that none of these «laws» was inviolate – that people had tools to adjust matters and that the laws themselves changed over time. Yet, we do not leave this volume with a crisp takeaway, only with a more nuanced understanding of the relationship between these laws and peoples' ability to manage them.

What is missing, in my view, and what would have helped to provide readers a clearer sense of the significance of all these negotiations, is more attention to the socioeconomic world the laws governed, or sought to govern. To be sure, many of the contributions gesture to such issues, emphasizing, for example, that in small businesses in cities, husbands and wives were frequently an economic team or that in the countryside the farm needed to be kept physically and managerially intact in order to maintain its productivity. But none takes the socioeconomic imaginary of the governing laws as the starting point, none directly asks, for example, how a communal marital property regime imagined the socioeconomic role of the marital household and the responsibilities of its members, to one another and to ascendant or descendant kin; none seriously takes up the question of why a separatist system based on the dowry and women's relative or absolute exclusion from the paternal patrimony would have so seemed to dismiss the possibility that the marital couple, as a team, produced new wealth. None rigorously pursued the question of how men's role in managing or creating the patrimony was related to the clear agnatic bias of all marital property, inheritance, and testamentary law, although most did comment on this bias and a few suggested that it reflected men's presumed role in the creation of wealth. And, although many took account of women's contribution to the household economy, none went further, to suggest, for example, that a dowry system imagined women simply as carrier of property, while a communal property system recognized her capacity to create wealth. To ponder such issues, one would have to specifically identify the nature of patrimony itself, its capacity to produce wealth from generation to generation, how it had to be managed to preserve its productive capacity or to replace it as it wasted away.

The problem here, I think, is the 'legalistic' approach of this otherwise excellent volume. Law is treated not as an expression of a sociocultural and socioeconomic imaginary that has been institutionalized in a political process, but as a system more or less imposed from outside and with which people have to contend. Seen from the perspective of the dramas described in this volume, that approach is reasonable, and we have a lot to learn about law and its workings from these studies. But the approach nevertheless tends to reduce peoples' struggles to deal with the law and the rather chaotic mix of solutions they found to 'instabilities' in the law rather than expressions of social and gender imaginaries that formal law inscribed ... but could not contain.