



INSTRUMENTS FOR PRESERVING THE UNITY OF (FAMILY) PROPERTY: A REPORT FROM AUSTRIA

GERALD KOHL

ABSTRACT

The desire to protect (family) assets from fragmentation is timeless and can be found in all social classes; motives and methods vary. Focusing on Austria, the paper provides an overview, ranging from the peasant inheritance laws and the old agrarian communities to the early modern entailed estates (fideikommiss) and 19th-century family foundations; additionally, it addresses private foundations that emerged at the turn of the millennium – thus making visible the various interrelated factors. The overview will also show that the target can be reached by means of customary law, statutory regulations and contractual agreements based on private autonomy.

Keywords: *private foundations, family foundations, entailment, fideikommiss, peasant inheritance laws, agrarian communities.*

Kohl, G. (2026) 'Instruments for Preserving the Unity of (Family) Property: A Report From Austria' in Szilágyi, J.E. – Ilyés, K. (eds.) *Instruments for Preserving the Unity of Family Businesses and Agricultural Assets: Perspectives of Legal History*, pp. 49–75. Budapest – Miskolc: Central European Academic Publishing. https://doi.org/10.54171/2026.jeszik.ipufbaa_2



1. INTRODUCTION – GENERAL REMARKS

In Austrian legal history,¹ there are numerous objects, properties and rights that should not be divided, and the instruments used to bring about such indivisibility are just as diverse as the underlying motives and purposes. Later, this paper will deal with the various factors interacting. But first, in order to gain an impression of possible parameters, and because a perspective based on the historical dimension needs a starting point anyway, we will begin by looking at two instruments that are used for preserving the unity of property in modern Austria. For the agricultural sector, a special peasant inheritance law, usually known as “Anerbenrecht”, will be examined; for the non-agricultural sector, the private foundation.

2. PRIVATE FOUNDATION AND FAMILY FOUNDATION

The private foundation of modern law is a relatively young institution; it dates back to the 1993 Private Foundations Act (“Privatstiftungsgesetz”).² The purpose of establishing a private foundation is to make an estate independent and preserve it in the long term so that it can serve a purpose determined by the founder even after his death. This purpose can (as an “end in itself”, so to speak) lie in the preservation of the assets, especially if the assets consist of companies or shares in companies. In this case, the main purpose is to establish a permanently independent organisation that (unlike mere co-ownership) is not threatened by the explosive force of conflicting individual interests. However, the purpose can also be to benefit certain individuals; this can also be the founder himself. These objectives are very often combined.

1 In general: Kohl et al., 2024. I would like to thank StudAss Felix Nachtlberger for his valuable support.

2 More on the Private Foundations Act BGBl 694/1993; popular source of information: *Privatstiftung Definition, Organe, Firmenbuch*, 2024. On the history of the Private Foundation: Pendl, 2022, p. 191.

A private foundation is a legal entity without shareholders or owners. It is created based on a “declaration of foundation” (Stiftungserklärung) inter vivos or by testamentary disposition, in either case by notarial deed and entry in the commercial register. In the context of the Private Foundations Act, there is notable flexibility regarding content requirements. The act mandates a minimum asset of EUR 70,000, along with essential information about the foundation’s duration, purpose and the beneficiaries. Moreover, the declaration of foundation can encompass comprehensive regulations pertaining to the governing bodies – a board of at least three people and various supervisory bodies. The establishment of the private foundation and annual fees for the foundation bodies are cost-intensive, so that in practice the statutory minimum assets are not sufficient.

The “Austrian Association of Foundations”, which represents the interests of private foundations, indicates that the history of private foundations only seems to go back to the preparatory work for the Private Foundations Act in the 1980s. Accordingly, the foundation association proclaims:³ “The private foundation has been a success story in and for Austria for 30 years.”⁴ This is because there are over 3,000 private foundations in Austria today. Their purpose is described as “anchoring companies, jobs, and capital in Austria”⁵ and defending them “against short-term profit-seeking and speculators”.⁶ “The private foundation as the holder of the shares in the endowed (family) company secures its future. In this way, foundations contribute to the sustainable development of the Austrian economy”.⁷ “The entrepreneurial families, who in most cases are behind the foundations, think long-term. This gives them the space and opportunity to develop and promote innovative

3 The following quotations are taken from *Stiftungen sind Verankerung. Nachhaltigkeit. Innovation. Stiftungen sind Österreich*, 2024.

4 “Die Privatstiftung ist seit 30 Jahren eine Erfolgsgeschichte in und für Österreich”.

5 “Unternehmen, Arbeitsplätze und Kapital in Österreich verankern”.

6 “[G]egen kurzfristiges Gewinndenken und Spekulanten”.

7 “Die Privatstiftung als Trägerin der Anteile am verstiteten (Familien-)Unternehmen sichert seine Zukunft. Dadurch leisten Stiftungen einen Beitrag zur nachhaltigen Entwicklung der österreichischen Volkswirtschaft”.

solutions and new product and process innovations. Foundations shape our future”.⁸ The transfer of assets to a foundation therefore does not appear to be motivated by (equally legitimate) selfish considerations, such as the preservation of family wealth or even tax savings; the unity of assets is not seen as an end in itself but as a way for achieving socially acceptable goals.

Orientation to the future as well as sustainability could perhaps become even clearer if the history of the private foundation is viewed in a broader context and does not just begin with the preparatory work for the current law. The Austrian General Civil Code (ABGB) already knew about “foundations” but referred to the “political ordinances”; § 646 said:

*Foundations are distinguished from substitutions and entailed estates, whereby the income from capital, land or rights is designated for charitable institutions, such as ecclesiastical benefices, schools, hospitals, or poor-houses, or for the maintenance of certain persons for all subsequent times. The regulations on foundations are contained in the political ordinances.*⁹

From the punctuation, two different types of foundation could in fact be distinguished, namely on the one hand the charitable foundation with a generally defined but specifically unknown circle of beneficiaries, and on the other hand the foundation that was set up “for the maintenance of certain persons” (“zum Unterhalt gewisser Personen”). It appeared to be confusable with the entailed estate regulated in the ABGB itself, which motivated the differentiation and reference by § 646 ABGB. In contrast to the entailed estates, the foundations were regulated outside the ABGB

- 8 “Die Unternehmerfamilien, die in den meisten Fällen hinter den Stiftungen stehen, denken langfristig. Das gibt Raum und Möglichkeit zur Entwicklung und Förderung von innovativen Lösungsansätzen und neuen Produkt- und Prozessinnovationen. Stiftungen gestalten unsere Zukunft”.
- 9 § 646 ABGB: “Von den Substitutionen und Fideikommissen unterscheiden sich die Stiftungen, wodurch die Einkünfte von Capitalien, Grundstücken oder Rechten zu gemeinnützigen Anstalten, als: für geistliche Pfründen, Schulen, Kranken- oder Armenhäuser; oder, zum Unterhalte gewisser Personen auf alle folgenden Zeiten bestimmt werden. Die Vorschriften über Stiftungen sind in den politischen Verordnungen enthalten”.

and were also subject to supervision by the political authorities, whereas the entailed estates were subject to the courts' jurisdiction.

It was not until the second half of the 19th century that foundations were integrated into civil law, when the dogmatics of the historical school of law invented the "legal person" ("juristische Person") and subsumed corporations (covered by the ABGB as "moral persons"/ "moralische Personen") as well as institutions and foundations under it.¹⁰ This brought the purpose more to the fore; it appeared as the "characteristic feature" of the legal person, which Herrnritt therefore described as a "purpose subject" ("Zwecksubjekt"). For the foundation, the question of its purpose emerged in the aftermath of its emancipation from church life (i.e. its opening up to non-religious purposes). While the church was originally in charge of the foundation system, such as charitable foundations, benefice foundations, foundations for the poor, and hospital foundations, secular purposes gained importance in the modern era. In addition to the promotion of art and science, foundations for the benefit of family members now also emerged. As a result of the "secularisation of the foundation system",¹¹ which was characterized by the broadening of foundation purposes, a princely foundation supervisory authority was established in the interests of expanding state sovereignty. It assessed the legitimacy of the foundation's purpose according to its "policy" interests and made the approval of the foundation dependent on this. Under the influence of rational law, the assessment of foundations was then reoriented towards the standard of the individual, whose private autonomy was expressed in an act of foundation: the purpose of the foundation merely had to be "morally possible and not contradicting any laws".¹² This was based on the conditions of the "moral person" in Section 26 ABGB.¹³ The non-profit status (which was assumed or at least implied in the ABGB, depending on the interpretation of the punctuation) receded into the background; although it was occasionally mentioned, it was often not considered mandatory in practice.

10 Brauner, 1982, p. 308.

11 Herrnritt, 1896, p. 46.

12 Originally "sittlich möglich sein und keinem Gesetze widersprechen". Herrnritt, 1896, p. 47 (with further references).

13 Stammer, 1983, p. 51.

For example, towards the end of the 19th century, the Supreme Court ruled several times that the foundation's purpose had to be "a permissible, permanent, general one".¹⁴ Despite the mention of the characteristic of charitable status, it did not appear to be "necessarily excluded by the fact that [the purpose] is only carried out within a narrow circle of people (family, members of a community)".¹⁵

It is therefore not surprising that there was considerable confusion about the term "family foundation" because it was supposed to refer to "essentially different institution[s]" ("wesentlich verschiedene Institution[en]"). From one perspective, scholars knew the "German-law family foundation"¹⁶ as a "family fideicommiss of the bourgeois circles".¹⁷ This institution, which was "not very common in Austria", was dominated by private law: the assets were owned by the family, which was also responsible for their administration; there was no state supervision of the foundation and any disputes were brought before the courts. From another perspective, administrative legislation and practice understood the term "family foundation" to mean precisely those foundations for specific administrative purposes "whose enjoyment [...] is restricted to the members of a family".¹⁸ In this sense, Mayerhofer's handbook for the political administrative service distinguished from "pure family foundations" those foundations "which aim to promote a specific administrative task (care of the poor, supporting studies) within a particular family".¹⁹ This "family foundation under Austrian administrative law" thus corresponded to the second type of foundation indicated in § 646 ABGB, in which "certain persons" were beneficiaries.

14 Originally, the purpose was described as "ein erlaubter, dauernder, allgemeiner". Cf. Herrnritt, 1896, p. 47.

15 Ibid., p. 50, footnote 6: "nicht nothwendigerweise dadurch ausgeschlossen, daß [der Zweck] nur innerhalb eines engen Personenkreises (Familie, Angehörige einer Gemeinde) durchgeführt wird".

16 Ibid., pp. 54–57 ("deutschrechtliche Familienstiftung").

17 Ibid., p. 55 ("Familienfideicommiß der bürgerlichen Kreise").

18 Ibid., p. 55 ("deren Genuß [...] nur auf den Kreis der Mitglieder einer Familie beschränkt ist").

19 Mayerhofer and Pace, 1901, p. 185; cf. Stammer, 1983, p. 53 ("welche die Förderung einer bestimmten Verwaltungsaufgabe (Armenpflege, Studium) innerhalb einer bestimmten Familie bezwecken").

While family affiliation was sufficient for the “German law family foundation” and only an order of succession under family law applied, a further qualification had to be added to the “family foundation under Austrian administrative law” in order to trigger beneficiary status; this special administrative task differentiated it from the first-mentioned foundation, which was intended to serve “general purposes” of the family and was therefore similar to the family fideicommissum (entailment).²⁰

3. EXCURSUS: FIDEICOMMISS (ENTAILMENT)

Even though the details of the roots of the modern family entail are disputed, the history of the institution in general can be assumed to be known, especially as its detailed description would go beyond the scope of this overview. Suffice to say that in the case of the Familienfideikommiss, the assets of a family – in reality a noble family²¹ – were also bound by a written legal transaction²² in the male line. The aim was “to grant the families of the nobility, especially the high nobility, permanent economic support and thus initially the opportunity to secure a social position commensurate with their noble status”.²³ The rights of the respective entail holder were limited by the

20 Cf. for the modern Private Foundation Scheuber, 2004, p. 931.

21 At the end of the 18th century being part of the nobility was not a requirement for establishing a family entail; this arises from a court decree from 21.08.1784, whereupon the local courts are competent for family entails of common people: Fraydenegg-Monzello, 1979, p. 789, footnote 62. Even though the ABGB formulates the section for family entails without reference to class, this was an example for the neo-corporative character of the codification (cf. Brauner, 2014, p. 192–197), in practice “the establishment of family entails was mostly only approved for the nobility”: court decree from 12.06.1838; cf. Mayerhofer and Pace, 1901, p. 166, footnote 2; Fraydenegg-Monzello, 1979, p. 796 (with further references).

22 If the property was tied by customary law, it was instead a (family-)estate.

23 Mayerhofer and Pace, 1901, pp. 164–165 (“den Familien des Adels, insbesondere des Hochadels, einen dauernden ökonomischen Rückhalt und damit zunächst die Möglichkeit gewähren, eine dem Adelsstande entsprechende gesellschaftliche Stellung gesichert einzunehmen”).

rights of the claimants;²⁴ the use of the entail followed predetermined rules (primogeniture, majorate, minorate, and seniorate).²⁵ The idea of family property ties, which originated in Austrian customary law, was thus continued in the family entail by means of common law. In Austria,²⁶ from around 1600 – presumably also under Spanish influence – there was an increase in the establishment of entailed estates. As early as the 17th century, the sovereign claimed the right to “confirm” such foundations in order to be able to influence which noble families should be given the opportunity to consolidate their position.²⁷ Maria Theresian absolutism was then particularly hostile to real estate entailments, while capital could also be tied up in entailments without authorisation;²⁸ at almost the same time, entailments were also subject to ongoing state supervision.²⁹ Under Joseph II, first the indebtedness of the entailments was made easier, then the conversion of real estate entailments into capital entailments, and finally the legal position of the claimants was worsened – all of which showed a tendency to reduce the constraint of the land and to weaken the position of the estates, which had been promoted by entailment. More than half a century later, neo-absolutism once again relied more heavily on the nobility, and a phase of pro-entailment policy began again, which was expressed in the detailed regulations of the 1854 Non-controversial Proceedings Act (“Außerstreitgesetz”).³⁰ In some provincial electoral regulations of the 1860s, the holders of entailed estates still formed a separate electoral body within the large estates.³¹ As a result of constitutionalisation, the establishment of a family entailed estate required approval under

24 Ebert, 2008, pp. 1503–1504; Erler, 1971, pp. 1071–1073; Kohl, 2020, pp. 145–146.

25 Rühl, 1847, pp. 699–701.

26 Fraydenegg-Monzello, 1979, pp. 777–808.

27 Ibid., p. 785.

28 Hofentschließung 22.1.1763 (Codex Austriacus IV, p. 371); Fraydenegg-Monzello, 1979, pp. 787–788.

29 Hofentschließung 9.1.1762 (Codex Austriacus VI, p. 81); Fraydenegg-Monzello, 1979, p. 788.

30 Fraydenegg-Monzello, 1979, pp. 796–797; on the Non-controversial Proceedings Act 1854 cf. Rechberger, 2006.

31 Fraydenegg-Monzello, 1979, p. 798.

imperial law from 1868³² onwards – which was granted 24 times up to 1898.³³ However, the last third of the 19th century saw a declining interest in entailed estates. Parallel to this eventful legislative history, the issue of entailed estates had been repeatedly discussed from various perspectives since the French Revolution and throughout the 19th century, but this did not lead to their abolition. After sectoral measures against certain entailed estates (1929)³⁴ and facilitating their dissolution (1932),³⁵ family entailed estates in Austria were ultimately abolished when Nazi law came into force; only traces of this remained in the Austrian legal system after 1945, in particular “a kind of special monument protection law” for former entailed estates (buildings, collections, and archives).³⁶

4. FOUNDATION AND ENTAILMENT

The overview has already shown several differences between foundations and entailed estates: as an amendment to the general law of succession, the establishment of an entailed estate as a result of constitutionalization from 1868³⁷ required approval under imperial law, while foundations were approved by the administrative authorities (governors).³⁸ In addition, the foundation only knew an obligatory right of claim, which the beneficiary asserted against the foundation, which was beyond his control, while the holder of the entailed estate had a right in rem to the entailed estate’s assets. In this regard, the holder of the

32 RGBl 1868/61 concerning the approval for creating and the indebtedness of family entails; cf. Mayerhofer and Pace, 1901, pp. 165–166.

33 Overview: *ibid.*, pp. 166–167, footnote 2; according to Fraydenegg-Monzello, 1979, p. 799, there were 25 approvals granted until 1897, of which only 8 were newly created ones.

34 *Ibid.*, pp. 802–803.

35 *Ibid.*, p. 803.

36 § 6 Abs 1 and 2 FidErlG 6.7.1938, dtRGBl I 1938 p. 825; cf. Fraydenegg-Monzello, 1979, p. 807 (“eine Art Sonderdenkmalschutzrecht”).

37 RGBl 1868/61 concerning the approval for creating and the indebtedness of family entails; cf. Mayerhofer and Pace, 1901, pp. 165–166.

38 Herrnritt, 1896, p. 57.

entailed estate possessed a degree of influence over asset management, unlike the beneficiary of the foundation.

Knowledge of these differentiations may have slowly declined in the 20th century. In any case, the view of family foundations seems to have been influenced by the abolition of fideicommisses (1938/39).³⁹ And the “family foundation of Austrian administrative law” was also successively pushed back because the literature increasingly emphasised the criterion of charitable status. This tendency can be understood as a late consequence of the above-mentioned focus on purpose: Accordingly, the foundation would have to go beyond an individual interest, and this was seen as synonymous with charitable status, as it were – although inter-generational thinking would also go beyond mere individual interest. Finally, the Supreme Court stated in 1966:

*Foundations other than pious and charitable foundations – in particular pure family foundations – can never be approved by the state and thus acquire legal personality. However, the purpose of such a family foundation can, under certain circumstances, be achieved by establishing a real charge on an inherited property.*⁴⁰

Nevertheless, an examination of practical legal situations reveals that this view was more recent than some of the existing foundations. For example, “Dr. Georg Wimmer’sche Wohltätigkeitsstiftung für Verwandte des Stifters” (Dr. Georg Wimmer’s Charitable Foundation for Relatives of the Founder) approved by the Lower Austrian governor’s office (Niederösterreichische Statthalterei) in 1900, intended to “support poor, old or sick relatives of the founder”. According to Stammer in his handbook published in 1983, the foundation authorities would have had to check “whether this was not a pure family foundation, which is

³⁹ In general, Eckert, 1992.

⁴⁰ OGH 16.11.1966, 6 Ob 232/1966 (“Andere als fromme und gemeinnützige Stiftungen – insbesondere reine Familienstiftungen – können niemals staatlich genehmigt werden und damit Rechtspersönlichkeit erlangen. Der Zweck einer solchen Familienstiftung kann aber unter Umständen durch Begründung einer Reallast auf einer Nachlaßliegenschaft erreicht werden”).

inadmissible according to today's legal situation".⁴¹ The reason for this critical attitude was apparently the unspecified purpose of the "support". In contrast, the "Therese Baumgarten Heiratsgutstiftung" (Therese Baumgarten Marriage Foundation) approved in 1909, which aimed to provide "marriage grants for poor female relatives of the founder",⁴² seemed just as acceptable to Stammer as the "Johann Wilhelm Ritter von Managetta-Stiftung" (Johann Wilhelm Ritter von Managetta Foundation) approved in 1662, which awarded "study grants to blood-related descendants of the founder".⁴³ However, the latter foundation was also justified by the fact that it also benefited other "Roman Catholic pupils of a higher educational institution or university".⁴⁴

The Federal Foundation and Fund Act BGBl 1975/11 then followed this change in sentiment; charitable status was established as a characteristic of a foundation. Foundations in the predominantly private-family interest were thus denied ground because the legislator no longer wanted to see this need. In the following years, interested parties turned to the Liechtenstein Family Foundation, for example, before the passing of Private Foundations Act in 1993.

5. PEASANT INHERITANCE LAW

At best, the private foundation can be used as a legal entity for large estates. In the common agricultural sector, the unity of farms should primarily be preserved through a special peasant's inheritance law (Anerbenrecht), which has been well known as customary law since the Middle Ages; statutory regulations could be met since about 1700.⁴⁵ When, in 1812, the ABGB provided for "deviations from the [...] statutory

41 Stammer, 1983, p. 56 ("ob es sich nicht um eine nach der heutigen Rechtslage unzulässige reine Familienstiftung handelt").

42 "Heiratsausstattung für mittellose weibliche Verwandte der Stifterin".

43 Stammer, 1983, pp. 54–55 ("Studienbeihilfen an blutsverwandte Nachkommen des Stifters").

44 Ibid., p. 55 ("römisch-katholische Schüler einer höheren Lehranstalt oder Hochschule").

45 Mack, 2009, p. 57; Brauneder, 1994, pp. 357 ff.

succession with regard to farm estates” (“Abweichungen von der [...] gesetzlichen Erbfolge in Rücksicht auf Bauerngüter”: § 761 ABGB), such deviating rules already existed. In certain cases, they were literally identical for individual crown lands or governorate districts. In his handbook, Michel⁴⁶ cites patents for Bohemia (1791), Carniola (1793), Styria (1793), Tyrol and Vorarlberg (1795/1816) and Salzburg (1826) in addition to a patent issued for the German hereditary lands in 1790.⁴⁷ Following the land relief (Grundentlastung), doubts about the continued existence of restrictions under inheritance law arose: In July 1850, the Ministry of Justice issued a decree clarifying that the “special provisions existing in several crown lands with regard to succession to peasant estates must continue to exist until [...] a special law is enacted”.⁴⁸ In addition to land relief and the abolition of differences between Dominical and Rustic lands (Dominikal- und Rustikalland), the equality of citizens before the law was also cited as an important factor. The neo-absolute turnaround was therefore also expressed in a provision of the “Constitutional Principles” of 1851/52: “In the case of the peasantry, where special regulations exist for the preservation of their property complexes, these are to be maintained”.⁴⁹

After returning to constitutionalism, the “division of estates” was a difficult issue, not least because private law was a matter of imperial competence, while agriculture was a matter of provincial (Länder) competence. The provisions of provincial law, which were intended to prevent the division of farm estates, therefore had to be accounted for when shaping (imperial) inheritance law. With this in mind, RGBI 1868/79

46 Michel, 1856, pp. 218–224, 54–55 (“Studienbeihilfen an blutsverwandte Nachkommen des Stifters”).

Stammer, 1983, p. 55 (“römisch-katholische Schüler einer höheren Lehranstalt oder Hochschule”).

Mack, 2009, p. 57; Brauneder, 1994, pp. 357 ff.

47 Justizgesetzsammlung Nr. 72.

48 Originally: “in mehreren Kronländern bestehenden besonderen Bestimmungen rücksichtlich der Erbfolge in Bauerngüter noch in so lange zu bestehen haben, bis [...] ein besonderes Gesetz erlassen wird”.

49 “Bei der Bauernschaft sind dort, wo besondere Vorschriften zur Erhaltung ihrer Güterkomplexe bestehen, solche aufrecht zu erhalten.” RGBI 1852/4, Nr. 34 of the constitutional principles; cf. Michel, 1856, p. 218.

repealed the “special norms on the inheritance of peasant estates”, but only “in those countries or parts of the country in which the division of peasant estates is no longer restricted”.⁵⁰ The effects of this liberal legislation based on the principle of equality were seen as controversial. While, it was said that the liberalisation of the agricultural system had led to “an excessive fragmentation of peasant property” and to an “over-indebtedness” of farms resulting in forced auctions and that the “inheritance law of the a.b.G.B.” had led to “overburdening with inheritance debts” (i.e. debts resulting from dividing the inheritance),⁵¹ by comparison, negative consequences of liberalisation were denied. This was justified by the continued existence of “tradition and custom”, which were not covered by the legal abolition of restrictions on division. Intestate succession had only occurred on farms in exceptional cases anyway, so that the unity of the farm had continued to be preserved through succession by a legal transaction (*rechtsgeschäftliches Erbrecht*) or by transfer agreement (*Übergabevertrag*).⁵² The Upper Austrian provincial committee (*Oberösterreichischer Landesausschuss*) had commissioned statistical surveys on the consequences of the abolition of a special right of inheritance for farmers: In the first decade after liberalisation (i.e. between 1868 and 1877), 260 farm estates (accounting for 0.65%), covering 2,113 hectares (0.3%), were impacted by secession out of approximately 40,000 farm estates with around 700,000 hectares. However, most of this land was reunited with other farm estates, so that effectively only 0.04% of agricultural land (313 hectares) “lost its character of peasant’s land” each year. The number of farms whose size had fallen below 10 acres as a result of separating parcels was only 98 per year (0.24%) – whereby this also included “all those parcelling-offs which became necessary due to the expansion of towns and health resorts, the construction of roads and railroads etc. or which were carried out for the purposes of

50 Schiff, 1905, p. 93 (“Sondernormen über die Vererbung der Bauerngüter [...] in jenen Ländern oder Landesteilen, in welchen die Teilung von Bauerngütern nicht mehr beschränkt ist”).

51 Originally: “zu einer übermäßigen Zersplitterung des bäuerlichen Besitzes”; “Erbrecht des a.b.G.B. [...] Überlastung mit Erbteilungsschulden bewirk[t]”.

52 Schiff, 1905b, p. 95.

consolidation”.⁵³ The loss of farmland caused by the inheritance law of the ABGB was therefore negligible.

Despite this, the government endeavoured to counter the potential economic dangers and to create a new legal framework for a special peasant inheritance law. After a bill in 1884 had provided for the introduction of an “Anerbenrecht”, RGrB 1889/52 finally provided for a regulation that was dependent on the enactment of implementing provincial laws. The provincial parliaments reacted very differently to government bills (which were different in terms of content); in the end, however, they rarely made use of this option.⁵⁴ Exceptions were Carinthia, which introduced an inheritance law for hereditary estates (“Hereditary Farmsteads Act”, *Erbhöfegesetz*) in 1903,⁵⁵ and Tyrol. Here, in 1900, a “Farmsteads Act” (“*Höfegesetz*”) not only enacted inheritance distribution regulations similar to the “Anerbenrecht”, but also regulations that restricted the owner’s freedom of disposal. This generally restricted the freedom of partition if the so-called “closed farm” was registered in a special section of the land register.⁵⁶

Ultimately, this is also the reason why the legal situation is still rather confusing today.⁵⁷ Special norms of peasant inheritance law are currently contained in various laws that differ from province to province: In Tyrol there is the “Farmsteads Act” (“*Höfegesetz*”), in Carinthia the “Hereditary Farmsteads Act” (“*Erbhöfegesetz*”), and in the other provinces (“*Länder*”) the “Peasant Inheritance Act” (“*Anerbengesetz*”) of 1958 comes into effect today. However, all laws have the common purpose of maintaining efficient farms with economically viable farm sizes and avoiding the division of agricultural assets. To this end, the farm is bequeathed undivided to one person, the so-called “preferred heir”

53 *Ibid.*, pp. 98–99.

54 Schiff, 1905a, pp. 102–103.

55 *Ibid.*, 1905a, pp. 103–104; Provincial Law dated 16.9.1903, LGrB 1903/33.

56 Law dated 12.06.1900, regarding the special legal status of closed farms, effective for the principality and earldom of Tyrol: GVBTirVbg 1900/47; *Tiroler Grundbuchsanlegungslandesgesetz* dated 17.3.1897, LGrB 1897/9, § 3; cf. Schiff, 1905a, pp. 104–105.

57 For the sake of brevity, the German Hereditary Farm Law, which was in force from 1938 to 1945, will not be covered here; cf. Ordinance dated 27.7.1938, dtRGrB I p. 935; StGrB 1945/174; BGrB 1947/85; Trattner, 2012, p. 8.

("Anerbe"); the heirs only receive compensation payments in the amount of their inheritance portion respectively their compulsory portion. However, the calculation basis is not the income value and not the market value of the farm, but the ability of the heir to pay; the preferred heir must be "well able to survive" ("wohl bestehen können"). If there are several children, all but the preferred heir are therefore fobbed off with a payment that is far below the regular inheritance share and also falls short of the usual portion; this unequal treatment serves the interest of the continuing existence of the farm.

However, the "Peasant Inheritance Act" applies specifically to commonly designated "hereditary farms", not to every agricultural asset. They are distinguished by a certain farm size and the ownership structure, respectively – Hereditary farms are owned by a natural person, spouses or a parent together with a child. Notably, farms run jointly by siblings are therefore not subject to the "Peasant Inheritance Act".⁵⁸ Regulations concerning the farm size mirror the change in agricultural structures: Since 2019, hereditary farms must provide for the "reasonable maintenance of one adult" but may not exceed forty times this rather vague income value.⁵⁹ Before 2019, the "reasonable maintenance of two adults" was necessary, and the upper limit was twenty times this value.⁶⁰ These provisions had been introduced in 1989 to take account of the structural changes in agriculture; originally, in 1958, the yield had been based on a family of five. Concurrently, as the lower limit was reduced to a two-person household, the upper limit was raised from seven times the minimum to twenty times. Originally, the status of a hereditary farm was therefore intended to fit a medium-sized farm; today, the scope of application has also been extended to farms that probably serve as an additional income source only.

58 For farms run by siblings, Tyrolean law has special provisions: Schiff, 1905a, p. 105; Eccher, 2018, §17 THG.

59 BGBl I 2019/38 (Zivilrechts- und Zivilverfahrensrechts-Änderungsgesetz 2019, ZZRÄG 2019); cf. Explanations on the government bill: 560 BlgNR XXVI GP.

60 Differing and partly more concrete are the provisions of the Carinthian Peasants Inheritance Act, which stipulates a minimum size of 5 hectares: Eccher, 2018, § 2 KtnErbhöfeG.

The “Peasant Inheritance Act” is dispositive law; voluntary succession takes precedence. This applies in both directions: If a testamentary succession meets certain minimum standards of future indivisibility, it takes precedence over the idea of consanguinity. In other words, if the testator makes a provision that appears favourable to the undivided continuation of the estate, an heir not related by blood takes precedence over any relatives. However, the testator can go even further by expressly or tacitly excluding the application of the “Peasant Inheritance Act” altogether. In this case, testamentary freedom therefore takes priority over the public interest in maintaining productive farms.⁶¹

In legal practice, one rarely waits for the inheritance to occur but instead regulates the succession of the farm within the framework of a transfer agreement. However, the provisions of the Peasants Inheritance Act also apply, at least to hereditary farms within the meaning of the Act, if the farm is passed on during the lifetime of the owner and if there are (other) persons entitled to a compulsory portion in addition to the transferee. However, it is disputed whether the Peasants Inheritance Act is applied here by analogy or whether a general customary farming law – recognised as a legal source by the judiciary until the 1990s – comes into play. Such a customary law would then also affect other farms (with different farm sizes).⁶² In practice, the transfer price is in any case based on the “ability to survive” of the transferee; those entitled to a compulsory portion receive compensation payments that are measured in the same way as compulsory portions. The benefits (agreed within the transfer agreements or separately from them) for the children of the transferor who do not take over the farm therefore fall far short of an equal share of the inheritance.⁶³ A certain justification for this unequal treatment could lie in the fact that the farm transferees often provide benefits for the farm transferors. However, the effective value of these benefits decreased in view of the existence of

61 Eccher, 2018, § 8 AnerbenG; Trattner, 2012, pp. 10–11.

62 Ibid., pp. 20–31; Mack, 2009, pp. 56–60.

63 For the legal nature of the peasant transfer agreement as a contract: Trattner, 2012, pp. 31–38; Mack, 2009, pp. 174–178, 263.

social insurance for farmers;⁶⁴ today, they are more an expression of traditional life concepts of peasants.⁶⁵

However, the goal of maintaining an undivided farm is getting under increasing pressure, resulting from the structural changes in agriculture. Although many farms would be subject to peasant inheritance law, they are still too small to be economically viable and efficient. Because farms are preserved as units by both inheritance law and legal practice, it is almost impossible to expand agricultural assets by acquiring new land. The viability of farmsteads is therefore achieved almost exclusively by leasing additional land belonging to farms that are no longer economically viable. The legal conviction of preserving the existing farm units, which historically goes back into the past far beyond the Peasant Inheritance Act, therefore works against structural changes, which would be expedient for establishing an efficient agricultural system. One could put it very pointedly: Against the background of changed framework conditions, the law has turned against its own goal. However, it should not be overlooked that a concentration of property ownership on a few large farms would have undesirable social effects.

Today, land transfer laws – favouring farmers in the acquisition of land – are also intended to serve the original purpose of the special peasant inheritance law, that is, preserving viable farms.⁶⁶ In this way, the legislator attempts to ensure that agricultural land remains in the ownership of farmers (“farmlands in farmers’ hands”/“Bauernland in Bauernhand”).⁶⁷ However, this purpose is undermined by traditional statutory inheritance, or inheritance by legal transaction, which aims to preserve family assets. The two goals of preserving family assets and maintaining an economically viable farming structure, which once went hand in hand, have therefore diverged.⁶⁸

64 Trattner, 2012, pp. 75–77.

65 Mack, 2009, pp. 121–122.

66 Holzer, 2012, pp. 673, 678.

67 Lechner, 2024.

68 The author draws on experiences from his own personal and family environment, e.g. District Court Hollabrunn GZ 1A375/21m.

6. FACTORS

The history of private foundations, entailed estates and peasant inheritance law reveals the key factors that play a role in preserving the unity of assets and, in different combinations, shape the various instruments that are intended to achieve this goal. The interplay of these various parameters can be used to explain almost all instruments that serve the purpose of economic unity – in the following this is illustrated by way of example: a) First and foremost, the sources of the law, customary law, statutes, and contract, must be distinguished. While customary law was successively displaced by statutory law, its basic ideas remained relevant in legal practice – which repeatedly proved the legislator wrong. In both “Anerben” inheritance law and foundation law, the legislator had abandoned the idea of preserving family assets and prioritised considerations of freedom and equality. Then in both cases, a period of inappropriate or even absent regulations began: In the case of peasant inheritance law, there were twenty years of legal freedom of division (between 1868 and 1889); in the case of private foundations, it took considerably longer before the legislator could no longer evade the needs of practice. This could be due to the fact that, on the one hand, the circle of people potentially affected by the private foundation was significantly smaller than in the case of peasant inheritance law and, on the other hand, it was much easier to avoid the issue in practice: In the absence of peasant inheritance law, an ordinary transfer agreement was sufficient, as it had already been possible and common in the past, whereas in the case of the foundation, the use of a Liechtenstein family foundation was a considerably higher hurdle in practical and financial terms; b) In terms of substantive law, the unity of assets is achieved by means of inheritance law, property law, family law, or the law of obligations; c) In terms of duration, the instruments are usually effective for an unlimited stretch of time. Occasional restrictions are either expressly formulated or arise implicitly from other factors; for example, if only a surviving spouse is the beneficiary or if the foundation’s assets are so small that the foundation’s purpose cannot be financed from the income alone – in such a case, time runs out automatically.

d) For those affected, two aspects could be distinguished: Beneficiaries are usually family members related by blood, but they may also be spouses or neighbours. However, these persons are not necessarily identical to those in whose interest the unity of the asset is to be preserved. There may be a conflict, for example, between the current beneficiary of the entailed estate and the interests of the claimants. Especially, interests of society as a whole or of the state should be mentioned here, such as that of maintaining a viable agricultural system, which – in the case of the peasant inheritance laws – coincides with the interests of just one single descendant. If legislation today attempts to achieve this goal by means of agricultural land transfer law, it will be limited by legal practice. The legal measures against the splitting of the so-called “minimum share” in modern apartment ownership also showed such ambivalence: On the one hand, they seemed to favour the surviving “owner partner” (from the WEG 1975⁶⁹ to the WEG 2002, the spouse), who took over the half share of the deceased at a more favourable price (since 2002, only if the surviving partner is entitled to a compulsory portion).⁷⁰ On the other hand, limiting the divisibility of the minimum share also meets the interest of the other apartment owners, the municipal administration and the land register management – in this respect, the term “minimum share” alone is quite treacherous.⁷¹ This is a significant difference from the otherwise similar mediaeval “co-ownership upon survival” (*Miteigentum auf Überleben*, also located in property law), in which the surviving co-owner (in practice: the surviving spouse) automatically acquired ownership of the predeceasing co-owner’s share upon their death.⁷² However, this “co-ownership upon survival” lacked any official interest. e) As an asset (object), real estate naturally dominates because this category of property provides a lasting benefit; especially private foundations are used to preserve industrial or commercial assets. Instruments to secure the unity of an asset are particularly necessary if a division would promise short-term or

69 BGBl 1975/417.

70 For details, see Explanations on the government bill concerning § 14 WEG 2002: Stabentheiner and Schernthanner, 2002, pp. 69–75.

71 Faistenberger, Barta and Call, 1976, § 3 WEG 1975.

72 Kohl et al., 2024, p. 60.

disproportionate benefits, for example, in the case of forests that could be cut down (see below 7), or in the case of collections that are valuable in terms of art history or monument conservation. f) Finally, the role of the state or pre-state authority deserves attention. Although the concept of unitary ownership may not be present in mediaeval customary law, the authorities at least provide a legal framework (e.g. apartment-owning partnerships, peasant inheritance law, agrarian communities) by means of provisions under public or private law (according to modern understanding). Furthermore, there is the requirement for special approval by legislation (in the case of entailed estates) or administration (in the case of foundations) as well as ongoing monitoring; registration (in the case of foundations in the company register; in the case of Tyrolean “closed farms” in a special section of the land register), or the decision on the existence of preconditions (on the existence of an inherited farm under the “Anerben”-Inheritance Act as part of the probate proceedings; on the qualification of an inherited farm under the Carinthian Inherited Farm Act by the probate court⁷³) should also be mentioned in this context. State interference is less severe in the case of private-autonomous legal succession arrangements with only a limited time effect (transfer agreement). Only seldom is the state to be recognised as a directly involved party that establishes undivided assets in its own interest (see below section 7). The influence of the state or the pre-state authorities in shaping the instruments discussed herein is ambivalent. The problem of special peasant inheritance rights, for example, became more important with the end of the manorial lordships (which had previously provided for economically expedient farm units), brought about by state legislation. Therefore, the divisibility problem stemmed, in the first instance, from state legislation. With their own endeavours to achieve indivisibility – the Golden Bull, the Privilegium maius or the Pragmatic Sanction come to mind – the sovereign dynasties were probably exemplary for the establishment of entailed estates. However, what was beneficial to the sovereigns in maintaining their established position could not be equally free for the aristocratic estates; therefore, as early as the 17th century, a sovereign’s authorisation was required to establish an

73 Cf. Eccher, 2018, §3 Abs 5 KtnErbhöfeG.

entailed estate. However, the authorisation in individual cases depended on the political framework and changing objectives; the history of the entailed estates therefore reflects the periods of constitutional history in which different political interests determined the attitude towards the entailed estates. Later, the republican rejection of all instruments that cemented a traditional social supremacy radiated from the entailed estates to the foundations but could not be maintained in the long term in view of the evasion possibilities of an increasingly globalised economy. Changing objectives can also be observed in the history of peasant inheritance law (freedom and equality realisation versus preservation of a viable agricultural sector); here too, however, the state's will to shape the system has reached its limits.

7. THE STATE AS A FOUNDER OF UNDIVIDED ASSETS – DEALING WITH FORESTS AGAIN...

Finally, a historical event should be mentioned in which the state not only set the legal framework or limited itself to authorisation and control but also established uniform third-party assets as an actor in its own interests. In the so-called “Tyrolean forest regulation” (“Tiroler Forstregulierung”) of 1847, the ownership of Tyrolean forests was reorganised. Prior to this action, most of Tyrol's forests were reserved for the sovereign, but his property was encumbered by countless different utilisation rights (timber rights) of the common people. These limited rights in rem, affecting the forests overall, were now to be converted into free ownership of only a part of the forests, while the rest of the state forests were to be unencumbered. This was therefore a typical form of servitude redemption, i.e. a legal transaction against payment, in which restricted rights in rem to an entire area are converted into an unrestricted right in rem (ownership) to a restricted part of the area. The servitude rights were held by individual farmers as owners of their farmsteads. It would have been obvious to convert these individual servitude rights into individual property rights. However, this was not to happen: On the one hand, this would have required individual negotiations, which would have been just as time-consuming and

resource-intensive as the subsequent registration acts required in the land register. On the other hand, this would also have led to a myriad of small forest plots lacking infrastructural development and therefore provoking disputes between the new owners. All the more so, as animosities and jealousies were to be expected anyway, it was hardly to be expected that all new owners would have been equally satisfied with the outcome of their respective negotiations. All these problems were to be avoided: the servitudes were not redeemed individually, but rather in conjunction with all authorised parties, who were coerced into forming a “community entitled to timber” (“holzbezugsberechtigte Gemeinde”). In the end, the individual farmers lost their individual servitude rights and gained membership in a compulsory community. This “community”, as defined under the ABGB, had the advantage of not establishing a regular co-ownership relationship as per the ABGB, which meant it could not be dissolved through a partition action. This appeared desirable in the public interest and in terms of sustainable management concerning the property – the forest. The unity of the asset was therefore not in the immediate interest of the beneficiaries.⁷⁴ The further course of history shows this particularly clearly; here it is not possible to describe in detail how the state interest of the 19th century proved fatal for the heirs of the former beneficiaries at the beginning of the 21st century: However, as the same German word “Gemeinde” was used, the compulsory community “Gemeinde” was confused with the “local political municipality”, also called “Gemeinde”, which was only established from 1849. This meant that the legal position of the former servitude beneficiaries deteriorated once again.⁷⁵

Incidentally, the preference for indivisible forests was also reflected in the way in which corporate owners, who had previously been referred to as “parcels”, were treated when the Tyrolean land register was

74 Kohl, 2010, pp. 130–132 (with further references); dissenting Barbacetto, 2023, pp. 15ff.

75 About this: Kohl and Oberhofer and Pernthaler, 2010; Kohl et al., 2012; Kohl and Oberhofer and Pernthaler, 2014, pp. 425–435; dissenting Schennach, 2012, pp. 369–390; Schennach, 2016, pp. 30–59.

created.⁷⁶ Despite initially being given the same name, alpine pastures (which did not promise any direct benefit in individual parts, meaning that there was little fear of lawsuits for division) tended to be understood as co-ownership, while in the case of forests, under the name of “fraction”, a type of legal entity was registered as owner.⁷⁷ This protected the forest from being divided and avoided the threat of smaller plots being cut down.

The special significance of forests as undivided assets was not new. It was already evident in the 18th century when Maria Theresia put the entailed estates under greater control in 1763 and laid down the duties of the entailed estate trustees. They were to ensure that “excessive usufruct” did not take place and, in this sense, were to be “particularly mindful of the preservation of the forests” (“auf die Erhaltung der Waldungen insonderheit bedacht”). This was the first time that the connection between entailed estates and forests was formalised.⁷⁸ The 1932 “Entailed Estates Regulation Act” (“Fideikommissregelungsgesetz”), which was intended to promote “liberation from the entailment” (“Befreiung vom Fideikommissband”), was also aimed at “the creation of larger units offering the guarantee of permanent forest management”.⁷⁹ When the entailed estates were dissolved, measures to create “protective forests” (Schutzwälder) were promoted.⁸⁰ Even in case of a division of ownership, such “protective forests” had to be managed uniformly.⁸¹ It was not until 1966 that the Constitutional Court cancelled the protective forestry provisions as being contrary to equality

76 On its legislation history: Kohl, 2006, pp. 248–256; on the Austrian land registration in general: Kohl, 2018, pp. 93–111.

77 Kohl, 2012, pp. 216–217.

78 Fraydenegg-Monzello, 1979, p. 788.

79 Ibid., p. 804 (cited § 20 BGBI 1932/258 – “Schaffung größerer, die Gewähr für eine dauernde Waldwirtschaft bietende Einheiten”).

80 Ibid., pp. 805–806.

81 Ibid., p. 806; Ordinance dated 21.12.1939, dtRGBI I 1939, p. 2459, on forest protection during the dissolution of family entails (forest protection regulation). – Cf. the parallel phenomenon of the “hunting community” (“Jagdgemeinde”) since 1849: Kohl, 1994, pp. 253–262; Kohl, 1998, pp. 755–767.

because they only applied to former entailed forests, regardless of the size of the forest in question.⁸²

8. SUMMARY

Instruments for preserving the unity of certain assets can be found in great variety since the Middle Ages. They were an expression of inter-generational thinking that brought economic and social benefits to the families concerned but at the same time stabilised and cemented societal relations. For this reason, the corresponding instruments were criticised both in the light of the physiocratism of the enlightened absolute monarchy and against the background of the principle of equality of the revolutionary-democratic movements. The liberalist legislature did not pursue a clear line; the abolition of institutions serving the preservation of undivided property was followed by new laws intended to counteract the negative consequences of divisibility. At the same time, legal practice repeatedly demonstrated the limits of legal liberalisation. While the freedom of the individual gradually pushed back traditional community-based thinking, the idea of sustainability⁸³ was already emerging as a new legitimisation narrative.

82 VfSlg 5120/1965; subsequently the Minister of Justice enacted the Regulation of 16.6.1966, BGBl 1966/89, which repealed the forest protection regulation; *cf.* Fraydenegg-Monzello, 1979, p. 807.

83 *Cf.* Klippel and Otto, 2008, pp. 39–59; Rödel, 2013, pp. 115–141; Schennach, 2026, pp. 30–42, 94–116.

BIBLIOGRAPHY

- Barbacetto, S. (2023) *Die „Waldzuweisung im Brixner Kreis“*. Vienna: Verlag Österreich.
- Brauneder, W. (1982) 'Von der moralischen Person des ABGB zur juristischen Person der Privatrechtswissenschaft', *Quaderni Fiorentini per la Storia del Pensiero Giuridico Moderno*, 11(1), pp. 263–318. ff.
- Brauneder, W. (1994) 'Die Entwicklung des bauerlichen Erbrechts am Beispiel Österreichs' in Brauneder, W. (ed.) *Studien II*. Frankfurt: Lang, pp. 357–369.
- Brauneder, W. (2014) *Österreichs Allgemeines Bürgerliches Gesetzbuch (ABGB). Eine europäische Privatrechtskodifikation. Vol. I: Entstehung und Entwicklung des ABGB bis 1900* (=Schriften zur Europäischen Rechts- und Verfassungsgeschichte 60). Berlin: Duncker&Humblot.
- Ebert, I. (2008) 'Familienfideikomisse' in Cordes, A., Lück, H., Werkmüller, D. (eds.) *Handwörterbuch zur deutschen Rechtsgeschichte. Vol. 1*. 2nd edn., Berlin: Erich Schmidt Verlag, pp. 1503–1504.
- Eccher, B. (2018) 'Commentary on Peasant Inheritance Laws' in Schwimann, M., Kodek, G. (eds.) *ABGB-Praxiskommentar. Vol. 4*. 5th edn. Vienna: Lexis Nexis.
- Eckert, J. (1992) *Der Kampf um die Familienfideikomisse in Deutschland* (=Rechtshistorische Reihe 104). Frankfurt: Lang.
- Erlar, A. (1971) 'Familienfideikommiß' in Erlar, A., Kaufmann, E. (eds.) *Handwörterbuch zur deutschen Rechtsgeschichte, vol. 1*. Berlin: Erich Schmidt Verlag, pp. 1071–1073.
- Faistenberger, C., Barta, H., Call, G. (1976) *Kommentar zum Wohnungseigentumsgesetz 1975*. Vienna–New York: Springer.
- Fraydenegg-Monzello, O. (1979) 'Zur Geschichte des österreichischen Fideikommißrechtes' in Rechtswissenschaftliche Fakultät der Universität Graz (ed.) *Reformen des Rechts*. Graz: Leykam, pp. 777–808.
- Holzer, G. (2012) 'Grundverkehrsrecht' in Norer, R. (ed.) *Handbuch des Agrarrechts*. 2nd edn. Vienna: Verlag Österreich, pp. 674–675.
- Klippel, D., Otto, M. (2008) 'Nachhaltigkeit und Begriffsgeschichte' in Kahl, W. (ed.) *Nachhaltigkeit als Verbundbegriff*. Tübingen: Mohr Siebeck, pp. 39–59.
- Kohl, G. (1994) 'Otto Bauer und das Jagdrecht: Ein Beitrag zur Geschichte der Gemein-dejagd', *Zeitschrift für Jagdwissenschaft*, 40, pp. 253–262.
- Kohl, G. (1998) 'Zur Rechtsnatur des österreichischen Jagdrechtes. Zugleich ein Beitrag zur Wirkungsgeschichte der Historischen Rechtsschule in Österreich', *Juristische Blätter*, 1998, pp. 755–767.

- Kohl, G. (2006) 'Territoriale Rechtsvielfalt und gesamtstaatliche Rechtsvereinheitlichung in der Habsburgermonarchie: Die Einführung des Grundbuchs in Tirol' in Haidacher, C., Schober, R. (eds.) *Bericht über den 24. Österreichischen Historikertag in Innsbruck*. Innsbruck–Vienna: Verband österreichischer Historiker und Geschichtsvereine, pp. 248–256.
- Kohl, G. (2010) 'Die Forstservitutenablösung im Rahmen der Tiroler Forstregulierung von 1847' in Kohl, G., Oberhofer, B., Pernthaler, P. (eds.) *Die Agrargemeinschaften in Tirol. Beiträge zur Geschichte und Dogmatik*. Vienna: Lexis-Nexis, pp. 105–150.
- Kohl, G. (2012) 'Die Tiroler Grundbuchsanlage und das „Fraktionseigentum“' in Kohl, G., Oberhofer, B., Pernthaler, P., Raber, F. (eds.) *Die Agrargemeinschaften in Westösterreich. Gemeinschaftsgut und Einzeleigentum*. Vienna: Lexis-Nexis, pp. 177–235.
- Kohl, G. (2018) 'The Austrian land register – history, principles, perspectives' in Schmoeckel, M. (ed.) *Übertragung von Immobilienrechten im internationalen Vergleich. Conference on real property law and land register* (=Schriften zum Notarrecht 52). Baden-Baden: Nomos, pp. 93–111.
- Kohl, G. (2020) 'Familienfideikomisse' in Olechowski, T., Gamauf, R. (eds.) *Studienwörterbuch Rechtsgeschichte und Römisches Recht*. 4th edn. Vienna: Manz, pp. 145–146.
- Kohl, G., Neschwara, C., Olechowski, T., Reiter-Zatloukal, I., P. Schennach, M.P. (Arbeitsgemeinschaft Österreichische Rechtsgeschichte) (eds.) (2024) *Rechts- und Verfassungsgeschichte*. 7th edn. Vienna: Facultas.
- Kohl, G., Oberhofer, B., Pernthaler, P. (2014) 'Gemeindeeigentum und Agrargemeinschaft', *Juristische Blätter*, 136, pp. 425–435.
- Kohl, G., Oberhofer, B., Pernthaler, P., Raber, F. (eds.) (2012) *Die Agrargemeinschaften in Westösterreich. Gemeinschaftsgut und Einzeleigentum*. Vienna: Lexis-Nexis.
- Lechner, P. (2024) *Bauernland in Bauernhand? Vergangenheit, Gegenwart und Zukunft des Grundverkehrs in Tirol*. Innsbruck: unpublished dissertation at the Law Faculty Innsbruck [Online]. Available at: <https://ulb-dok.uibk.ac.at/ulbtirolhs/download/pdf/9674461?originalFilename=true> (Accessed: 12 September 2024).
- Mack, J.M. (2009) *Bäuerliche Erbgewohnheiten in Oberösterreich am Beispiel der Bezirksgerechtssprengel Wels und Bad Leonfelden*. Vienna: unpublished dissertation at the Law Faculty Vienna [Online]. Available at: <https://theses.univie.ac.at/detail/5424#> (Accessed: 12 September 2024).
- Mayerhofer, E., Pace, A. (1901) *Ernst Mayerhofer's Handbuch für den politischen Verwaltungsdienst in den im Reichsrathe vertretenen Königreichen und Ländern*, vol. 5. Vienna: Manz.
- Michel, A.T. (1856) *Handbuch des allgemeinen Privatrechtes für das Kaiserthum Österreich*, vol. 2. 2nd edn. Vienna–Olmütz: Eduard Hölzel.
- Pendl, M. (2022) 'Die Rechtsformneuschöpfung „Privatstiftung“' *Der Gesellschafter*, 2022, pp. 191–200.

- Rechberger, W. (ed.) (2006) *Außerstreitverfahren zwischen 1854 und 2005* (=Veröffentlichungen des Ludwig-Boltzmann-Institutes für Rechtsvorsorge und Urkundenwesen XXIX). Vienna: Manz.
- Rödel, M. (2013) 'Die Invasion der Nachhaltigkeit. Eine linguistische Analyse eines politischen und ökonomischen Modeworts', *Deutsche Sprache*, 2013/2, pp. 115–141; <https://doi.org/10.37307/j.1868-775X.2013.02.03>.
- Rühl, G. (1847) 'Majorat, Minorat, Primogenitur, Seniorat' in Rotteck, C., Welcker, C. (eds.), *Das Staats-Lexicon*, vol. 8. Altona: J. F. Hammerich, pp. 699–701.
- Schennach, M.P. (2012) 'Das Provisorische Gemeindegesetz 1849 und das Reichsgemeindegesetz 1862 als Zäsur? Reflexionen zum österreichischen Gemeindebegriff im 19. Jahrhundert', *Mitteilungen des Instituts für Österreichische Geschichtsforschung*, 120, pp. 369–390.
- Schennach, M.P. (2016) 'Verwirrung aller Rechtsverhältnisse? Gemeindeordnung und Gemeindegut im Mitteleuropa des 19. Jahrhunderts', *Zeitschrift für Neuere Rechtsgeschichte*, 2016/1–2, pp. 30–59; <https://doi.org/10.5771/0250-6459-2016-1-2-30>.
- Schennach, M.P. (2026) *Rechtsgeschichte der Nachhaltigkeit in Österreich*. Vienna: Facultas.
- Scheuber, E. (2004) 'Die „Familien-Versorgungsstiftung“ – Eine Wiederbelebung der Familienfideikomisse?' in Fischer-Czermak, C., Kletecka, A., Schauer, M., Zankl, W. (eds.) *Festschrift Rudolf Welser zum 65. Geburtstag*. Vienna: Manz, pp. 931–1288.
- Schiff, W. (1905a) 'Anerbenrecht und Höferecht' in Mischler, E., Ulbrich, J. (eds.) *Österreichisches Staatswörterbuch*, vol. 1. 2nd edn. Vienna: Alfred Hölder, pp. 100–108.
- Schiff, W. (1905b) 'Die älteren Beschränkungen im Verkehre mit Bauerngütern und ihre Beseitigung' in Mischler, E., Ulbrich, J. (eds.) *Österreichisches Staatswörterbuch*, vol. 1. 2nd edn. Vienna: Alfred Hölder, pp. 91–100.
- Stabentheiner, J., Schernthanner, G. (2002) *Das Wohnungseigentumsgesetz 2002*. Vienna: Manz.
- Stammer, O. (1983) *Handbuch des österreichischen Stiftungs- und Fondswesens*. Eisenstadt: Prugg.
- Trattner, I. (2012) *Rechtsfragen des bäuerlichen Übergabevertrages insbesondere seit 1945*. Vienna: unpublished dissertation at the Law Faculty Vienna.
- Privatstiftung Definition, Organe, Firmenbuch* (2024) WKO, 25 July [Online]. Available at: <https://www.wko.at/wirtschaftsrecht/die-privatstiftung> (Accessed: 12 September 2024).
- Stiftungen sind Verankerung. Nachhaltigkeit. Innovation. Stiftungen sind Österreich* (2024) Österreichischer Stiftungsverband [Online]. Available at: <https://www.stiftungsverband.at/> (Accessed: 12 September 2024).
- VfSlg 5120/1965* (1965) *Sammlung der Erkenntnisse und wichtigsten Beschlüsse des Verfassungsgerichtshofes 5120/1965*. Vienna: Österreichisches Staatsdruckerei.