

The marriage court and the law of family property

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One of the most lasting institutions created by the Reformation was the marriage court, the *Ehegericht*. Before 1529, marriage was a sacrament. Disputes about its validity, its dissolution and the legitimacy of children belonged to the jurisdiction of the bishop's court, which applied canon law. The Reformation removed marriage from the sacraments and placed it under the jurisdiction of the civic authority. The marriage court of Basel, composed of members of the council and pastors, decided on the formation and validity of marriages, heard complaints of adultery and desertion, and granted divorces in cases of adultery and malicious desertion, which canon law had not allowed.¹

The transfer of marriage to civic jurisdiction had consequences for the law of property. Marriage determined the property relationship between spouses, the inheritance rights of children and the transmission of family wealth across generations. By placing marriage under the control of the council, the Reformation placed the legal framework of family wealth under civic law, which the council could shape according to the needs of the merchant families who governed the city. Marriage contracts, dowries, the administration of the wife's property by the husband and the division of the estate between the surviving spouse and the children were regulated by municipal statutes and customs that reflected the interests of a propertied citizenry.

The merchant families of Basel used marriage as an instrument of economic strategy. Alliances between families combined capital, connected businesses and consolidated the position of the leading families in the guilds and the council. The dense network of kinship among the Basel elite, which Part C describes, was built through centuries of carefully negotiated marriages. The marriage contracts that regulated the property consequences of these alliances are among the most important sources for the economic history of the city.

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The modern Swiss law of matrimonial property and inheritance, codified in the Civil Code of 1907 and revised several times since, is the framework within which families structure their wealth today. The ordinary regime of participation in acquired property, the possibility of choosing community of property or separation of property by marriage contract, and the rules on forced heirship, which were relaxed by the revision in force since 1 January 2023 to give testators greater freedom, are central tools of wealth planning.² Part E examines these tools in the context of international families, whose wealth crosses several legal systems. The marriage court of 1529, which placed family property under civic law, stands at the beginning of this tradition.

1 Notes

1. On the Basel marriage court (Ehegericht) established in 1529 and its competence to grant divorce for adultery and desertion, see HLS, article "Ehegerichte". To be verified. ↩
2. On the Swiss law of matrimonial property (Art. 181 ff. Civil Code, participation in acquired property as the ordinary regime) and the revision of the law of succession in force since 1 January 2023 (reduction of the compulsory portions of descendants and abolition of the compulsory portion of parents), see SR 210. To be verified. ↩

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