1 Introduction

In the course of the first half of the fourteenth century one of the greatest legal minds of the day, Bartolus of Sassoferrato (1313–57), arrived at a definition of family that rested on the equation of family and property – more particularly, of *familia* and *substantia*. In his words, "familia accipitur in iure pro substantia." Just what was included in *substantia* he did not elaborate. His contemporary, Alberico da Rosciate (1290–1360), came to an identical equation, or, in his terms, "familia, id est substantia."[1] But he revealed more about that *substantia*, specifically including nonmaterial elements, *dignitas* and *memoria*, in that substance.[2] *Dignitas* and *memoria* comprised such things as family name and coat of arms, size and style of dwelling, and all else that contributed to family honor, in other words. Those were all elements that members of a family shared. That sharing may have been most evident at the moments at which it ended or was under some threat, such as the very moment that was Bartolus's focus, namely death and inheritance. The ideal case was that as the nominal owner of the *substantia* died, his son stepped forward and acceded to the *substantia* so seamlessly that in some sense father and son had shared the patrimony together. The tie between father and son was indeed substantial.

What propelled these simultaneous and parallel jurisprudential observations of Bartolus and Alberico? Why the concern about family? And why then? To that point in time there had essentially been no jurisprudential theorizing about family. *Familia*, to be sure, was a term from Roman law, but *familia* had no precise legal definition and was not itself possessed of distinctive rights or legal contours. It was not conceived as a corporate entity. The word was a handy collective noun, useful for certain situations that arose in civic or natural circumstances.[3]

[1] For Bartolus, see the references in Chapter 2. Alberico da Rosciate, *Dictionarium iuris tam civilis quam canonici*, s.v. *familia*.
[2] Cf. Andrea Romano, *Famiglie, successioni e patrimonio familiare nell'Italia medievale e moderna*, 2; and Kuehn, "*Memoria* and Family in Law."
[3] Cf. David Herlihy, "Family."

Legal thought had not advanced before that point to concentrate on the ongoing social and political developments, to seek the logic (*ratio*) behind laws and to apply that to new and shifting circumstances.[4] To that point the logical and textual coherence of law (Roman and canon) had been the focus. With the so-called commentators, including Bartolus, an active interest in the relations between society and local laws, on the one hand, and learned academic law, on the other, came to the fore and began to have effects on law in practice. Men like Bartolus and Alberico took direct aim at legal issues that were real and pressing, including those arising from changes in family and in local laws bearing on family affairs and possessions. But what Bartolus and Alberico were addressing was the means, in law, by which property and *dignitas* and *memoria* were preserved, mainly in the management and transmission of *substantia*. They were beginning to think of *familia* as something abstract and corporate, an entity or substance enduring in time.

The timing of this juristic interest in family, however, is indicative of social and economic factors also. It was around the middle of the fourteenth century that, as Cesarina Casanova, among others, has said, "the model of the great horizontal family and its communion of goods began to give way to the emergence of an agnatic and patrilineal conception, which was manifest in the tendency to maintain a unitary patrimony."[5] By the early fourteenth century the large clans in Italian cities that had been prominent in the Guelf and Ghibelline factionalism in the thirteenth century had begun to give way to more elongated, temporally durable configurations, couched in terms of agnatic lineage. Families were more narrowly cast, but also more complex, as they tracked relations over time.[6] Scholars' attention consequently has turned from the accumulation and sharing of resources within a residential and relational group to the passage of families and patrimonies across generations.

It was not an easy or simple task to accord a corporate character to the family. While the ethos of kin sharing and living from a common fund was undoubtedly strong – presumed, in fact, in many realms of activity – it ran up against everyday contingencies that revealed the dark side of shared gains and losses, credits and liabilities. Mismanagement, sudden reversals of fortune, and vagaries of markets always threatened to bring down all those who shared a familial *substantia*. A narrower, temporally extended

[4] Ferdinando Treggiari, "Commentaria (Commentaries on Civil Law), Fourteenth Century, Bartolus a Saxoferrato (1313/14–1357/58)."

[5] Cesarina Casanova, *La famiglia italiana in età moderna*, 87. On this theme also Gianna Pomata, "Family and Gender."

[6] Franca Leverotti, *Famiglie e istituzioni nel medioevo italiano: dal tardo antico al rinascimento*, 137.

family was one device to reduce liabilities that might undercut family survival. Even more, for jurists, a more corporate approach to ownership and management ran into conflict with another important premise: that of contractual freedom of legal persons.[7]

The estate itself had qualities of a legal person that emerged mainly when an inheritance was in abeyance (*iacens*). Then an estate had elements of personality, having and meeting obligations, that stood until someone came forth to accept the estate and make it (and its debts) his.[8] The notion of a *haereditas iacens* clarified and allowed the imposition of rights and obligations through the singular person. The legal person is a fiction, but medieval law operated through such devices. As Yan Thomas maintains, looking precisely at the "continuation" of ownership from father to son in inheritance, the law perpetuated fictions that altered the nature of things within the law. In Bartolus's example, the fiction that father and son were somehow one and the same person, in turn, could generate the fiction that family was its substance.[9] In that regard, examined carefully, the law provided space within which the realities of shared domestic existence could proceed alongside concerns to maintain family, substantially, over time. Corporate interests were thus perpetuated through, but also conflicted with, individual prerogatives.

Families were units of production, as Frederik Pedersen has recently noted, that also "shared economic, social, and political resources." Ideally tasks were interchangeable and all family members were supported. The older generation furnished the capital and land; the younger generation the labor. All shared the fruits of that labor and capital.[10] The synchronous sharing of life and resources stood in some contrast, however, to the passage of resources across generations and the personification of rights and obligations in the deceased owner passing to one's heirs. Still, by no means was it the case that the horizontal family and its "communion of goods" (Casanova) had disappeared entirely. In fact, the sharing of goods went on; certainly the ideal and presumption of it did, but now such horizontal solidarity could come to clash with the more vertical emphasis on an intergenerational patrimony. That equation of family and substance that Bartolus and Alberico envisioned so nicely sprang from a perception of a unity of patrimonial elements, of shared resources, under the guiding hand of the single *paterfamilias* directing the

[7] Casanova, *La famiglia italiana in età moderna*, 91.
[8] Thomas Kuehn, *Heirs, Kin, and Creditors in Renaissance Florence*, 72–74.
[9] Yan Thomas, Fictio legis: *La funzione romana e i suoi limiti medievali*, 80–82. See also Marta Madero, "Interpreting the Western Legal Tradition: Reading the Work of Yan Thomas," 124–26.
[10] Frederik Pedersen, "The Family Economy," 102, 109, 111.

family, its members and property, to a common well-being and to a prolongation in subsequent generations. *Familia* became a concern, in other words, as the meanings or utilities of *familia* were shifting. Bartolus, as we will see, was struck by the close sharing of the patrimony by father and son, to the extent that during his father's life a son could still be termed a sort of owner (*quodammodo dominus*) of the family's *substantia*, and on his father's death inherited it immediately and automatically in the eyes of the law. This sense of sharing as normative has been lost or at least downplayed in scholarly attention to accounts of patrimonial management, to the strategies employed in moments of transmission, such as marriage or death. The ideal of living together and sharing assets of a patrimony, of surviving lean times and enjoying the good, remained a powerful and persistent force shaping behavior and expectations.

Sharing is not generally seen as an economic activity, if only because it occurs in spaces away from markets and embodies something other than the acquisitive rationality that supposedly governs behavior there. A stark contrast between the home and the market is the expectation of the present. Stephanie Coontz, in a popular book from the 1990s, nicely described those expectations:

> The effective adult, at work and in public, is independent, individualistic, rational, and calculative. The effective family member, by contrast, shares, cooperates, sacrifices, and acts nonrationally. The character traits that keep families together are associated in all other arenas of life with immaturity or irrationality; family interdependency is now the only thing that stands in the way of "self-actualization."[11]

This dichotomy continues to shape historical understanding. It is a false dichotomy in many ways, most clearly so when one looks at things like family investments, exploitation of assets, and devolution of wealth across key moments of marriage and death. Wealth as patrimony required more of that sharing, cooperation, sacrifice, and, above all, nonrationality. But the approach to family as *substantia* was not thoroughly beyond the nonrational. There was an interpenetration and combination of the legal and the extralegal, the individual and the collective, the commercial and the inalienable that allowed the equation of family and substance. Patrimony was not incompatible with markets, but both interacted with cultural and political, as well as economic, values. Sharing was not always irrational and it was always meaningful. It was a systematic form of behavior that can be tracked behind and even through the evidence left

[11] Stephanie Coontz, *The Way We Never Were: American Families and the Nostalgia Trap*, 155.

by market activities and reciprocities of exchange that formed the core of the economy of gifts. That, again, is what this study seeks to do.

The idea of the patrimony underpinned by a sharing economy is the point of departure for the chapters that follow, beginning with close consideration of Bartolus's formulation. The sharing economy of households can be seen as a third option, between the two conventionally opposed forms of exchange broadly recognized within social sciences – the economy of the commercial market and the economy of the gift. The gift economy was first elaborated by the French anthropologist, Marcel Mauss, and developed and refined by others.[12] It was a notion formulated in clear contrast to relations and exchanges in a market economy (and from that association largely taken as "primitive" in contrast to markets). The market, of course, is broadly taken as indicative of the modern world, which began with commercial markets and then developed industrial and financial markets. The gift is taken as characteristic of earlier forms of exchange and distribution, in tribal or feudal societies, influentially so in the work of the historians Georges Duby and Natalie Zemon Davis.[13]

In both the competitive world of markets and gift-giving, there is a calculated exchange and reciprocity (just not necessarily immediate or precise in the case of gifts). In the market typically the reciprocation (price) is set and the return is made immediately (or credit is extended). A gift, in contrast, set an expectation of reciprocation at some future point, in an as yet undetermined form, and thus put the recipient in the position of debtor to the gift giver. Extension of credit was the essence of gift-giving. In an economy of gift or largesse, reciprocity could present problems of miscalculation, while the norm of reciprocity was real and undeniable. The reciprocal countergift could seem to be a sort of extortion on the person who accepted the initial gift. Reciprocation, imprecise in form and timing, could raise anxiety as to the continuing social relationship between donor and donee.[14]

In the sharing economy, in contrast, there is no reciprocity; there is the "demand" on one side and the accession to or refusal of it on the other. There is no calculation of return. There is no sense of indebtedness or individualistic ownership to acknowledge.[15] As laid out by the

[12] Marcel Mauss, *The Gift: Forms and Functions of Exchange in Archaic Societies*. Also interesting is James G. Carrier, *Gifts and Commodities: Exchange and Western Capitalism since 1700*.

[13] Cf. Georges Duby, *The Early Growth of the European Economy: Warriors and Peasants from the Seventh to the Twelfth Century*; Natalie Zemon Davis, *The Gift in Sixteenth-Century France*.

[14] William Ian Miller, *Humiliation: And Other Essays on Honor, Social Discomfort, and Violence*, esp. 5–6, 16–17, 48–50.

[15] Cf. Russell Belk, "Sharing," 716.

anthropologist Thomas Widlok, sharing is not an aspect of gift exchange but a complex social phenomenon in its own right that makes specific demands on those involved in it. Some people share what they value without expecting returns. Sharing is more likely in situations of proximity, though not necessarily face to face, as intermediaries may often be used to convey things. Sharing shelter or food, as with brothers living together (*ad unum panem et vinum*, to use a frequent metaphor from our period), can generate powerful social bonding apart from any sense of blood-relatedness. Sharing helps establish a sense of self as "limited," subject to the demands of others and with possible access to things through them, including the honor shared with others.[16] It does not demand unequivocal ownership as a right to exclude others from access to what is owned.[17] Inequalities and distinctions that are in fact inevitable are muted by sharing.[18]

The centrality of physical presence is one weakness of sharing, as the relationship can be attenuated when presence ends or intervals between appearances lengthen. Claims after a long absence may slide a relationship to a point more akin to gift-giving than sharing, where some expectation of reciprocity and keeping score creeps in.[19] Sharing may also erode when kin relations start to become fixed roles – when those involved stop speaking of and to each other in certain ways, practice different crafts, circulate in different corners of society, and certainly when they take up separate dwellings.[20] Death has extensive effects on sharing, of course, as sharing most often ends at that point, and those not present at the moment might be left out.[21]

Still, as a household mode of living, sharing presents a different option, difficult to reconcile with notions of ownership. In the formulation of some anthropologists, the household economy is more than a set of practices. It is "a way of thinking about those activities, an orientation that sees the household itself as the focus of economic action and that subordinates the economic pursuit of its members to the survival of the house as a social unit."[22] As the business analyst Russell Belk points out,

> Within the family, shared things are, de facto if not de jure, joint possessions. Their use requires no invitation, generates no debt, and may entail responsibilities

[16] On honor and personality, see William Ian Miller, *Eye for an Eye*, 101.
[17] Cf. Yan Thomas, *Il valore delle cose*.
[18] The foregoing derives from Thomas Widlok, *Anthropology and the Economy of Sharing* and his programmatic essay "Sharing: Allowing Others to Take What Is Valued." Also Belk, "Sharing," 723; and Alfred Gell, "Inter-Tribal Commodity Barter and Reproductive Gift-Exchange in Old Melanesia."
[19] Widlok, *Sharing*, 182. [20] Widlok, *Sharing*, 83. [21] Widlok, *Sharing*, 183.
[22] Carrier, *Gifts and Commodities*, 153–54.

as well as rights. The responsibilities may include taking care not to damage shared possessions, not overusing these things to the detriment of other family members, and cleaning up so that others will find these resources in a similar state of readiness for their own use. Such responsibilities underscore a difference between shared possession and sole ownership.[23]

Contrary to the contrasting conditions of seller and buyer or donor and recipient, there is no distinction to be made conceptually between sharers; their ownership, as it were, is mutual.[24] Possessiveness and mastery or control are the sorts of outlooks that threaten the end of sharing.[25] Indeed, sharing is most evident, certainly most apt to fall into the purview of legal documents, at those moments at which individual prerogatives and rights are asserted against those of the group. Sharing, in other words, pops into view when it is threatened (from within or without) or ceases altogether, evidently so at death.[26] We may not always see it from the perspective we adopt as historians dependent on legal records. Indeed, as the anthropologist Marilyn Strathern has demonstrated, perceptions of actions as borrowing or sharing can vary by observers' circumstances – their location in an institutional or social nexus. Sharing within a family can seem something else (e.g., borrowing, theft) from outside. Ownership as a way of negotiating relations and appropriation as a way of acquisition exist in a fluid dynamic.[27] In contrast to a rich line of scholarly investigation, arising from the work of Karl Polanyi and others,[28] which postulates a metahistorical transition from an economy of embedded gift exchange to one of disembedded market exchange, this study wants to insist both on the overlap or persistence of both forms (gift and market) in a given society and, even more importantly, on a third economic model, sharing, which also overlapped the other two.

In an Italian community such as Florence (the principal entry point, but not the only one, for our investigations) all three forms of economy existed and interacted. The borders between them were permeable. One might conceptualize the situation as having a sharing economy at home, a gift economy outside the home with kin and friends, and an exchange economy with all others in the various marketplaces of the city. But calculations went on at all levels, such that there could be and indeed from time to time was individualistic activity with the house and equally nonrational considerations

[23] Belk, "Sharing," 717. Also his "You Are What You Can Access: Sharing and Collaborative Consumption Online."
[24] Belk, "Sharing," 720. [25] Belk, "Sharing," 727. [26] Widlok, *Sharing*, 187–88.
[27] Marilyn Strathern, "Sharing, Stealing and Borrowing Simultaneously."
[28] Karl Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time*. Also Jens Beckert, "The Great Transformation of Embeddedness: Karl Polanyi and the New Economic Sociology."

that could influence market transactions. Family feelings can also lead to anger or disappointment and produce intergenerational conflict, and as such be essentially ambivalent.[29] In contrast to the clean distinction between market behavior and family that serves Coontz's purposes, the approach here is to insist on the overlaps and interpenetrations between these realms. It is evident, for one thing, in the legal aphorism that the female was the avaricious gender, capable of rational pursuit of desired things even at the expense of other family goals.[30] It was an effective aphorism as it injected market behavior into the family sphere as a negative. Historians have also long recognized that forms of patronage prevalent in Florence were redolent with elements of a gift economy.[31]

The sharing economy was alive mainly in the forms of domestic activity (the monasteries and convents were certainly sharing environments too). People partook of food and shelter, as well as the harder-to-determine emotional life of the group that fed into and from a collective sense of honor and social identity. A strong association of sibling groups could importantly serve to underwrite household solidarity.[32] This collectivity, in turn, interacted through its members in the other economies of market and gift. The presumption of sharing was enthroned in the statutes that made financial liability common among fathers and sons, and brothers living together (though not wives). The markets, as sophisticated as they were, from the public space of the Mercato Vecchio to the scattered stores and workshops throughout a city such as Florence, were also permeated with exchanges of gifts and favors – above all, the extension of credit based on the intangible and tangible qualities of trust. Family members and business partners (not mutually exclusive groups) shared profits and losses.

Florentines, especially those fortunate to command considerable resources, made loans to relatives, neighbors, and business and political associates. Loans expressed and maintained solidarities, based on kinship, neighborhood, or guild. Trust was less of an issue with those people one knew or with whom one had active ties; and personal loans, as opposed to commercial, were often written off, as more was involved than market calculation. Accounts were carefully kept of inter-business credits and debits, while real estate transactions were "almost entirely treated as interpersonal exchanges."[33] Across these relations Florentines

[29] Cf. Aafke E. Komter, *Social Solidarity and the Gift*.
[30] Cf. Thomas Kuehn, *Family and Gender in Renaissance Italy, 1300–1600*, 54, 62, 177.
[31] David Herlihy, "Family and Property in Renaissance Florence," 13.
[32] As Janet Carsten found in Langkawi society (Malaysia): "Houses in Langkawi: Stable Structures or Mobile Homes?".
[33] Paul D. McLean and Neha Gondal, "The Circulation of Interpersonal Credit in Renaissance Florence," esp. 155.

managed to assemble rural estates and move commodities, especially real estate, into a category of items devolving outside output or factor markets. These more personal resources posed less risk to the process of passing property to the young.[34]

Partners in a business venture, a *societas*, in contrast, gave their trust a concrete form in their written partnership agreements. They shared profits and losses according to a contractual formula they had agreed to, although they as often dissolved their partnerships, sorted out the capital and gains, and reentered modified contracts in new, even if essentially the same, partnerships.[35] The marketplace was not secure and thus it was where relations in sharing profit and loss required the most detailed and careful rendering. The patronage exemplified by gifts and favors, in turn, could be at the heart of highly strategic and manipulative thinking, asserting solidarities in the face of the dissolvent forces of the market. And those who lived together and shared unabashedly in a common patrimony, nonetheless, could also keep careful accounts of acquisitions and expenses and seek appropriate returns when the time came. Even for brothers, who could adopt the form of an association nominally more than a mere business *societas*, being rather a *societas omnium bonorum*, there was always an eye on its dissolution, the end of sharing, and the assertion of individual ownership. The family and its substance might then be parceled out, or lost entirely. Against that eventuality it was possible to erect an inheritance device, the fideicommissum (a trust erected around a directed substitution of heirs from the agnatic lineage with the provision that family property not be alienated to outsiders), that took ownership of one person (the founding testator) to an extreme, obliterating the rights of heirs to manage and direct property as they saw fit, and yet it did so to hold collective property for family over generations. Different and at times surprisingly flexible options thus existed across the gamut of economic interactions.[36] Collective ownership could be continued in adverse economic circumstances by turning it legally into individual ownership and asserting a separation of liability from other individual holders (as when a wife retrieved her dowry during marriage on the grounds of her husband's impending bankruptcy) or by giving

[34] Rebecca Jean Emigh, *The Undevelopment of Capitalism: Sectors and Markets in Fifteenth-Century Tuscany*; Bas van Bavel, *The Invisible Hand? How Market Economies Have Emerged and Declined since ad 500*.

[35] On Florence's economy see Richard A. Goldthwaite, *The Economy of Renaissance Florence*; and Goldthwaite with Tim Carter, *Orpheus in the Marketplace: Jacopo Peri and the Economy of Late Renaissance Florence*.

[36] Cf. Diane Scarabotto, "Between: The Hybrid Economies of Collaborative Networks."

property away to someone not liable otherwise.[37] Florentines continued, at least in statutes whose initial formulations went back to the late thirteenth and early fourteenth centuries, to intertwine business and personal activities in an extensive liability for obligations that made little distinction between the substance of a partnership (simple *societas*) and that of a family. Trust resided on such bases.[38] But there was also every reason to forge distinctions in ownership or use when obligations came due, especially when they were so great as to threaten family.

Here, then, is the problem to be investigated in several contexts in the chapters that follow. Although there was a sharing economy of households and their patrimonies, there were in fact and inevitably a variety of personal claims that could burst forth to attenuate sharing or even necessitate an end to sharing. After all, while assets were shared, so were debts and liabilities. To have recourse again to the judicious observations of Casanova, tensions arising from the continuity and pretended unity of the patrimony for individual men and women, seeking to see their rights to property realized, "traversed the histories of many lineages."[39]

Familial substance, or patrimony, was also composite. As Loredana Garlati observes, there was the *patrimonium* of the father (*pater*), but there might also be shares, *peculia*, belonging nominally to the children, and there was the dowry and possibly other property belonging to the wife/mother.[40] To these we can add the conflicting claims of brothers living together on a single patrimony after their father's death. These forms of family property are the focus of Chapters 3 through 5. Issues around these forms of property were real and require investigation.

Of course, the family consisted, at least in most cases, of more than one person; not to deny that a household of one was quite possible, in terms of coresidence and in terms of the law. That family of one, however, unless something was done (marriage, adoption), would die out with the demise of its sole member. As we will see in Chapter 2, it was precisely the continuation of family into subsequent generations that was at the heart of the equation of *familia* and *substantia*. It was also a peculiarity of gender in law that a woman could not begin an enduring family line; rather, she was the beginning and end, it was said, of a family of one – herself.[41]

[37] Kuehn, *Family and Gender*, 91–97, 131–39; Kuehn, "Protecting Dowries in Law in Renaissance Florence"; Julius Kirshner, "Wives' Claims against Insolvent Husbands in Late Medieval Italy."
[38] Thomas Kuehn, "Debt and Bankruptcy in Florence: Statutes and Cases."
[39] Casanova, *Famiglia italiana*, 86.
[40] Loredana Garlati, "La famiglia tra passato e presente," 5–6.
[41] Cf. Kuehn, *Family and Gender*, 63.

Those portions of patrimonial *substantia* that were tied to children or wives or siblings became of legal interest on the occasion of breakdown, when outsiders and their claims might impinge on those resources, or simply when someone inside the family wanted to detach him or herself and his or her property from the others. Additionally, at the time of death there might be testamentary bequests to others, possibly including charities or other institutional beneficiaries, in which case making distinctions as to ownership and its prerogatives was a way to bracket off some of the household property from the claims of others. Among those "others" might be the wife-become-widow or the emancipated child.[42] Resisting or limiting such claims was vital to the integrity of the patrimony.[43] Sharing was also about who was denied access; who did not have a share.

Complicating any such individual claims, however, was the fact that among those goods and objects that family members shared were those that were considered inalienable. These were things, including land and buildings, but also "incorporeal" possessions (such as family honor or titles), that were to be enjoyed within a group and also to be passed along to those who would follow.[44] For that purpose property owners seized the option of the early modern fideicommissum, explicitly forbidding alienation of vital properties *extra familiam* (the subject of Chapter 6).[45]

To insist on seeing the patrimonial economy as a sharing economy is, if not perhaps to diminish the role and power of the patriarchal head of family (the *paterfamilias* of civil law), to place it in more nuanced contexts. Scholars such as Isabelle Chabot have cautioned about overemphasis on paternal control of family wealth in light of the actions of wives and daughters in relation to their dowry rights, for one thing (Chapter 4). Less systematically examined, but no less a limiting context for some fathers, were the actions of sons, especially as they came of age and tried to take their place in society. Here indeed, right at the spot where Bartolus found the strong identity of the family, in the substantial tie between fathers and (legitimate) sons, there was bound to be less friction, one assumes. But there too there were tensions and potentially conflicting claims.[46] And there were limits to legal paternal power

[42] On these see Kuehn, "Travails of the Widow in Law in Florence at the End of the Fifteenth Century: An Illustrative Case" and *Emancipation in Late Medieval Florence*.
[43] Garlati, "La famiglia tra passato e presente," 9–10.
[44] Foundational is Annette B. Weiner, *Inalienable Possessions: The Paradox of Keeping-While Giving*.
[45] Garlati, "La famiglia tra passato e presente," 11–13, sees this as central to early modern families.
[46] Cf. Kuehn, *Law, Family, and Women: Toward a Legal Anthropology of Renaissance Italy*, 129–42.

(*patria potestas*).[47] Finally, relations between brothers, until quite recently, have largely been left out of account. Their coresidential arrangements are typically taken as temporary. Benedetta Borello's work promises to return attention to sibling relations, made all the more interesting in light of the burgeoning practice of primogeniture (privileging one child against all siblings) as the inheritance norm among mainly elites in some communities.[48] The heir in primogeniture was sole owner, but still had to accede to the rights, however diminished, of siblings to at least basic alimentary support. Conflicts could result, but there were still rights of others to be taken into account.

Here is perhaps where Bartolus's legacy, his linking of *familia* and *substantia*, had its greatest effect. Jurists throughout Italy came to accept a key element of the fideicommissum as it evolved in the fifteenth and sixteenth centuries – namely, the prohibition of the alienation of patrimonial properties *extra familiam*. In that context *familia* came to have legal contours, in that claiming to be part of a *familia* was productive of rights and privileges to share in what the heir could not alienate. The medieval family, conceived in terms of its members, gave way to a patrimonial conception of family, indivisible, tied to male agnatic succession.[49] Chapter 6 displays how some jurists struggled with the contrasts and contradictions between prolonged, shared ownership of property, as spelled out in fideicommissa, and the claims of all singular persons that thereby were trampled upon in the name of enduring *familia*.

The patrimony also required careful management. Its preservation fell to those who inherited and faced the directives in wills or simply the pressures of kin to use all means possible to maintain *substantia*. One of the things an heir by fideicommissary substitution might have to do, for example, was make an inventory of the estate. The inventory could serve to alert subsequent heirs as to what had initially, or at least at some prior point, been in the patrimony. But the inventory was also, first and foremost, a legal device to limit an heir's legal liability for debts on the estate and to guarantee him (or her, more rarely) a requisite minimum portion, the Falcidian quarter of Roman law. These inventories, which survive in profusion for Florence and elsewhere, have proven to be invaluable sources, letting historians in some cases seemingly walk through the rooms of fifteenth- and sixteenth-century houses. Yet these inventories, as legal documents, also had some propensity to conceal or deceive.

[47] Here Kuehn, *Family and Gender*, 71–79. For the legal background, see Yan Thomas, "Il padre, la famiglia e la città: figli e figlie davanti alla giurisdizione domestica a Roma" and Marco Cavina, *Il padre spodestato: l'autorità paterna dall'antichità a oggi*.

[48] Benedetta Borello, *Il posto di ciascuno: fratelli, sorelle e fratellanze (xvi–xix secoli)*.

[49] Romano, *Famiglia, successioni e patrimonio familiare*, 59.

These documents had consequences that people could have every reason to manage or manipulate. For that reason Florence legislated to limit the availability of inventories to the estates of minors (under eighteen), meaning that inventories were mainly the work of legal guardians, who might be the child's mother. Chapter 7 looks carefully at the relevant law and some examples to see how deceptive or merely inept legal inventories could have been, as well as to see what was the *substantia* that some had shared.

Here, as in previous chapters, Florentine sources will be in evidence, though not exclusively, as it is Florence's rich archives with which I am most familiar and which allow access to materials not readily available elsewhere.[50] Also frequently in evidence in the following pages are Florentine domestic accounts. Account books and household fiscal declarations provide unparalleled entree to the handling of family *substantia*. Prominent in these pages too is the humanistic dialogue on family penned by Leon Battista Alberti, a singular monument to the care and attention, if not obsession, for family and domestic life at that time in Florence. As vital as family was in all aspects of life, there was explicit theorizing and strategizing about it. What was said about it and what was at times left unsaid are revealing. These are all sources distinct, though not separate, from the legal discourses on *familia* and *substantia*.

These sources could serve to school and prepare those who would own and manage family property. Whoever managed property, honestly or deceptively, was at some level supposed to be a prudent man. That was the vague legal standard that distinguished the sane from the insane – what Liz Mellyn has called patrimonial rationality.[51] It was prodigality, reckless mismanagement, in contrast, that identified the insane (*furiosus*, *mentecaptus*). Here too it was Bartolus who played a pivotal role, as he laid out the possible qualities of the prudent man, who, as a witness in court, gave testimony that could be taken as reliable. But much as with the well-known qualities of *virtù* (Machiavelli) and *sprezzatura* (Castiglione), there was no clear definition of prudence. It was another form of what Douglas Biow has termed a *nescio quid*, an indefinable something that gave one a measure of individuality, if not of success in general.[52] Chapter 8 directs attention to some cases of insanity and learned discussion of prudence, but now in a context of partible patrimonies and the sharing economies of families. The law assumed the capability of most people to be prudent in

[50] Katherine Ludwig Jansen, *Peace and Penance in Late Medieval Italy*, 5.
[51] Elizabeth Mellyn, *Mad Tuscans and Their Families: A History of Mental Disorder in Early Modern Italy*, 17, 21–22, 103–4.
[52] Douglas Biow, *On the Importance of Being an Individual in Renaissance Italy: Men, Their Professions, and Their Beards*.

some sense, and left its determination largely to the discretion of witnesses, and so jurists did not feel compelled to detail what prudence was – or wished to avoid an intellectual quagmire. Much like the notion of the "reasonable man" today, the prudent man of early modern law stood as a hypothetical standard. Though prudence could be a general attribute in some sense, it was not necessarily "shared." The next heir and manager of a patrimony did not necessarily possess it, and there does not seem to have been much hesitation on the part of those who first devised the terms of a fideicommissum to tying the hands of heirs whose prudence could not be assumed. Standards of prudence remained awfully loose and hard to define. The insane were perhaps also those who made unreasonable demands or refused to meet reasonable and appropriate demands of others. The insane did not want to share any longer. They were operating on their own, without reference to the *familia*. Again, it was important that the patrimony, or its management, was divisible – that no individual was truly so autonomous as to waste all his *substantia* to the harm of his own sons.

One type of source plays across all these chapters: the consilium. These were written responses, in technical Latin prose, dense with references to appropriate texts and institutions of the academic *ius commune*, in answer to questions arising for judges and litigants, or even for legislators, coping with legal uncertainties. These unparalleled jurisprudential devices allowed trained experts to try to square local laws, social practices, and the rules of *ius commune*.[53] The consilium represents a creative moment, "providing law where there was none," as I have said elsewhere.[54] They allow us to track law in action. They are the locus where experts in civil and canon law (the essence of the so-called *ius commune*) grappled with the peculiar statutory and customary nexus of a place like Florence, and thus Florentinized the law in some sense, and worked a similar alchemy for Milan, Bologna, Padua, and elsewhere (except Venice).[55] That is another theme that runs through the pages that follow.

Consilia also remind us how much the relevance of legal rules is at play in problem moments, in normatively uncertain circumstances. That again may be most apparent in looking at Bartolus's definition of family. The son was a sort of owner and stepped seamlessly, immediately, into full ownership on the father's death. There was little room for uncertainty, barring a paternal attempt to disinherit the son or simple neglect of him in a will (which made it void in any case). It was when that situation

[53] Here see Kuehn, *Family and Gender*, 12–17. [54] Kuehn, *Family and Gender*, 15.
[55] For an excellent account of the development of academic law and local legislation in Italy, see Mario Ascheri, *The Laws of Late Medieval Italy (1000–1500): Foundations for a European Legal System*.

failed to materialize that uncertainty reigned, or as Letizia Arcangeli has it, there was some true freedom of maneuver to manage how and to whom one's patrimony passed, to the possible consternation of others who might well bring suit and thus throw the matter into the laps of jurists.[56] We can go further to say that in inheritance practices, especially the fideicommissum, the living were sharing still with the dead and with the yet-to-be-born. A plurality of claims clustered about every patrimony, no matter how unified it pretended to be. Law was indeed "a very flexible instrument" and yet the great variety of actions it encompassed also shows that practice cannot be derived simply from norms.[57]

Finally, before coming to grips with the dimensions and difficulties of patrimony, we might stop to ask what is/was patrimony. There is no better way to approach the issue than to ask what patrimony was to those who had and used it, or hoped to. Here is just one example of insights we can gain from close study of consilia. We can see what patrimony was in a narrative legal context, in which academic terms had to find their effective meaning in the hands of the litigants and legal experts faced with particular pieces of property and specific local customs or laws.

This case arose between 1517 and 1523, for those were the years in which the author of the consilium, the Sienese Mariano Sozzini junior (1482–1556), was teaching at Pisa, where he was asked to take on the legal questions it raised (probably by the heirs of the principal figure). The matter at hand strayed into the arena of a statute of Castro Nuovo di Garfagnana, not far from Pisa, with the rubric De rebus communibus nisi certo modo non alienandis (on not alienating properties except in a certain manner).[58] The law called for a fifteen-day period to intervene if one owner of a common *res immobilis* wanted to sell his share, so that the other owners were forewarned and could try to buy it themselves. If that format was not followed, any sale was annulled. The law further applied to anyone who wanted to alienate patrimonial or "matrimonial" (here, carrying the sense of coming from the maternal line) real property, requiring the same fifteen-day notice to be given to male relatives to the third degree.

So when a fellow named Francesco sold a house with a shop front, which he had obtained from his brother, as he was about to enter the religious life, to a man named Ercole, with a provision allowing

[56] Letizia Arcangeli, "Ragioni di stato e ragioni di famiglia: strategie successorie dell'aristocrazia milanese tra Quattro e Cinquecento (Visconti, Trivulzio, Borromeo)."

[57] David Warren Sabean and Simon Teuscher, "Kinship in Europe: A New Approach to Long-Term Development," in *Kinship in Europe: Approaches to Long-Term Development*.

[58] Mariano Sozzini junior, *Consilia*, 1 *cons*. 20, fols. 32rb–34vb, which opens with a detailed *casus*.

redemption within a certain time, his heirs invoked their right to repurchase the property (Francesco having died during the intervening fifteen days). This little turn of events left two legal questions that also go to the heart of our interest in defining patrimony: first, as Francesco got the house from his brother and not from his father (directly; that is, as a gift and not as an inheritance), did the statute apply? And second, depending on the answer to the first question, were the heirs freed of the restriction to offer the property first to their *consortes*?

Sozzini proceeded in an uncontroversial manner, rehearsing the pros and cons of each question. He had to start with the statutory language. What did *patrimonialis* and *linea* mean here? A *res patrimonialis* rested on a *patrimonium*, which in turn "is said to be the whole substance of whomever, as if we should say my patrimony, yours, or another's" (vero dicitur uniuscuiusque substantia universa, ut si dixerimus patrimonium meum, tuum, vel alterius). In that regard, dowry was the personal patrimony of a wife (proprium patrimonium mulieris) as it came to her from her natal kin. The house in this case then could be said to be in the patrimony of Francesco, as whatever came to someone was part of his patrimony.[59] But Sozzini declared that this could not be the sense of the statute, because it also differentiated what was *matrimonialis* and what came by maternal line versus the paternal. The statute did not simply see everything one owned as patrimony but looked at where it had come from, what had been accumulated, and what had been inherited, from either line. If the statute meant goods that came in some fashion from one's ancestors, then the house and shop in question could be seen as covered by the statute, because Francesco and his brother obviously got it from their father. Or it meant what came to one directly, by the *linea paterna*, in which case the statute did not apply to what Francesco had received from his brother, rather than his father. In favor of the first reading, that the house and shop were subject to the statute, was the idea that the statutory intent was that the term *patrimonium* meant the same as agnation and that was the meaning of the term *consortes*. Whether in communion of property or not, they were agnate. They were also males, in keeping with the statutes common throughout Italy that excluded dowered women from inheritance in favor of agnate males. But Sozzini determined that the second meaning held, that the property had not come in inheritance (though it had clearly been shared at some level), and thus that Francesco could freely sell his property to anyone without first gaining leave from anyone. To see it the other way would be

[59] Sozzini, *Consilia*, 1 *cons*. 20, fol. 32vb, in fact used the first person: "quia undecumque res ad nos pervenerit, dicitur esse de patrimonio nostro."

to condone a "serious harm" to the seller. The first meaning also clearly put the statute in contrast to the *ius commune* – extraordinarily so ("exorbitantissimum"), in fact. The statute thus needed a strict reading according to the interpretive tenets of jurisprudence.[60] In strict terms it seemed that the statute said nothing about the property from a brother, so Francesco was free to sell. We, of course, might look at that as splitting a fine hair, if only because, were there no brother (and his gift to Francesco marked his civil death in entering a monastery[61]), it would all have come to Francesco from his father.

Sozzini therefore followed with another set of arguments, prefaced by the observation that "properly speaking according to experts in Latin vocabulary what comes from the father is called inheritance/estate" (proprie loquendo secundum vocabulorum latinorum explanatores dicitur haereditas a patre proveniens). The statute in fact required not only that something be *patrimonialis* but also that it had come by the paternal or maternal line. There was a difference between brothers, and Sozzini traced it out: "while cousins and uncles and all could be termed descendants of a single father [here, in fact, the paternal grandfather], among those descendants there seemed to be several lines and not just one, because among ourselves we are not of the same line but from our father several [lines] are said to emanate."[62] By this calculus the house had not come to Francesco from the *paterna haereditas*. Sozzini went on,

> those words "relatives of the patrimony" could probably be understood in another sense, namely those who would have participation [in the household] without goods, as properly is of the nature of the word according to Baldo. . . . Nor does it matter that it is not required that they must have communion in the object at hand, because it did that; but I say that in other property they have communion, otherwise they are not properly termed relatives of the patrimony.[63]

The relatives who deserved a right of first refusal had to be in a sharing relationship (*communio*) with the seller, even if that did not encompass the

[60] Cf. Mario Sbriccoli, *L'interpretazione dello Statuto: Contributo allo studio della funzione dei giuristi nell'età comunale*.

[61] Anne Jacobson Schutte, *By Force and Fear: Taking and Breaking Monastic Vows in Early Modern Europe*.

[62] Sozzini, *Consilia*, 1 *cons*. 20, fol. 33rb: "advertendum est quod si pater meus habet tres filios et ex quolibet nepotes etc., licet omnes dicantur a patre descendere, et ex linea sua, et suorum genitorum, inter nos tamen non sumus de eadem linea, sed ex patre nostro dicuntur plures lineae emanare."

[63] Sozzini, *Consilia*, 1 *cons*. 20, fol. 33va: "illa verba consortes de patrimonio possent fortasse aliter intelligi, videlicet de his qui participationem absque bonis haberent, prout proprie est de natura verbi iuxta doctrinam Bal. . . . Nec obstat quod non requiritur quod habeant communionem in re de qua agitur, quia hoc facebat, sed dico quod in alia re debent habere communionem, alias non proprie dicerentur consortes de patrimonio."

specific item put up for sale. Only then were they truly *consortes* – literally, those sharing a common fate.

Sozzini's argument was, in effect, that the legislators had not been thinking of brothers as a source of patrimonial objects (which came neither *per lineam patrimonialem* nor *paternam*). Against the argument that the house had belonged to his father and simply came to him through his brother as an intermediary person, Sozzini asserted that it came from the brother's patrimony, not the father's. Having removed the house from the grasp of the statutory law, Sozzini could proceed to the question of the claims of Francesco's heirs (other brothers). They were not held to have to sell the property on the demand of other agnates, but could keep it. That was the more probable conclusion. The heirs had redeemed the property, which then reverted to its original state, as if the sale had not happened. The statute merely accorded agnates an opportunity to keep an item of property from leaving the lineage if it were sold to outsiders.[64] It did not allow one set of agnates to trump another. The brothers who had shared their existence and assets with Francesco had priority over other agnates who had not.

Clearly, Francesco had gained by his brother's generosity and care for his family, to pass along before his departure for the monastery what had been his father's. This is about as close as possible that something acquired in life could also be seen as inheritance. In keeping with a strict reading of the statute, Sozzini excluded the house and shop from the meaning of *res patrimonialis* in the statute. In the strict sense it came to Francesco as a gift from his brother, not as inheritance from his father. We cannot say if those who drafted the text would have agreed with that narrow construction, but we can see that, in general terms, what one held patrimonially came by inheritance. It, and all one acquired in life, would in turn become patrimony of the heir, and in turn be what came patrimonially to his heirs, for them to pass along, with any acquisitions and, it was to be hoped, no losses.

[64] Sozzini, *Consilia*, 1 *cons*. 20, fol. 34va.