CHAPTER SIXTEEN

SOUTH TYROL’S SPECIAL STATUS IN PRIVATE LAW: THE ‘ENTAILED FARM’ AND THE ‘GRUNDBUCH’ SYSTEMS

Giovanni Poggeschi

I. Introduction

Autonomy is a peculiar way of governing a territory, in the frame of a common state but with a (more or less) strong recognition of some distinctive features. Normally, autonomy is taken into consideration from the point of view of public law; this is an obvious starting point, as the amount of rules concerning the system of government and their practice is what mostly shapes the autonomy. Discussion on autonomy normally focuses on the institutions of self-government of a certain territory, i.e., a regional assembly, a regional government and the links between them, etc. A fundamental part of the analysis of autonomy regards the relations between the state and the region (or province, Land, autonomous community, etc.), and the most common approaches deal with the competences that a sub-state entity has or has not, or may have in concurrency with the state. All the abovementioned issues are thus typical of the analysis of public and constitutional law. However, when we analyze the contents of these competences, it is easy to find questions of private law, the branch of law that deals with the legal rights and relationships of private individuals. This chapter is devoted to a juridical analysis of a traditional institution under Austrian law that still exists within South Tyrol, the ‘entailed farm’.1 Reference will also be made to another peculiar institution, the ‘Grundbuch’ (‘Real Properties Register’).

II. The System of the ‘Entailed Farm’, the Austrian Law of 1900 and the Act of the Province of Bolzano/Bozen of November 2001

South Tyrol, as is also the case in other strong and ambitious autonomous sub-state entities (such as Catalonia and Euskadi within the Spanish state2 or Vojvodina

---

1 Also known as the ‘closed farm’.
within Serbia), has peculiar forms of private law, which reflect even more than some public law features the distinctiveness of the local legal environment. The most important of those (South) Tyrolean features is the system of the ‘entailed farm’, ‘maso chiuso’ in Italian and ‘geschlossener Hof’ in German. The purpose of this juridical institute is to ensure the unity of a family agricultural enterprise in its management and through successive inheritances. On the death of the owner, the farm is inherited by the older son (‘Anerbe’ in German), who becomes the sole owner of it. It would be more exact to define the holder of the right (‘Übernehmer’ in German, ‘assuntore’ in Italian) as a kind of usufructuary, as the real owner of the farm is the family, throughout the centuries. It is very important to provide an exact value of the good, as the inheritor who will take possession of the farm has to compensate the other heirs with a sum of money.

The juridical institute of the ‘geschlossener Hof’ is rooted in the Germanic tradition and was introduced into South Tyrol in the first centuries of the Middle Ages. A more complete regulation was made by an Imperial Law of 1 April 1889, which delegated the regulation of the issue to provincial legislation. This was effected by the law that still inspires the South Tyrolean legislation on the issue, the ‘Tiroler Höfegesetz’, Law No. 47 of 12 June 1900. A very rough and short historical and sociological analysis of the institute of the ‘entailed farm’ suggests that its acceptance by the Austrian legislature can be explained by the desire to maintain tradition practices that both safeguard the unity of the group and the positive exploitation of the land. The maintenance of the system shows the desire to maintain a strong collective protection, which undeniably may at least appear to infringe upon some individual rights (in this case, the rights of the second-born children). It is not by chance that it was in the second part of the nineteenth century that the German and Austrian juridical doctrine elaborated

---

3 I carefully avoid the term “‘civil law’”, which would be the norm in continental Europe (droit civil, Zivilrecht, diritto civile, derecho civil) in order not to confuse the English-speaking reader who is more familiar with the conception of ‘civil law’ as different from the conception of ‘common law’.

4 I put ‘South’ in parentheses because actually the institution of the ‘Geschlossener Hof’ is more of a pan-Tyrolean peculiarity (without forgetting that similar institutions exist in other Germanic and Northern European areas). However, as this handbook deals only with South Tyrol, I use this term in the text, even if, on this particular occasion, I add the parentheses.

5 Other peculiarities are the ‘land registers’ (see section IV), which are arranged according to the Austrian model, and the so-called ‘regole dell’arco alpino’ (alpine rules), collective properties of pieces of land, which can be exploited for timber, pasture or plantation.


7 It is interesting to add that in Italy other agricultural traditions rooted in Germanic law from the Middle Ages still exist: this is the case of the ‘partecipanze agrarie’ (‘shared agricultural properties’) of the municipalities of Nonantola, San Giovanni in Persiceto, Cento, Pieve di Cento, Sant’Agata Bolognese and Medicina (locality of Villafontana) in the Region of Emilia-Romagna. See Carlo Frassoldati, Le partecipanze agrarie emiliane (Cedam, Padova, 1936).

8 This law is still in force, constituting, together with the ‘Kartner Erbhöfgesetz’ of 13 December 1989, the exceptions to the general discipline. See Winfried Kralik, System des österreichischen allgemeinen Privatrechts—Das Erbrecht (Manz Verlag, Wien, 1983), 82–83.