

DYING AND INHERITING IN RURAL TRÁS-OS-MONTES

I. *Introduction*

This paper deals with the two closely linked processes of dying and inheriting in a small rural hamlet in North-east Portugal. I place major stress upon the element of *time* involved in the transmission of property over the generations. Hence, I am not concerned here primarily with the strictly ritual aspects of death as a rite of passage in the traditional anthropological sense, nor with purely descriptive elements of the discrete events of 'death' and 'inheritance'. Rather, I will look at a specific form of property transfer (*post-mortem* partition) and its long-term effects on the entire social structure over time. Following Jack Goody,¹ we might expect that the precise timing of this property transfer has repercussions throughout the society. This is indeed the case. Fontelas is a most peculiar place, especially if viewed through the eyes of 'Mediterranean' anthropological theory. I propose that this peculiarity itself is a function of a particularly rigid form of delayed inheritance at death.

This paper follows a simple sequence. After a brief introduction which situates the hamlet under study, Section II deals with the process of 'dying' in two respects. I look first at the

¹ Jack Goody, with Joan Thirsk and E.P. Thompson (eds.), *Family and Inheritance: Rural Society in Western Europe 1200-1800*, Cambridge: Cambridge University Press 1976; see 'Introduction' and 'Inheritance, Property and Women: Some Comparative Considerations', pp.1-36.

short periods of time immediately preceding and following a death, and secondly at the extreme stress placed by this society upon ties of 'descent' and the *downward* transmission of property over the generations. It is at death and not at marriage that key transfers of property and domestic power take place in Fontelas. Finally, Section III further elucidates the link between dying and inheriting by examining (a) the short-term steps involved in the partition of property, and (b) the long-term effects of delayed inheritance upon the social structure as a whole. I conclude that this specific mode of *post-mortem* property transfer constitutes the principal 'clue' to an understanding of the society's major features.

'Fontelas' is a rather tiny rural hamlet located in the northern Portuguese province of Trás-os-Montes.² In the middle of my period of fieldwork (mid-1977) the hamlet comprised 57 inhabited households with a total population of 187. Although two daily buses connect the hamlet with the municipal town (Vinhais) and the district capital (Bragança), Fontelas' general geographical isolation is obvious. The hamlet is situated within a high plateau region characterized by predominantly manual agriculture. Three tractors have been purchased over the last two decades (the first in the 1960s and the following two in 1970), while two mechanical reapers and a threshing-machine have also been incorporated within the hamlet's productive system. However, most tasks are still carried out with sickles, scythes, hoes, and picks. Wooden ploughs and ox-carts constitute a rural household's basic farm equipment. The Mediterranean trio of wheat, wine, and olives is quite absent here, where the cooler climate and mountain location favour the Central European crops of rye, potatoes, and chestnuts. Only a handful of wealthy households ever sell surpluses of the little wine they produce, while smaller quantities of maize, legumes, and walnuts are also grown. Some quantities of chestnuts and potatoes are also sold, but certainly not on a scale that would properly merit the term 'cash crops'. Agriculture in Fontelas is basically small-scale: it is directed almost exclusively towards household consumption and internal hamlet exchanges.

Internally, the hamlet's physical appearance presents a sharp contrast between the older, stone houses and the more recently built brick and cement houses constructed by emigrants and their relatives. Despite the arrival of such painted and flamboyantly coloured houses in recent years, the general contours of the hamlet remain dominated by the older stone structures. At the time of my fieldwork there was no electricity in Fontelas, no televisions other than the priest's (itself only battery-operated), and for

² Fieldwork in 'Fontelas' (a pseudonym) was carried out continuously from March 1976 to September 1978. Special thanks are extended to the Calouste Gulbenkian Foundation in Lisbon for a research grant, and to José Cutileiro, Julian Pitt-Rivers, and Peter Loizos for supervision of my doctoral thesis.

most of the year the unpaved hamlet streets and paths were veritable piles of dirt and mud. Most houses used the open hearth rather than butane-gas stoves for cooking throughout most of the year and for the smoking of pork in the winter.³ The interiors of kitchens in the older stone houses were invariably pitch-black. Only the priest and the bus-driver (a temporary resident) had cars. Despite the wave of emigration to France and West Germany in the 1960s, the general aspect of Fontelas as late as 1978 was still that of an isolated, 'backward' peasant community.

Four major social groups have constituted the social hierarchy of Fontelas since at least the mid-nineteenth century. My survey of all of Fontelas' landholdings in 1978 indicates that these social groups continue to maintain distinct economic and social characteristics linked closely to the ownership of land. The 4 *proprietários* (large landowners) own landholdings of an average size of 43 hectares each, and tend to rent out some of their land to poorer villagers. These 4 households own virtually all of the agricultural machinery in the hamlet, and have historically constituted the wealthy élite of local notables occupying key posts on parish and municipal councils. The second group is that of the 6 *lavradores remediados* (well-off 'ploughers') who own landholdings averaging 25 hectares each. Many of these villagers are related by kinship or marriage to a number of the wealthier *proprietário* households.

The third social group is that of the 14 *lavradores* ('ploughers') who own landholdings averaging 8 hectares each. The social origins of individuals in this group are quite distinct from those in the two upper groups: many of today's *lavradores* were in fact poorer day-labourers, servants, or shepherds in the past. Most villagers in this group have managed to consolidate just enough disparate plots of land (through borrowing, rental, and clearing) to be able to maintain a plough-team of two draught animals. The fourth and poorest social group is that of the 31 smallholders. These villagers were formerly *jornaleiros* (day-labourers) who worked for wages in kind or money. Today they own landholdings averaging only 2½ hectares each. None of the smallholders owns a plough-team, and most must borrow equipment or pay for the ploughing services of other co-villagers.

This picture of current hierarchy is reflected by both civil and ecclesiastical documentary sources from the nineteenth century,

³ By 1982, a number of substantial improvements within the hamlet have altered this picture dramatically. An entire series of newly constructed houses on the outskirts of the hamlet have come to constitute a 'new section' called *o bairro novo*; electricity has been installed, bringing with it refrigerators and televisions; the central hamlet paths have been laid with cobblestones; a new schoolhouse has been built; and a new *Casa do Povo* (People's House) serves the inhabitants of Fontelas and its surrounding hamlets in a social-service welfare capacity.

and should warn us against viewing Fontelas as an 'egalitarian' community in which 'everyone owns their little plot of land'. This hierarchical structure will provide an important background to the processes of inheritance examined in Section III below.

A number of corporate institutions also characterize the hamlet's social organization, but these elements should not imply that villagers continue to live (or indeed ever lived) in a state of pristine communal bliss. There are four fully collective water-mills (*moinhos do povo*) in Fontelas, only one of which currently functions. Also in use today are three corporate baking-ovens (*formos do bairro*) located in three of the hamlet's poorer sections. But alongside these forms of communal and corporate property, there are also three individually owned water-mills (not functioning) and 20 private baking-ovens. Both collective and private property thus co-exist in Fontelas. The hamlet council (*conselho*) is called together to discuss common hamlet concerns and to implement the reconstruction and repair of communal property. Also of interest is the rigid system of summer irrigation turns: this system of rotation allocates strict turns (*tornas*) of water to the co-owners of three corporate water-pools. The presence of all of these corporate institutions as well as the practice of unpaid day-labour exchange (*tornajeiras*) situate Fontelas within the context of Iberian collectivism.⁴ This does not mean that these villagers are any more 'democratic' or naturally cooperative than other villagers in different regions of the Iberian Peninsula, but rather that the specific ecological constraints of Fontelas' location have necessitated particular forms of the pooling of property and labour.

We will see below that this particularly bleak geographical situation sets strict limits upon villagers' economic activities. European mountain agriculture has probably always been a relatively precarious endeavour.⁵ But it is this generally poor mountain agriculture that also conditions key elements in Fontelas' social system. Elderly villagers must be assisted throughout their old age, and the hamlet's predominantly manual agriculture requires a particularly rigid form of the *avoidance* of patrimony division. In this sense, we should bear in mind that the processes of dying and inheriting analyzed below occur within an especially small and 'peripheral' ecological niche.

⁴ See Jorge Dias, *Rio de Onor: Comunitarismo Agro-pastoril*, Porto: Instituto Para a Alta Cultura [Centro de Estudos de Etnologia Peninsular] 1953; and Susan Tax Freeman, 'Corporate Village Organisation in the Sierra Ministra: An Iberian Structural Type', *Man* (n.s.), Vol. III (1968), pp.477-484.

⁵ See B.H. Slicher Van Bath, *The Agrarian History of Western Europe: A.D. 500-1850* [Trans. O. Ordish], London: Edward Arnold 1963; and Fernand Braudel, *Capitalism and Material Life*, London: Fontana/Collins 1973.

II. *Dying as a Social Process*

The process of dying in Fontelas is in no way limited to the physical reality of sickness or death. This is perhaps an area that has not been treated with great attention in the ethnography of European rural communities. A general analytical focus on the strictly religious aspects of the mourning period, and on formal obligations to the dead, has perhaps underplayed the equally significant period of time *prior* to a death.⁶ Let me briefly stress here one aspect of this period by highlighting the proliferation of gossip which abounds as a death approaches. A close look at this gossip will lead us directly into the link between dying and the inheriting of property.

Gossip about a villager's property may begin well before a terminal illness. In this case (as in those of old age) such gossip understandably heightens as the prospect of imminent death increases. Two of the major topics touched on by most co-villagers are: (a) the specific pieces of property owned by the dying villager, and (b) the tenor of the social relationships between the latter and his/her closest relatives. These two topics do of course intertwine, as property relations and kin relations clearly blend together. Many subjects are discussed: the villager's life-history, reputation, personal relationships, and his/her inherited and acquired property. The most minute characteristics of the villager's personality, and the most specific examples of past behaviour are described, discussed, and evaluated. But the approach of death adds a rather dramatic note of expectation and uncertainty to these comments. Upon the villager's death, who will get what? Who are the person's legitimate heirs, and what are their specific economic circumstances? Will the property be partitioned equally, or does a will favouring one legatee enter the picture and complicate matters? The speed with which this gossip spreads is quite striking, and in the priest's eyes is indicative of these villagers' 'obsession' with *terras* (plots of land).⁷

⁶ This is not meant as a criticism of these major ethnographers' treatment of death. Rather, for reasons that will become clearer throughout this paper, this 'pre-death' period has a very important and specific role within this particular society's inheritance system. I suspect that comparable structures, in communities where death and inheritance are *not* so closely linked, may of course not catch the eye so quickly.

⁷ The villagers' extreme interest in *terras* is the priest's most often-cited reason for desiring to give up his job and leave Fontelas altogether. Padre Gregório sees this excessive concern with land and inheritance as a degenerate form of 'materialism'. He has for many years sought to escape from this 'vicious circle of stingy peasants' by requesting the Bishop to transfer him to Angola or Mozambique as a missionary.

Much of the talk prior to a death centres on the imminent redistribution of the individual's patrimony: this talk usually circulates in subdued, whispered tones. Such gossip is frequently a mixture of fabrication and fascination about other villagers' property rights rather than precise knowledge of the legal facts involved. Indeed many heirs themselves are not always clear as to the specific legal details of inheritance even in their own cases. However, this fabrication about others is of interest in itself: it points to a particularly acute perception of the implications of death in Fontelas. While death clearly brings about the *end* of a living individual, it also marks the *beginning* of a process of property redistribution. It is both of these processes together that give death in Fontelas such a pivotal role within the transfer of patrimony over the generations.

The gossip I allude to here continues throughout the actual days between a villager's death, the accompanying vigil and funeral, and through the days and weeks following the death. It is the anticipation of the social and economic reorganization of kin and property relations which is sparked here, and which is so visible in villagers' gossip. In this sense, my stress on *process* attempts to highlight the time periods prior to and following a death rather than the death itself.

Of particular interest is the level of conversation during the *mortório*, or vigil.⁸ Following a few formal statements to the close kin of the deceased and the sprinkling of holy water over the corpse (which lies for viewing in an open coffin), most visitors begin to mingle together in one of the main rooms or hallways of the deceased's house. Conversation here may reach quite loud proportions, and it is not solely limited to comments on the deceased. Occasional laughs and exclamations can be heard, and conversation may wander over the weather, the day's activities, relatives abroad, the news, national politics, or even the state of one's cows and pigs.⁹ Thus, conversation throughout these ritualized days oscillates continually between (a) complete

⁸ My fellow anthropologists, I hope, will forgive this heretical abbreviation of mortuary ritual in Fontelas. A detailed description of vigils and funerals is contained in Chapter 7 of my doctoral thesis (*Social Hierarchy in a Northern Portuguese Hamlet, 1870-1978*, London School of Economics, Dept. Anthropology: Ph.D. thesis 1982).

⁹ Both William Douglass (*Death in Murélagá: Funerary Ritual in a Spanish Basque Village*, Seattle: University of Washington Press 1969; at pp. 26-28) and Stanley Brandes (*Migration, Kinship and Community: Tradition and Transition in a Spanish Village*, New York: Academic Press 1975; at p.172) have noted similar attitudes towards conversation during vigils in Spanish rural communities, where laughter is not out of place and where a 'stone-faced solemnity' is absent. Douglass interprets this as a sign of a generally 'matter-of-fact' attitude towards death in the Basque village of Murélagá.

'avoidance' of the human tragedy through miscellaneous chat, and (b) total immersion in the wider implications of the death. In the latter case, there appears a dual 'telescopic extension of time' on both sides of the death. Firstly, one set of comments centres upon the past of the deceased (his/her personality, achievements, and former kin). Secondly, another series of comments lingers suspiciously around the future events which will re-order the relations of the deceased's close kin (the partition, the value of the property, and the life-chances of the heirs). The fact that this field of communication spreads so quickly throughout the hamlet is an indication of the power that death holds within the social structure: the implications of a death are profoundly unsettling and disturbing. Let us see now why this is so.

I turn here to a second time period - that immediately following a death - in order to stress a particularly salient feature of this society's kinship system. This is the extremely strong 'descent' tie¹⁰ between parents and children. This tie pervades the entire kinship system in both legal as well as social terms, and it far outweighs the very weak link in Fontelas between husband and wife.

Clearly, the period following a death is a particularly traumatic one for close kin. Many of the songs and verses from the hamlet's folklore point to the lingering feelings of loss when a parent dies:

*Olha tu, já não tens pai,
Tua mãe também morreu,
Diz-me com quem vives tu,
Diz-me com quem vives tu.*

Listen you, who has no father,
Your mother has also died,
Tell me with whom you live,
Tell me with whom you live.

*Eu vivo com um irmão meu,
Diz-me lá como lhe fazes,
Para lhe dar de comer,
Mandengando* pelas portas.*

I live with a brother of mine,
Tell me then what you do,
In order to give him food,
Begging at people's doors.

¹⁰ I use the term 'descent' here in a strictly European and *not* an Africanist sense to stress the vertical link between proximal ascendants and descendants. A number of authors (Goody, *op.cit.*; Emmanuel Le Roy Ladurie, 'Family Structures and Inheritance Customs in Sixteenth-century France', in Goody (ed.), *ibid.*; and Pierre Bourdieu, 'Marriage Strategies as Strategies of Social Reproduction', in Robert Forster and Orest Ranum (eds.), *Family and Society: Selections from the Annales*, Baltimore: Johns Hopkins University Press 1976, pp.117-44) also use the term in a similar way to refer to 'household lines' and the perpetuation of household property through time. The term 'lineage' poses the same problem as Goody rightly notes: "'Lineage' is used in the medieval way, very different from current anthropological use' (Goody, *op.cit.*, p.21).

*Mandengando pelas portas,
Quando não há que fazer,
Queria ir ao cemitério,
E eu sozinha tenho medo.*

Begging at people's doors,
When there is nothing to do,
I wanted to go to the cemetery,
And I am frightened all alone.

*Queria ir beijar a campa,
Queria ir beijar a campa,
Onde tenho o meu segredo.*

I wanted to kiss the grave,
I wanted to kiss the grave,
Where I have my secret.

*Queria ir beijar a campa,
Queria ir beijar a campa,
Onde tenho o meu segredo.*

I wanted to kiss the grave,
I wanted to kiss the grave,
Where I have my secret.

*(i.e. mendigando)

The death of a parent implies a major readjustment of the labour and kin relations involved in domestic groups. These relations are particularly affected, for instance, by the drastic re-ordering of residence arrangements following the death of a *second* parent. After the death of a first parent the existing residence arrangements of a sibling group may not be reshuffled, and in many cases a partition of the first parent's property is postponed until the death of the second. As the bulk of a person's patrimony is transmitted 'downwards' to the latter's direct descendants and not 'sideways' to the surviving spouse¹¹, it is precisely this descent relation between the children and each of their parents that attains priority. In the song above, the daughter attempts to recover her parents by trying to break through the 'barrier' between the living and the dead (the grave or cemetery). But the song points at a deeper level to the general stress placed in the society upon both the emotional and property elements involved in vertical parent-child ties.

Also noteworthy here is the absence of a stress upon horizontal links of spiritual kinship. The *compadrio* link established at a baptism between the parents of the child and the two sponsors is not significant in Fontelas. The only occasions at which relations between *compadres* (male co-parents) and *comadres* (female co-parents) are activated is during labour exchanges, particularly at harvests. Co-parents merely constitute one further choice of potential cooperators, and they could equally

¹¹ Cf Jack Goody, 'Sideways or Downwards? Lateral and Vertical Succession, Inheritance and Descent in Africa and Eurasia', *Man* (n.s.), Vol.V (1970), pp.627-638.

be substituted by friends, neighbours, or distant cousins.¹² Of far greater importance in Fontelas are the vertical relationships established between the baptised child and the godparents: one's *padrinho* (godfather) and *madrinha* (godmother) occupy rather more significant positions. In the event of the deaths of both of a child's parents, in the absence of other close kin the godparents must ideally assume responsibility for the child's upbringing. In general, then, it is the vertical inter-generational tie of the godparents with the godchild that assumes an important role in Fontelas, and not the horizontal intra-generational one between the ritual co-parents. Strong parent-child ties of descent are here 'mimicked' by the vertical tie between the godparent and the godchild.

These points concerning the binding vertical ties of consanguineal and spiritual kinship in Fontelas suggest a particularly keen interest in the continuity of descent relations over time. Let us return to the theme of 'time' here in another form. The long period of time following a death involves quite a different series of events than those observable while an individual is dying. A certain 'process' is nevertheless discernible. This process is highlighted at obvious ritual moments, such as the three customary masses held for the deceased. These are the 'first week's mass' (*missa do sétimo dia*), the 'first month's mass' (*missa do primeiro mês*), and finally the 'first year's mass' (*missa do primeiro ano*). Following the last of these three masses the period of formal religious services terminates, but further masses said for the soul of the deceased may occur afterwards at any time or frequency. A later duty owed to the deceased by his closest relatives is that of All Souls' Day (*Dia dos Fiéis Defuntos*) on 2 November of each year. On this day a special mass is held for all of the deceased of Fontelas: the women of each household then place candles, flowers, and petals in patterned

¹² A similar lack of stress upon *compadrazgo* ritual kinship has been reported for three northern Spanish communities. Brandes states that 'the *compadrazgo*, as it is known in Latin America and southern Spain, is virtually non-existent in the peasant communities of Castile. In Becedas at least friendship and neighbourship are the main avenues through which non-familial ties are expressed; they are, as it were, functional equivalents of the *compadrazgo*' (*op.cit.*, p.133). Similarly, among the Basques, Douglass has noted that 'there is little emphasis placed upon the tie established between the godparents and the natural parents of the child. The elaborate godparenthood relationship, which exists in other parts of Spain [as Pitt-Rivers has described], is not a feature of the social organization of Murélagua' (*op.cit.*, p.188). Yet more extreme is the Castilian hamlet studied by Susan Tax Freeman, where 'the term *compadre*, stressing the ties between the adults in the contract, is not in use in Valdemora' (*Neighbors: The Social Contract in a Castilian Hamlet*, Chicago: Chicago University Press 1970, p.141).

designs upon their relatives' graves. Following the 'first year's mass' this is the only day of the year when formal religious obligations to the dead are prescribed.

Yet throughout these formal stages of mourning and religious observance, another process also unfolds at another level. I do not mean to underplay the ritual aspects of the post-death period here, but rather to prevent these aspects from dominating our view of long-term processes. In this sense, it is quite as significant to look not only at the specific individual who has died but also at the *structural* position of that individual within a wider fabric of social and property relations. I have in mind the specific concept of 'generational time'¹³ in the sense of the reproduction of a social structure over time. Two questions are immediately suggested here. First, why is it that these specific vertical ties are so markedly stressed within the kinship system to the detriment of 'horizontal' ties? Secondly, what particular explanations can be given for the prevalent role of death as the key nexus controlling all major property transfers in Fontelas? I believe that satisfactory answers to both of these questions lie in this case within the 'structural law' of *post-mortem* inheritance, and that a number of clues leads us directly to this conclusion. The gist of the argument runs as follows.

Given Fontelas' specific geographical location and 'peasant' economy, strict limitations must be placed either upon the total resident population of the hamlet or upon the number of heirs to landed patrimony. If all households actually followed to the letter the legal prescription of 'equal division of property between all heirs' the ultimate result would be collective economic suicide. Each heir would end up with only a few millimetres of terrain. As Fátima Brandão has noted for the North-west Minho region: '... even when property could be divided, an actual division was not always possible or advisable owing to economic reasons'.¹⁴ In order to circumvent this, various strategies are effected towards the ultimate goal of *preserving the patrimony intact* as far as this is possible. We will see below that this key goal is quite closely linked to the 'peculiar' features of social structure I have hinted at: late marriage, celibacy, and high ratios of illegitimacy.

But here let us focus for a moment on the role of death. The basic problem is perhaps most easily conceptualised as a dichotomy, or structural opposition if you will, between the two complexes of

¹³ See Carmelo Lisón-Tolosana, *Belmonte de los Caballeros: A Sociological Study of a Spanish Town*, Oxford: Clarendon Press 1966, pp.170-201.

¹⁴ 'Death and the Survival of the Rural Household in a North-western Municipality', in Rui Feijó, Herminio Martins and João de Pina-Cabral (eds.), *Death in Portugal: Studies in Portuguese Anthropology and Modern History*, Oxford: JASO 1983, pp.75-87; at p.83.

matrimony and *patrimony*.¹⁵ In order to achieve the goal of preserving landed patrimonies, drastic limitations must be set upon the potential reproductive careers of a household's future heirs. In most cases this limitation is effected by the postponement (or prevention) of the marriages of some of the siblings. One child (either male or female) usually marries at an early age and attains a favoured position both socially within the parental household and often economically as the recipient of a large portion of the natal patrimony. In other words, a process of selection by the parental generation separates a sole, favoured heir from the remaining siblings. These siblings are then informally 'cajoled' into less prestigious paths - either celibacy or late marriage. Indeed, many of these socially 'secondary' siblings never marry at all. The prime goal of preserving the patrimony intact thus drives a wedge between the siblings.

This system of selection creates a constant tension between, on the one hand, *matrimony* and the drive for reproduction, and on the other, *patrimony* and the objective of 'restricted' marriages. In this society it is quite clear that patrimony is the winner and matrimony the loser. Ideally, each landed household must attempt to achieve a balance between an optimum labour supply and a minimization of threats to divide its patrimony. There is one extreme (too many children and multiple marriages) and the other (no children and no marriages). The former will ultimately force partition, while the latter will menace the household with extinction. It is as if every occasion of matrimony in the society provides a future threat to a patrimony. But as long as a few favoured heirs are chosen to carry on each 'family line', then the remaining heirs are superfluous. In fact, the potential marriages of these remaining heirs can come to constitute outright threats to the natal patrimony, as each married sibling will hold a stronger future claim to an equal share of the patrimony. Unmarried siblings, however, do not pose threats to the patrimony as they do not normally produce (legitimate) offspring who will eventually demand provision. This is why the inheritance system is not one of primogeniture or unigeniture. Rather, it is a 'primonuptial' one - *the child who marries first* and remains in the natal household is usually the favoured one, and it is this child who is likely to obtain a central role in both household management and patrimony transmission. It is irrelevant which sibling this is: it may be the eldest, the youngest, or a middle sibling of either sex.

¹⁵ No suggestion of a feminine/masculine contrast is intended by the terms 'matrimony' and 'patrimony', nor of 'property in the female (or the male) line'. As we will see below, both the kinship and the inheritance systems of Fontelas are strictly bilateral and there is no detectable stress on male primogeniture. For convenience, my use of the term 'heir' henceforward in this paper will refer to *both* male heirs and female heiresses.

But the unmarried siblings do provide crucial sources of labour for their natal households and care for their parents as they age. Here we find the role of death once again prominent. As inheritance in Fontelas is only linked to death and not to marriage, the members of the younger generation must simply *wait* until their parents die in order to acquire their shares of the patrimony. Although this implies a whole series of undesirable conditions for most of the heirs, from another angle it ensures particularly well for the care of the aged parents. The inheritance system thus contains a 'built-in' form of old-age security. Because no transfer of property takes place at any of the marriages of the heirs, the division of the patrimony is as it were 'stored up' until a much later stage in the developmental cycle of the household. Parents in no way 'retire' in Fontelas following any of the marriages of their children, and there is no 'west room' such as that described by Arensberg and Kimball for Ireland¹⁶ into which the elderly couple physically move as they age. On the contrary, in Fontelas the elder generation 'hold the strings' of the patrimony (the farming house, land, and equipment) literally until their dying day. Indeed, as Goody maintains: 'Late transmission retains generational control; early transmission weakens it'.¹⁷

Here lies the reasoning behind the selection of a favoured heir. By choosing one son or daughter to manage the household as they age, the parents can begin to create the conditions under which this heir can maintain the patrimony *relatively* intact following the parents' deaths. This is why so many villagers marry late, never marry, or settle for celibacy or bastardy. There is only one point (the death of a parent) in the developmental cycle of the household and not two (the marriage of the favoured heir) at which property is redistributed. All of the aspects of matrimony are thus suppressed, limited, and strictly controlled in the name of preserving the natal patrimony. This opposition does not constitute merely an observer's prism - an analytical device - but rather an empirical reality lived by villagers themselves. The tension between matrimony and patrimony indeed pervades the entire society and we will see that its long-term effects are quite wide-ranging.

One clear illustration of this opposition is visible in some of the legal aspects of the strong descent tie between parents and children which I have alluded to earlier. Not only are the ties between parents and children very close socially, but they are also consecrated within the system of inheritance through the sequential order of heirs. Until the substantial legal changes in

¹⁶ Conrad Arensberg and Solon Kimball, *Family and Community in Ireland*, Cambridge, Massachusetts: Harvard University Press 1940.

¹⁷ *Family and Inheritance*, p.28.

the Portuguese Civil Code in 1977,¹⁸ the order of heirs to the patrimony of an individual dying intestate was as follows (*Código Civil*; art. 2133):

1. Descendants
2. Ascendants
3. Siblings and their descendants
4. Spouse
5. Other collaterals to the 6th degree
6. The State

Note that the surviving spouse figures only *fourth* in line following three other categories of legitimate heirs. The implications of this system are that the surviving spouse is left in a particularly weak position, his/her partner's property being transferred downwards rather than sideways. It is a person's descendants, ascendants and siblings-and-their-descendants who inherit *before* the surviving spouse. In other words, property tends to pass downwards along consanguineal kinship lines and not sideways through affinal or collateral ties formed by marriage. A surviving spouse is thus as it were 'left out on a limb'. Again, we find relations of affinity underplayed in the face of relations of descent.

Even the apparent joining of the property of each spouse at marriage is itself a predominantly 'downward' and descent-oriented procedure. This is why *the* separate partitions of property may theoretically be effected by a couple's children, each following the death of one of the parents. Upon the death of the first parent, one half of the couple's property is inherited immediately and directly by the descendants, while the surviving spouse inherits the other half. The second parent's half of the original patrimony is then divided after his/her death. Of course, the children (or other heirs) may and often do *delay* the partition of the first parent's patrimony until the death of the second parent.

However, if a couple produce no descendants and remain childless (both dying intestate), upon the first partner's death his/her property is not inherited by the surviving spouse. Rather, the person's property reverts to his/her 'family line' following the principle of *paterna paternis/materna maternis* (the father's property to the father's kin/the mother's property to the mother's kin).¹⁹ The bulk of the patrimony of the first spouse returns to

¹⁸ I refer here to the major alterations in the 1966 Civil Code introduced by the Decreto-Lei No. 496/77 of 25 November 1977. These alterations have considerably improved the formerly weak position of the surviving spouse in inheritance, although the extent to which these legal changes have affected actual inheritance practices *socially* within Fontelas will have to await future study.

¹⁹ See Le Roy Ladurie, *op.cit.*, p.58.

to his or her natal family.²⁰ In this sense, the interests of *neither* of the natal family groups of two childless spouses are ultimately affected by the marriage: each spouse's patrimony returns to its original line rather than being inherited by the surviving spouse. Although the example of childless couples is an exceptional one, the legal rules of property distribution are clarified by it. Descent lines everywhere predominate in Fontelas over weak marital ties. Precisely as described for the regions of western France, inheritance customs in Fontelas oblige villagers to 'attach only slight importance to the act of marriage which they seem to regard as an ephemeral union of two perishable creatures, each issued from a different line whose own value lies in its permanence.'²¹ Indeed, it is the preservation of patrimony that preoccupies villagers in Fontelas, and not the continuity or coherence of matrimony.²²

It is not my objective here to raise complicated questions concerning the interrelations between administrative law and customary law,²³ but rather merely to stress that the system of inheritance in Fontelas places great emphasis upon death and relations of descent and not upon marriage and relations of affinity. This is why 'matrimony' and 'patrimony' seem so forcefully opposed. I follow Jack Goody here in maintaining that different societies (and varying regions within one society) place

²⁰ See David Sabeau, 'Aspects of Kinship Behaviour and Property in Rural Western Europe before 1800', in Goody, *Family and Inheritance*, pp.96-111; at p.105.

²¹ Le Roy Ladurie, *op.cit.*, p.56.

²² Although this paper focuses primarily on *patrimony*, the entire topic of matrimony and 'restricted marriage' deserves equal attention. Some of the major features of this society's limitation of marriage include: the absence of dowries, the 'natolocal' residence of spouses with each of their sets of parents for many years after their marriage, and the absence of a highly structured courtship system. The mean age at first marriage for men in Fontelas from 1870 to 1978 has been 33.2 and for women 31.0 (Parish Register - marriage entries): these figures provide an excellent example of John Hajnal's classic 'European marriage pattern' (see his 'European Marriage Patterns in Perspective', in D.V. Glass and D.E.C. Eversley (eds.), *Population in History: Essays in Historical Demography*, London: Edward Arnold 1965, pp.104-143). Further, an 'alternative' tradition among the poor of consensual unions, illegitimacy, and non-marital sexuality invites further analysis.

²³ See Pierre Bourdieu's excellent essay (*op.cit.*, particularly pp.142-44) for some penetrating insights into the disjunction between abstract legal statutes, regional customary law, and the actual practices and strategies of individuals on the ground.

differing emphases upon key points in the developmental cycle when property passes from one generation to the next. Societies in which marriage constitutes a key moment of property transfer²⁴ will consequently have radically different features from those in which property is transferred only at death.

This key 'fulcral moment' of property transfer within the social system of Fontelas is clearly death, and our earlier examination of the process of 'dying' leads us directly to this point. This is why I have insisted upon a perspective which focuses not merely on the individual death as a ritual moment, but also upon the whole fabric of social and property relations within which each specific death is embedded. The preponderant role of death in conditioning property transfers is visible both before a death (in forms of gossip about the deceased's property) as well as after a death, through the weeks and months when the patrimony is redistributed. This is why *both* the related processes of dying and of inheriting must be analysed in their respective short-term and long-term dimensions.

But these short periods of time give us only a hint, an inviting clue, to the much longer processes involved in dying and inheriting in Fontelas. Let us turn now to a different dimension, a somewhat more diachronic one, in order to delve deeper into the question. Has matrimony been so strictly controlled in the past in Fontelas, and has the role of death in inheritance always been so strong? In answering this question, we will need to look at a second 'time dimension': that of the long-term effects of *post-mortem* inheritance. Here we will 'telescope' our perception of time even further beyond the short-term periods preceding and following a death. I will begin to focus upon the topic of the reproduction of social groups. In other words, what are the repercussions at a wider level of the transfer of property at death? What effects does this specific mode of inheritance have upon the overall shape of the social structure over time?

III. *Inheritance and Social Structure*

There are four major ways through which a *partilha* (partition) of property can be effected in Fontelas. Let us look briefly at these before dealing with the main theme of this section: the long-term effects of delayed inheritance. It is crucial that we grasp the specifics of inheritance partitions here before turning to these wider implications.

²⁴ See John Davis, *Land and Family in Pisticci*, London: Athlone Press 1973; and Peter Loizos, 'Changes in Property Transfer among Greek Cypriot Villagers', *Man* (n.s.), Vol.X (1975), pp.503-523.

Inheritance partitions in Fontelas follow one of these four procedures:

1. *De Boca* (orally)
2. *Sortes* (lottery)
3. *Escritura* (will or donation)
4. *Justiça* (court division)

An oral partition is by far the most frequent form of division of a patrimony. Upon the death of an individual (assuming for the moment that there are children) one half of the patrimony²⁵ is partitioned in equal shares among the person's direct descendants. The second half is then divided following the death of the surviving spouse. Although there is a tendency in Fontelas to delay the partition until both parents have died, even then the legal steps involved do not always coincide with actual practice. An oral partition may occur, but the heirs may continue to cultivate a landholding jointly or to reside within the same house. If the parents die intestate, each heir has rights to an equal share of land, movables, livestock, and a portion of the house. There is an *absolute equality* between male and female heirs both in local hamlet custom as well as in the Portuguese Civil Code, and as I have pointed out there is no informal preference within the inheritance system for either sons or daughters.

With respect to land, three main types of distribution occur:

- (a) plots may be partitioned into smaller plots, with boundary stones placed at the borders;
- (b) different heirs may each obtain separate plots of roughly equal values;
- (c) heirs remaining in agricultural activities may borrow, look after, rent, or purchase the plots of their non-resident co-heirs.

If we were to accept the popular view of smallholding regions being subject to ineluctible fragmentation, then type (a) would seem to us to be the logical practice. In fact, precisely the opposite occurs in the hamlet. Except in cases of very large plots of land, (b) and (c) are the most frequent choices, as these lead to a more practical distribution of farming land among those siblings remaining permanently in Fontelas. Obviously, an

²⁵ There are a number of couples in Fontelas who have married under the 'separate property' regime (*separação de bens*) rather than the more frequent 'joint property' regime (*comunhão de bens*). The former arrangement is followed principally in cases of remarriage in order to retain separate inheritance rights for a person's children by a former marriage, and it implies a different series of legal options concerning the disposal of property by spouses from those available to spouses married under the 'joint property' regime.

extreme adherence to (a) through continual subdivisions of shrinking plots would lead eventually to utterly miniscule sub-plots. Thus (b) and (c) are resorted to in order to circumvent this.

Oral partition is termed by villagers *de boca* simply because that is precisely how it is done - 'by word of mouth'. Nothing is written down anywhere, and each heir inherits his or her share.²⁶ Alternatively, in other cases all of the plots of a group of heirs may be listed at the time of inheritance in each of their names. The *partilha* is still nevertheless termed an oral one because formal recourse to assessors or lawyers is not resorted to. This is why the term *amigável* (friendly) is used to refer to this form of division: all of the heirs divide the patrimony *amigavelmente*, or 'in a friendly way'. Each heir registers his/her plots (or new portions of plots) and all remain on good terms. Following the 8 deaths occurring during my fieldwork, 6 oral partitions were effected. *De boca* division is the ideal form of a *partilha* in Fontelas and indeed the most common.

A second form of partition is that involving a 'lottery' between the heirs. This form of inheritance is similar to oral partition except that a mediator, or witness, is called in from outside the household(s) in question in order to assure an equitable division. The word *sorte* (share/lot) refers, first, to the small slips of paper on which the locations of a series of plots of land are written: these slips of paper are placed in a hat and drawn randomly by the heirs. The second meaning of *sorte* refers specifically to plots or sub-plots themselves from this point on. Any plot in the hamlet can thus be termed 'my *sorte*' or 'my brother's *sorte*'. The lottery system implies some degree of caution, otherwise no outside witness would be called in and the heirs could effect the partition orally. This system also implies a certain amount of equally distributed 'luck' in the drawing. The witness is usually a villager of high social standing with a good knowledge of the hamlet's terrain. Along with the heirs, the witness draws up a list of all the deceased's land.²⁷ It is at this point, shortly prior to the drawing, that

²⁶ This is why the town Tax Bureau has such difficulty in keeping track of who owns what in each of the 95 hamlets within its jurisdiction. Plots frequently remain registered under the name of a villager's parent or grandparent. This may temporarily avoid both a minimal inheritance tax as well as a yearly land tax, but it may lead to problems in cases of sale or disputed ownership rights. Such disputes force an heir to obtain a proper legal title to the plot(s) in question.

²⁷ This lottery form of partition was described to me by a number of villagers, although I did not observe it in practice. I am not sure therefore whether movables are also written on the paper slips; they may have been distributed orally.

the value of the plots must be decided and that disagreements are most likely to occur. A landholding consisting of 20 plots to be divided among 4 heirs may, theoretically, be partitioned into 4 portions of 5 plots each. But subdivisions may also be made, or alternatively, for example, three less fertile grain plots may be put on one slip of paper and one very fertile meadow on another. Each heir thus draws a slip of paper with a series of listed plots whose total value is roughly equal.

The essential point about the lottery is that it is a variant of the 'friendly' oral partition. Although not as straightforward as an oral partition, divisions by lot do not go as far as the courts. This is why the lottery is relatively rare: either the heirs basically agree and opt for an entirely oral partition, or they disagree to such an extent that one (or more) of them demands recourse to legal bodies. A partition by *sortes* is thus a form of compromise between an entirely 'friendly' agreement among co-heirs and disagreements strong enough to commence legal action.

A third type of inheritance involves the making of a will (*testamento*) or a donation (*doação*). Both of these forms of property transfer are termed inheritance 'by writing' (*de escritura*) and both are considered by villagers to be processes quite distinct from purely oral or lottery divisions. A will or a donation both inject a written document into the process of property transfer. According to Portuguese law, a person may only freely dispose of 1/3 of his or her property through a will (this percentage is 1/2 if there is only one child).²⁸ This portion is termed the 'third' or *terço* in Fontelas. In legal terms this constitutes the testator's 'free quota' or *quota disponível*. The remaining 2/3 constitutes the legitimate inheritance (*legítima*) of the testator's heirs, and cannot be included in a will (Civil Code; art. 2158). If the heirs feel that their *legítima* has been mistakenly or wrongfully encroached on by a will, they may dispute this in court and recover the portions of their patrimony incorrectly included in the will.²⁹ However, even in cases of legally correct wills, there is a strong feeling in Fontelas that wills subvert the law of equal partition between all siblings. This contrast between the generalized 'ideology' of equal partition and the simultaneous wariness about wills constitutes a fundamental contradiction within this society, and I will return to it below.

²⁸ Again, I am describing the functioning of inheritance here *prior* to the 1977 alterations in the Civil Code (see Note 18 above).

²⁹ The legal procedures glossed over here are obviously more complex than I have made out. Furthermore, knowledge of the legal rules of inheritance is of course only of limited use in following the actual practices and specific 'moves' of individuals on the ground, as Bourdieu's brilliant analysis (*op.cit.*) of marriage and inheritance strategies in a southern French village has shown.

In a will, a testator may bequeath any or all of his/her free quota to anyone - these may be one or more of the legal heirs, a spouse (more rarely), or an unrelated person. A donation (*doação*) is another matter entirely. This is a *pre-mortem* transfer of property and as such the closest thing to a dowry existent in Fontelas. A donation is really a kind of pseudo-will, or an advance on inheritance, as the portion of property disposed of through a donation already dips into the testator's free quota of 1/3 of the patrimony. The donation thus leaves less property to dispose of through a later will. It is virtually the only means available in this society (apart from sales and purchases) to transfer property *inter vivos* and avoid the strict rule of *post-mortem* inheritance.

According to villagers today, donations are not a frequent form of property transfer, although when they do take place they always involve (like wills) a certain degree of public gossip and suspicion. Villagers were very reluctant to discuss donations involving themselves, although they are constantly speculating about the contents of those of others. Such phrases as *deixou-lhe aquela leira* ('he left him that field') or *a tia fez-lhe doação da casa* ('her aunt donated the house to her') are endlessly on people's lips. This gossip about donations abounds at any time in Fontelas, unlike the gossip described earlier which arises immediately prior to a villager's death. This is due, of course, to the timing of *pre-mortem* donations: donations may take place at any point in an individual's life-cycle. A donation is thus quite an 'odd' form of property transfer in Fontelas as it is not strictly tied to death (although the amount of property included in the donation reappears later in the inheritance redistribution). Particular attention is given in Fontelas to both donations and wills because these lend an aura of suspicion and hidden calculation to the *partilha*. Who has obtained what, and through which means? Did a specific person really deserve to inherit through a will? Or did he/she fiddle the documents or 'play up' to the owner purely for personal interest? Nor are parents the only objects of a 'greedy' heir's intentions: an unmarried aunt or uncle is always a potential target. Hidden plans and schemes may lurk beneath the 'honest' exteriors of caring children, as expressed in the phrase:

*O cordeirinho manso,
Mama a sua mãe e alheia.*

The meek little lamb,
Sucks from its mother and
others too.

The inclusion of a will at the time of a *partilha* does occasionally occur in Fontelas, although my impression is that it is an exception among households with descendants and more common in cases of elderly, unmarried individuals. In none of the 8 cases of individuals who died during my fieldwork was a written will drawn up, and none of the heirs involved in the 8 deaths had received a donation. Following my fieldwork, in 1981 one widowed woman (with children) left a will and another unmarried woman (childless) died later in the year also leaving a will. In

general, villagers in Fontelas view the making of a will with great suspicion. This is due not only to a general aversion to institutionalized 'favouritism' but also to a deeply rooted fear of the legal manipulations of selfish heirs and bribed notaries. Conflicts are most likely to arise in cases of wills and not in cases of oral or lottery partitions, although this is not to say that in the latter there is necessarily an absence of disputes. Of course, a will need not be disputed, and the heirs of the remaining 2/3 of the patrimony may divide that 2/3 orally and amicably between themselves. Nevertheless, a suspect will, in writing and legally binding, is more likely to explode latent disagreements and resentments and to shift the whole affair to the town court.

The fourth kind of inheritance procedure in Fontelas involves extreme cases of disputes which force a legal partition in court. Villagers term this process simply one of inheritance 'by law' or 'through justice' (*por justiça*). I observed a number of cases of disputed inheritance in the town court involving individuals from other hamlets in the municipality. When this occurs, the heirs as well as their witnesses may completely sever all social relations. The partition itself may require *in situ* valuations of the plots in question by land assessors, the lawyers involved, and the judge. As legal costs are high, recourse to lawyers and the court is an expensive affair and in villagers' eyes must involve enough property to merit the various expenses incurred. Indeed, actual legal recourse to lawyers and courts is far less common than indirect gossip or verbal threats. There is even a bit of suspicion of the lawyers themselves, whom some villagers view as liars and smooth talkers who manipulate the law for their own and their clients' interests. Nevertheless, in cases of a deadlock in inheritance the court provides a last resort. Although expensive, a legal division (often lasting for years) usually succeeds in resolving the original dispute.³⁰

These then are the four principal means of transferring property between the generations in Fontelas. Of particular interest for our argument is the fact that none of the procedures enumerated here involves the transmission of property or the partial division of a patrimony *at the moment of marriage*. The only form of *pre-mortem* transfer is through donation, yet even this relatively rare procedure does not necessarily involve marriage. Anyone (married or not) may be the recipient of a donation and there is no social custom or habit of giving donations at the time of a villager's marriage. Virtually all of the forms a partition can take (oral, lottery, will, and court division)

³⁰ Another form of partition involving the town court (although of less relevance to this paper) arises in cases of minor children whose parents die before their having reached majority. In these cases, a mandatory legal partition is effected in court called an *inventário de menores* (probate inventory).

only occur after an individual's death at a point in the developmental cycle of the deceased's household which is entirely unrelated to the timing of the marriages of any of the heirs. Even in the case of wills, although a will may be written many years prior to a villager's death, it cannot be brought into effect legally until the testator has died. The total absence of any form of dowry provisions, as well as the general cultural orientation towards 'restricted marriage', point unmistakably to a mode of inheritance strictly linked to death.

These then are the short-term elements of the process of inheriting in Fontelas; what are its long-term effects? In other words, what features of Fontelas' social structure can be said to be shaped significantly by this specific mode of property transfer? If we maintain that the particular timing of property transfer at death (and not at marriage) is a prime 'structural law' underlying the social system, then a number of concomitant features must be visible as predictable results. This is indeed the case. Let us now turn to our concluding point about dying and inheriting: the long-term reproduction of social-structural features in Fontelas linked to delayed inheritance at death.

Two major features of this form of delayed inheritance are (a) the separation between favoured and secondary heirs, and (b) extremely high ratios of illegitimacy. An analysis of both of these key features clarifies the pivotal role of death in the process of property transmission. Let us conclude by touching briefly on these two points.

Despite the legal rule of equal partition between all siblings described above, we would be very naive indeed if we actually believed that land and other forms of property are actually 'equally' divided. There is in Fontelas a sharp contradiction between this ideal of legal partibility and the real, practical inequality between favoured heirs and their tacitly excluded siblings. This is not to say that equal partitions never occur, but rather that some form of *social* differentiation occurs at an early stage in the developmental cycle of the household. This is an important point because it reveals a *dual* structure within the internal composition of the rural community.³¹ This dual structure separates (a) those in favoured positions with access both to land and to social positions of household management, from (b) those disadvantaged villagers dependent either on the wealthy landed households or on their own favoured siblings.³² All heirs do not normally

³¹ See Brian Juan O'Neill, 'Proprietários, Jornaleiros e Criados Numa Aldeia Transmontana desde 1886', *Estudos Contemporâneos* [Porto], No. 2/3 (1981), pp.31-73; at pp.62-64.

³² A similar dual structure is visible at the hamlet level between (roughly speaking) the land-rich and the land-poor, and even in the spatial distribution of houses within the hamlet sub-sections. Smaller and poorer households tend to be located on the outskirts, while larger wealthy ones are concentrated in the centre.

stay in Fontelas in agriculture: some emigrate, some marry out, and others remain celibate. But indirectly, one of these heirs manages to consolidate much of the patrimony in the interests of avoiding both excessive partitions of land as well as the dispersal of 'labouring arms'. For instance, each co-heir theoretically inherits a share in the natal house, but such division of the physical structure of a house among six siblings would obviously be impractical.³³

In most cases one heir remains in a central role within the family line and it is this heir who is informally chosen to manage the household and the landholding over time. This may be either a son or a daughter, or indeed even an adopted servant. Just how this favoured heir is chosen by the parents is an extremely subtle process, and we must bear in mind that there is not always a favoured heir in any given household. Furthermore, this selection process does not apply equally among the poor, where resources are generally scarcer. In landed households, one parent (or both) may will a portion of property to this favoured heir, although this may create friction or overt conflicts among the other co-heirs. But the practical needs of the household necessitate the elimination of competing claims to the house and the landholding from the other co-heirs (patrimony limiting matrimony). The marriages of these co-heirs will clearly add to the force of their claims. But the delay or prevention of their marriages, either by the parents or later by the favoured heir, will tend to diminish their claims and to relegate them to secondary, celibate positions within the household.

It is almost as if the house (or the household) takes on a kind of life of its own, regardless of the specific individuals who occupy positions within it. However, in Fontelas there are no institutionalized means through which the parents or the favoured heir can force other co-heirs to leave the hamlet entirely or relinquish their shares. I have found no contemporary evidence of male primogeniture, and today there are no compensation payments given to co-heirs in order to push them off the landholding. The most a parent can do legally is to favour one of the heirs with 1/3 (the *terço*) of his or her patrimony and a stronger social claim to retain management of the house. So, although excessive partition is generally avoided, some portion of most landholdings is bound to be split eventually.

The major strategy of the favoured heir is thus to postpone the partition, or if this is unavoidable, to buy out the

³³ Of the total of about 80 inhabitable *houses* in the hamlet (including a few emigrants' houses, but many more older and currently empty ones) only 2 have been partitioned down the middle in recent decades.

shares³⁴ of the other co-heirs in order to consolidate the total holding. As marriage in Fontelas is generally late, by the time a partition takes place many co-heirs are already well into their 30s or 40s and long established somewhere or other. The varying life circumstances of each of these co-heirs at the time of the partition is crucial. Who has remained in Fontelas? Who has left the hamlet? Who will press for partition and who is likely to claim a share of the patrimony for immediate use? While all co-heirs are in this sense legally equal, socially their positions as claimants to the patrimony at the moment of partition may be distinctly unequal. If we were to emphasise merely the *legal equality* between heirs, the entire complex of *practical inequality* between favoured heirs and secondary co-heirs would be missed. As one woman put it so aptly, the ultimate result of a partition is not always equal: *Uns ficam com as vinhas, e outros com as pipas*. ('Some get the vineyards, and others the wine-barrels.')

One further element of crucial significance here is the link between death and the old-age security of elderly parents. As Goody has noted:

The link between stratification and the economy is by means of the system of inheritance, which organises the transmission of property from generation to generation, at death, at marriage or at some other point in the developmental cycle.³⁵

Post-mortem transmission implies not only a delay in the acquisition of property by the young, but also a prolongation of the retention of property rights by the old. The fact that a formal

³⁴ Sales and purchases of land in Fontelas do not seem to have been a frequent occurrence, although recent emigration may erroneously predispose us to assume that sales have always occurred regularly in the past. Far more common is the avoidance of *de jure* partition simply by maintaining a natal landholding and household intact through *de facto* joint administration of the legally partitioned shares. This does not involve sales of shares but rather pooling, lending, or simply the non-assumption of legal property rights by unmarried siblings.

³⁵ Jack Goody, *Production and Reproduction*, Cambridge: Cambridge University Press 1976, p.65.

transmission of an intact patrimony³⁶ does not occur at marriage in Fontelas implies that the parental generation does not in any sense lose control of the holding. Nor do they enter any form of 'retirement' from farming, unless utterly senile. In this sense, there is no legal (or indeed social) transfer of household authority in Fontelas even at the marriage of a favoured heir - this household authority is retained firmly by the parental generation.³⁷

This is why the system of inheritance in Fontelas, although partible, actually looks like an impartible one. The structure of inheritance thus demands that one or more of the parents' children (or other kin) look after them with special care as they age. Favoured heirs in particular will also provide for the

³⁶ A number of features of inheritance customs in Fontelas are comparable with other European communities where formal unigeniture is practised. There are important differences, however, particularly in the absence of any property transfer at marriage in Fontelas: this transfer at marriage does occur in the Irish, Spanish, and Italian Alpine communities described by Arensberg and Kimball (*op.cit.*), Douglass (*op.cit.*), Carmelo Lison-Tolosana (*Antropologia Cultural de Galicia*, Madrid: Siglo XXI de España Editores 1971), Raul Iturra ('Strategies in the Domestic Organization of Production in Rural Galicia (N.W. Spain)', *Cambridge Anthropology*, Vol. VI (1980), pp.88-129) and Eric Wolf and John Cole (*The Hidden Frontier: Ecology and Ethnicity in an Alpine Valley*, New York: Academic Press 1974). Whether such a formal system of unigeniture or strict single-heir inheritance has existed in Fontelas prior to the mid-nineteenth century is a historical question beyond the scope of this paper.

³⁷ Indeed, even in the Minho region of North-west Portugal marriage involves quite a different set of elements (see Brandão, *op.cit.*). Brandão notes that in the Minho '... in general, marriage consummated the change in the positions of the two couples in the household, when the newly-weds acquired the leading position' (Brandão, *ibid.*, note 18). In Fontelas, even cases of uxorilocal and virilocal residence do not imply such a change of position for the younger couple. Natolocal residence even further highlights the near-obliteration of the newlyweds' claims to status and the supreme authority of the parental generation. The crucial point of contrast here between the region studied by Brandão and this one, I think, lies in the difference in the *timing* of key property transfers (see also Robert Rowland and Fatima Brandão, 'História da Propriedade e Comunidade Rural: Questões de Método', *Análise Social*, Vol. XVI (1980), pp.173-207). In the Minho region, major transfers of property accompany *marriage* while in this area of Trás-os-Montes such transfers occur only following the *deaths* of the parents.

parents' funeral expenses, look after their graves on All Souls' Day, and have at least the prescribed series of masses said for the parents following their deaths. The parental generation thus retains near-complete control of both land and labour while they remain alive. The selection of a favoured heir further ensures this old-age security. Indeed, one elderly villager quoted the appropriate saying:

<i>Quem é teu herdeiro?</i>	Who is your heir?
<i>Quem te limpa o traseiro.</i>	The one who cleans your behind.

Again, the close link between death and the delayed transmission of property is evident. The special care given by the favoured heir to the ageing parents is institutionally cemented within the structural law of inheritance at death.

But one of the most flagrant results of this form of delayed inheritance is the presence of consistently high proportions of illegitimacy in Fontelas over time. A detailed count of all baptisms recorded in the Parish Register³⁸ for Fontelas since 1870 yields the following information. The overall illegitimacy ratios in Fontelas range in the late nineteenth century from over 1/3 to almost 1/2 of all baptisms. The mean illegitimacy ratio (bastards baptised as a percentage of all children baptised) over the century has been 47.4 per cent: 326 in a total of 688 baptisms. In other words, throughout the last century (1870-1978) virtually one half of all children baptised in Fontelas have been bastards.³⁹

In the decade from 1910 to 1919, bastard children accounted for 73.6 per cent of all children baptised. Three out of four children baptised during that decade were illegitimate (there were 19 baptisms of legitimate children but 53 of bastards). From 1920 to 1929 this percentage was 67.9 per cent. Finally, even in the decade from 1950 to 1959, the ratio was 47.5 per

³⁸ There is no doubt that these figures in and of themselves, are quite reliable, as each baptismal entry in the Parish Register records the marital status of the mother of a bastard child as 'single' (*solteira*) as well as the standard phrase 'unknown father' (*pai incógnito*).

³⁹ The overall illegitimacy ratios in the parish as a whole (around 700 inhabitants) for the last three decades of the nineteenth century yield similar figures: 29.2 per cent for 1870-79, 35.2 per cent for the 1880s, and 40.8 per cent for 1890-99. During the first three decades of the twentieth century, the parish ratios were respectively 44.1 per cent, 46.0 per cent, and 42.3 per cent.

cent.⁴⁰ Only later in the 1960s and 1970s did illegitimacy suffer a marked decline, with respective ratios of 23.4 per cent and 7.4 per cent. Recent emigration has undoubtedly contributed to this decline in the last two decades, but this emigration in itself does not explain why the ratios have been so consistently high in the past.

Analysis of the occupations of the mothers of bastard children reveals that unmarried women in the social group of *jornaleiros* (day-labourers) have accounted for the majority of bastard births. Almost as consistent has been the tendency among women from the social groups of *lavradores* (ploughers) and *proprietários* (large landowners) to bear legitimate children within legal marriage. Since 1870, 172 bastard children and 87 legitimate ones have been born to *jornaleira* mothers, while in contrast only 10 bastard children yet 102 legitimate ones have been born to *lavradora* mothers. The basic pattern of the illegitimacy figures thus points overwhelmingly to bastard births among the poor, and legitimate ones among the landed. The exclusion of these unmarried mothers from *both* matrimony and patrimony has been quite evident as far back as local records go. Villagers themselves produce apparently contradictory explanations for illegitimacy. The wealthy and the poor view the problem from opposite ends, and both sides systematically blame the other. The poor, especially many single mothers themselves, blame wealthy men for 'exploiting us as servants or day-labourers' and burdening them with bastard children. Yet the wealthy blame the poor simply for being poor - 'how can they help themselves, those poor souls?' Those on the bottom of the social hierarchy seek economic and political causes, while those on the top find moral ones.

My point here is that neither side is correct, but that the entire problem is shaped from the start by a specific mode of

⁴⁰ A far broader survey of the literature on illegitimacy in various disciplines is needed here, considering the near-total absence of analyses of the topic in the major anthropological monographs of European communities. Although I have not yet carried out systematic comparisons of illegitimacy in other rural areas of Portugal and Europe, some suggestive figures are available from the Austrian mountains: Michael Mitterauer ('Marriage Without Co-residence: A Special Type of Historic Family Forms in Rural Carinthia', *Journal of Family History*, Vol. VI (1981), pp.177-181) has reported a 68.1 per cent illegitimacy ratio for 1870-74 in an Eastern Alpine region of Austria. Further research on rural illegitimacy in Portugal is being carried out in the Historical Sociology Unit of the Instituto Gulbenkian de Ciência (Oeiras, Portugal). My brief analysis of illegitimacy here clearly places far greater emphasis on factors involving property and household structure than on religious morality or the even less applicable topic (in this case) of 'honour and shame'.

inheritance. Not all fathers of bastard children are wealthy, nor are all of the relations leading to illegitimate children necessarily exploitative. Many fathers were simply co-heirs left outside (or 'pushed' outside) the main lines of property transmission in their natal households. Yet for poorer women, children are always an asset as their labour is highly valued. Better a bastard child than none at all. We see then that even among the poor, 'descent' and sibling ties are strong while ties of marriage and affinity are comparatively weak. As Le Roy Ladurie has noted for the west of France,⁴¹ the inheritance customs of this region of Portugal 'smile on children, but not on love'.

The ratios of illegitimacy over the decades provide ample evidence of a persistent pattern of the social reproduction⁴² of a 'bastard group' over time. The maintenance of a group of day-labouring women (the *jornaleiras*) and their illegitimate children has provided a source of temporary hired labour for wealthy landed households. Many servants in the hamlet's wealthy households have come from this poorer group. But the key point is that the wealthy and the landed have managed to retain this source of wage labour *without* posing threats to the bulk of the hamlet's patrimonies. Note that unless their paternity is legally recognized (a rare occurrence), illegitimate children inherit property only from their mothers. (The inheritance rights of illegitimate children have also undergone legal changes since the 1977 alterations in the Civil Code; see note 18 above.) But the illegitimacy ratios of Fontelas are suggestive: bastard births are so common that the society's general level of tolerance for illegitimacy must be quite high. Even today in Fontelas, over 1/3 of the hamlet's adult women over 21 have borne at least one bastard child at some point in their lives. Bastard children and single mothers although low in social status, are accepted as social individuals and non-marital unions are openly tolerated.

This does not mean that some stigma is not also present. Bastards are called *zorros* or *zorras* (the term suggests both 'fox' and 'rascal') while verses such as that quoted below indicate the 'inheritance' of the low status of poor single mothers:

*Da ovelha ruim,
Não sai cordeiro bom.*

From a bad ewe,
A good lamb does not come.

⁴¹ Le Roy Ladurie, *op.cit.*, p.58.

⁴² The term 'social reproduction' (like 'strategy') is borrowed here directly from Pierre Bourdieu (*op.cit.*), although comparable uses of the term can also be found in Lisón-Tolosana (*Belmonte*) and Peter Laslett (*Family Life and Illicit Love in Earlier Generations*, Cambridge: Cambridge University Press 1977).

Irregular sex is thus in the long run a mechanism, or a somewhat indirect path, for the satisfaction of sexuality and the reproduction of labour outside the central spheres of marriage and property. A large part of the hamlet population must remain marginal to the delicate balance between prestigious matrimony and undivided patrimony. Few are those who obtain *both* prestigious marriage and a large share of the patrimony, but many are those who obtain neither. The latter are however allowed a considerable amount of choice of sexual partners, much as Georges Duby has noted for medieval France: 'Under this ethic, marriage, I repeat, regulated the sexual impulses, but only in the interest of a patrimony. As long as no inheritance was involved, sexual activity was permitted outside marriage'.⁴³ Viewed in this way, the 'problem' in Fontelas is thus not illegitimacy but marriage itself.

The link between illegitimacy and inheritance is now clear. I submit that the main reason for these illegitimacy ratios lies in the mode of property transfer I have been describing. As long as a high rate of *illegitimate* fertility exists, a large part of the population is strictly prevented from both marrying and inheriting. They have no easy road to either matrimony or patrimony. This does not mean that illegitimate children do not later marry or inherit at all, but merely that their chances are slim from the start. The needs of the peasant household are so delicately balanced between labour and land in this isolated mountain region, that the inheritance claims of some villagers must be obliterated. These villagers may *produce* within their natal households, but they must not *reproduce* within them. This is why the fundamental concern of maintaining patrimonies 'intact' is not merely one of population control: the lower group of the *jornaleiras* and their bastard children may continually expand in numbers without threatening the basis of the inheritance of patrimony. In other words, the prize of prestigious matrimony is reserved for only a few, and the rest must either emigrate, marry out, or settle for celibacy or bastardy.

The extreme delay in inheriting property thus shapes the structure of this society's peculiar features. The only way in which the society's fundamental contradiction between the legal equality of heirs and the practical inequality between favoured heirs and secondary co-heirs is ever resolved is through the illicit links between these co-heirs and unmarried mothers. A 'bastard class' is the final result, and it is these unmarried male co-heirs who are in fact the 'unknown fathers' of bastard children.

In consequence, there must be an actual approval (however indirect) of illegitimacy and non-marital sexuality for the purpose of keeping patrimonies together. Only a few favoured

⁴³ Georges Duby, *Medieval Marriage: Two Models from Twelfth-Century France*, Baltimore: Johns Hopkins University Press 1978, p.7.

heirs - primarily among the wealthy landed groups - ever connect marriage, property, and 'respectable' sexuality. But for the rest, these three are disconnected. If an acceptable level of non-marital sex can exist (although the *jornaleiras* have borne most of the burden) then a substantial number of people can be kept out of the competition for patrimony. But the general limitation of marriage in the society still allows for a few favoured and prestigious marriages. It is in this sense that the two sides of the coin support each other: prestigious marriage could not remain prestigious without the reproduction of a group of people systematically locked out of both matrimony and patrimony. The chosen few hold onto land, while the many excluded lose their grip. Much like the myriad branches of a tree, many more villagers fall 'outwards' from their natal landholdings (and downwards in the social hierarchy) than those who retain control of the central 'trunk' of the patrimony.⁴⁴

I do not wish to be misunderstood in this paper, and to be misjudged for placing undue emphasis on an abstract system of inheritance. Clearly, anthropologists study living people just as much as they analyse the structure of societies. Obviously, villagers in Fontelas live within a system of customary law and strategize their moves in myriad ways. I do not mean to imply that these villagers are passive victims of the 'mindless application of inheritance laws'.⁴⁵ As Pierre Bourdieu would maintain,⁴⁶ villagers' strategies are conditioned by a whole structure of property relations accumulated over the generations.

⁴⁴ Georges Duby's fascinating essay on medieval marriage in France suggests that the limitation of marriage in the interest of an undivided patrimony may have been a very old European pattern. For twelfth-century northern France, Duby writes that '...the concerted effort of families to deprive most of their sons of legitimate procreation was bound to weaken the dynasty. And yet our text shows just as clearly that this policy attained its main objective, for it did preserve the wealth of the house. In the course of these two centuries covered by Lambert's account, none of the main trunks of these lineages permitted the sprouting of sidebranches, that is, the division of inheritances. At every generation, one male only took over the entire patrimony. This was made possible by the elimination of his brothers, who were shunted toward the clergy or a monastery, toward adventures in the Holy Land or in England, or toward the deadly hazards of military apprenticeship and practice' (Duby, *op.cit.*, p.102).

⁴⁵ Davis, *op.cit.*, p.111.

⁴⁶ *Op.cit.*; see also his *Outline of a Theory of Practice*, Cambridge: Cambridge University Press 1977.

In this sense, each individual (or each specific death) is merely one among a long chain of successive links, and this is why I have stressed the long-term *processes* of dying and inheriting.

There is an interconnection over time in any society between kinship relations and property relations,⁴⁷ although the precise features of this interconnection obviously vary from society to society, from region to region. The goal in mountain regions of Europe seems to be the same nevertheless: the preservation of viable landed patrimonies through the avoidance of partition. As Bourdieu quotes the clever phrase of Marx: 'The beneficiary of the entail, the eldest son, belongs to the land. The land inherits him'.⁴⁸ This society achieves this goal through blocking *one* of the possible moments of property transfer (marriage) by delaying this transfer until death.

What I wish to stress here is that Fontelas provides a particularly clear test-case for Goody's recent statements about family and inheritance in rural Europe. These are the extreme results of a system of delayed inheritance: late marriage, celibacy, complex households, natolocal residence, stress on descent over affinity, and illegitimacy. Also present in Fontelas are other related features of this characteristically 'European' family organization, also described by Goody in *Production and Reproduction* (Cambridge 1976): spinsters, bachelors, 'informal marriage' and the occasional concubine, abandoned children, step-parents and step-children, half-siblings, and some female servants suggestive of the Cinderella tale. I have shown that some of these features are closely linked to a specific form of property transmission. These features are clearly shaped by a certain structural logic - this logic in itself depends to a great extent on the transmission of property at death. An understanding of the *timing* of key property transfers in Fontelas is crucial to our analysis of the rest of the society. These two processes of dying and inheriting (stretched out to incorporate the long-term periods preceding and following a death) invite further study. This region of Portugal provides some extremely unusual characteristics which suggest comparison with other regions of mountain Europe. Further research along these lines, linking varying forms of

⁴⁷ On this point, once again Goody makes the key link: 'The manner of splitting property is a manner of splitting people; it creates (or in some cases reflects) a particular constellation of ties and cleavages between husband and wife, parents and children, sibling and sibling, as well as between wider kin' (Goody, *Family and Inheritance*, p.3). Fontelas provides an excellent example of this comment on the relation between kinship ties and property relations - in Fontelas it is the manner of 'splitting property' that clearly conditions strong parent/child ties and contrastingly weak husband/wife ties.

⁴⁸ 'Marriage Strategies', p.117.

kinship relations with property relations, will prove particularly stimulating for future interdisciplinary work in anthropology and social history.

Underlying the peculiar characteristics I have described for Fontelas, and providing them with their basic structural shape, is the fact of partible inheritance at death. The transmission of all major patrimony in Fontelas is tied to this one event. This then is the underlying structural law which conditions the basic contours of this rural community. The *ritual* aspects of dying and the *legal* elements of inheriting may only lead us to a partial, skewed view of a long historical process. By isolating these discrete events, we may lose sight of the time dimension through which patrimony is passed from one generation to the next. In Fontelas this is only achieved through dying and inheriting, and it is these two closely linked processes which hold the key to the entire social structure.

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