Archbishop Eberhard II announced in 1239 that he had confiscated the possessions of Karl of Gutrat "in accordance with the approved and prescribed customs of our church" because he had married outside the familia without the archbishop's permission.¹ These customs dealt in particular with the ministerials' marriages and ownership of property, as Eberhard made explicit in 1246 when he granted the ministerials of the Carniolan lordship of Gurkfeld (Krško, Slovenia) "the same law, both in regard to marriages as well as fiefs and all other rights, that the ministerials of the church of Salzburg enjoy."² In spite of such references to an archiepiscopal ministerial code (ius ministerialium, Dienstrecht), no written custumal, like those that have survived from some other lordships,³ is extant today. It is therefore necessary to reconstruct the ministerials' rights and obligations from specific cases—usually from instances where the rules were modified or violated in some way.

Since the requirement to marry within the archiepiscopal familia was the most visible manifestation of the ministerials' personal servitude, the best place to begin is with a discussion of the customs that governed servile marriages in general in the archdiocese and then to examine how those rules were applied to the

¹. SUB 3:496–97, no. 944. Bishop Otto of Passau stipulated in 1256 that the child of a ministerial who resided on the lands of the abbey of Niedernburg and had married without permission outside the episcopal familia would lose his fief unless the heir subsequently contracted an intrinsic marriage. Breinbauer, Otto von Lonsdorf, p. 143, n. 288, p. 185.
². SUB 3:639–40, no. 1095. For other references to such a ministerial code, see SUB 1:591–92, no. 12; 628, no. 88; 631, no. 92; 2:303–4, no. 207a; 3:109–10, no. 617; 310–12, no. 783; 517–19, no. 968.
³. Arnold, German Knighthood, pp. 76–99.
archiepiscopal ministerials in particular—that is, to situate the ministerials in the servile world from which they were trying to emancipate themselves. Lords were confronted with two different, though related, issues: cross-marriages between the serfs of different lordships and marriages between men and women with different legal status, both within and outside a specific familia.

There is no evidence on how lords dealt with these problems in the Austro-Bavarian area before the mid-twelfth century, when the first extant general conventions were written, and much of this evidence concerns the ministerials rather than the lower strata of the familia. Philippe Dollinger thought that the lords had previously handled such marriages case by case and that the twelfth-century agreements codified older practices. At any rate, even the oldest evidence is relatively late. There continued to be a great deal of uncertainty, even in the thirteenth century, in applying general rules to specific instances. For example, Duke Ulrich III of Carinthia confessed in 1265, when asked by the Cistercians of Viktring, that he did not know whether children whose mother was an altar dependent (censualis) who had married an abbatial serf obtained their mother’s or their father’s status. He had been forced to seek a ruling from the assembled witnesses, among whom were several prominent ministerials. They had unanimously opted for maternal ascription, and the scribe even cited the Roman legal maxim that the offspring follows the womb (“partus sequitur ventrem”). This decision was at variance with another principle, however, that the children were to have the legal status of the parent of inferior rank, or as an imperial customary of 1282 put it, “The offspring ought always to follow after the more vile condition.” No wonder the duke was confused and the lords were compelled to deal individually with such problematic marriages.

More was at stake, however, than simply reconciling conflicting laws. Although the generally preferred rule was that a child obtained its mother’s legal status, if for no other reason than that a child’s mother was more readily known, most families practiced patrilocality. That is, women left their families of origin to live with

5. MC 4/2:629, no. 2885. The first lay witness was the Styrian ministerial Siegfried of Mahrenberg (today Radlje, Slovenia). For information about him, see John B. Freed, “Rudolf of Habsburg, the Dominicans, and the Pettaus,” in Zur Sozial- und Begriffsgeschichte des Mittelalters, Tel Aviver Jahrbuch für deutsche Geschichte 22 (Gerlingen, 1993), pp. 87–103.
6. Constituciones et acta publica imperatorum et regum, vol. 3, ed. Jakob Schwalm, MGH, Legum 4 (Hanover, 1904–6), p. 300, no. 306. Stephen D. White’s study of land conveyances in western France, Custom, Kinship, and Gifts to Saints: The “Laudatio Parentum” in Western France, 1050–1150 (Chapel Hill, N.C., 1988), although it deals with an earlier period, may offer some insight into the contradictory norms the duke and the witnesses wrestled with. White argued that since there were no binding laws (in our modern sense) that could be invoked in specific cases, but only different norms that could be quoted, disputes ultimately could be resolved only by feud or compromise. Although the scribe did cite the Roman legal maxim about the offspring following the womb, it was in the end only one more adage that could be applied in a particular situation and did not have binding force in comparable cases.
their husbands. More important, most property, whether it was a ministerial’s castle or a peasant’s hide (by the fourteenth century most peasants in the principality held their tenures by hereditary right),7 was inherited in the male line. In this situation the rigid enforcement of maternal ascription meant that individuals whose bodies did not belong to the lord could live on his domains and that the property of a man who married outside the familia could pass into the hands of individuals who served another master. The preference for male inheritance thus favored paternal ascription, that is, granting a child the father’s status. In practice the solution adopted in a specific case, usually either an exchange of serfs or a division of the children, depended on the lords and people involved.

It is no accident, I think, that it was precisely in the thirteenth century, when the ministerials had become the de facto nobility of the principality, that the archbishops were so insistent on enforcing the principle that the ministerials could not marry outside the familia without their lord’s permission. It was the best way to prevent the alienation of powerful men and their castles, courts, and armed retinues to a rival prince. In a paradoxical way this reaffirmation of the ministerials’ personal servitude was a tribute to their upward social mobility. Seigneurial custom thus favored endogamy, marriage to one’s peers within the familia.

Like all Christians, the ministerials were subject to another external constraint on their freedom to marry, namely, canonical prohibitions against consanguineous unions that promoted exogamy. Although it is necessary to reconstruct seigneurial customs in the archdiocese from specific cases, in the twelfth century the church was formulating and refining its teachings on marriage. The problem in studying consanguineous marriages is ascertaining how well the church enforced its teachings. The divorces of Louis VII and Eleanor of Aquitaine and of Frederick Barbarossa and Adela of Vohburg are well known, but it is less clear how strictly such rules were applied in practice to people of less exalted rank. Regrettably, there is no hard evidence to answer this question for Salzburg. Still, the frequency with which the archiepiscopal ministerials contracted extrinsic marriages may mean that they obeyed the canonical rules, particularly after they were modified by the Fourth Lateran Council. Less attention may have been paid, however, to the extension of the canonical prohibitions to relatives by marriage and a person’s spiritual kindred.

In theory, the archbishops were thus required to enforce two contradictory sets of behavioral norms: seigneurial customs that imposed endogamy on the ministerials and canon law that required exogamy. In practice things were not quite so simple. Unlike the free nobility for whom endogamy was a way to prevent the fragmentation of a lineage’s possessions, an extrinsic marriage was an indication that

a ministerial had partially freed himself from the constraints of the familia. Moreover, as will be discussed in chapter 5, it often served the archbishop’s political interests to promote a ministerial’s marriage to the retainer of a rival prince. This chapter will explore how the archbishops and other lords applied these conflicting seigneurial and canonical rules in practice.

Seigneurial Constraints on Servile Marriages

Lords in the Austro-Bavarian region did not pay much attention to their serfs’ marriages as long as they occurred within the familia. There is no evidence, for example, that women in southeastern Germany were required to pay a fine of several pennies (comparable to the French *maritagium* or the Saxon *bunede*) when they married. Marriages between archiepiscopal serfs and the retainers of Salzburg’s proprietary houses were considered to be an internal affair and thus legal. For example, when Archbishop Eberhard I in 1158 enfeoffed Count Sigiboto IV of Falkenstein with the advocacy of Herrenchiemsee, Eberhard granted Sigiboto the ban, as all other advocates exercised it, in cases involving disputes and illegal contracts but specifically excluded from Sigiboto’s jurisdiction marriages between the canons’ and the archbishop’s serfs because such marriages were not illicit. This conception of the proprietary foundations as part of the archiepiscopal familia explains why in the twelfth century archiepiscopal ministerials could intermarry freely with Gurk’s men. Nevertheless, serfs belonging to the archbishop and to Saint Peter’s who intermarried were liable to a fine until 1278.

Extrinsic marriages were another matter. There was some doubt about the legality of such marriages as late as the middle of the twelfth century. In a famous case that found its way into canon law, Archbishop Eberhard I sought the advice of Pope Hadrian IV on this subject. Hadrian ruled that since according to Gal. 3:28 no person could be denied the sacraments on account of his or her legal status, serfs could not be prohibited from marrying and their marriages could not be dissolved even if they had been contracted against the express will of the couple’s lords. Both husband and wife were still required to perform their customary services for their own masters, however. The papal decision left several crucial questions unresolved: which lord would have jurisdiction over the couple’s children, what rights each partner would have to the other’s property, how the couple’s property would be divided among their heirs, and above all, whether the


10. MC 1:76–78, no. 31. The charter purportedly was issued by Archbishop Gebhard in 1072 but is a forgery of the 1170s.

11. SUB 4:107, no. 100.
marital or servile duties would take precedence in a conflict—for example, if serfs could not fulfill their marital debt because they had been transferred to a distant estate. It may be that the twelfth-century conventions that addressed some of these questions were a response to the pope’s decision.

In spite of Hadrian’s ruling, extrinsic servile marriages continued to be viewed as illegal and were prohibited even in the thirteenth century in Bavaria. Violaters were lucky if, like Berchtesgaden’s men in Niederheim (today Sankt Georgen in the Pinzgau), they only had to pay a fine. Saint Peter’s treated its men more roughly. Arbiters ruled in 1264 that if one of the abbey’s men married a woman who belonged to the cathedral chapter, the abbot was no longer to imprison the husband but to give him a chance to be reconciled with Saint Peter’s. As late as 1302 Ulrich, provost of the archiepiscopal possessions in Traismauer, Lower Austria, acknowledged that he had lost the grace of Archbishop Conrad IV because, among other things, Ulrich had alienated his children from the church of Salzburg through marriage. He promised to arrange for his daughter-in-law Geysel to be given to Salzburg or, if this proved impossible, to procure the division of his grandchildren between Salzburg and Geysel’s unnamed lord. Ulrich’s remaining unmarried children were to marry only with the archbishop’s advice.

Conrad IV had been deprived of the services of Ulrich’s grandchildren because Geysel’s children, in accordance with the prevailing custom of maternal ascription, had been assigned to her lord. As noted above, this custom gained additional support from the diffusion of the Roman legal maxim “partus sequitur ventrem.” The dictum was alluded to or cited on several occasions in the second half of the thirteenth century in instances where it was in fact being circumvented. For example, Duke Louis II of Upper Bavaria (1253–94) stated in 1283 that Sigiboto of Ebbs, an archiepiscopal serf and knight, had married a Bavarian and fathered a son and six daughters, all of whom had obtained their mother’s status “in accordance with common law and territorial custom.” Nevertheless, for the benefit of his soul Louis gave two of the children, Elizabeth and Christmann, to Archbishop Frederick II.

The reason the children of serfs could no longer be automatically assigned to their mother’s lord was that maternal ascription was in conflict with the formation of patrilocal peasant households and the inheritance of property in the male line. Examining the documents in which they were conferred on churches, Käthe Sonneleitner analyzed how the children of serfs, particularly censuales (serfs who

15. Regesten 2:72, no. 595.
16. Regesten 1:137, no. 1074. See also Regesten 2:21, no. 163; 36, no. 291.
owed their lord an annual nominal payment of a few pennies in recognition of his lordship), were identified in Salzburg, Styria, and Carinthia from the twelfth to the fourteenth century. During the twelfth century, most children appeared only with their mothers (225 with the mother, 52 with the father, 30 with both parents); by the fourteenth century, when such donations had become far less common, the father had become the standard reference person for children (5 with the mother, 38 with the father, 15 with both parents). Sonnleitner attributed the growing emphasis on identifying the child’s father to the inheritance of peasant holdings in the male line.

She also thought that many of the children who were mentioned only with their mothers in the twelfth century were illegitimate, the offspring of a servile mother and a man of superior rank who conferred on or procured for his bastards and their mother the better condition of censuales. This is certainly true in a number of cases. For example, about 1147 Heribold, a ministerial of Michaelbeuern, redeemed for two pounds the daughter borne him by a serf who belonged to a noblewoman and gave the girl to the abbey as a censualis. But illegitimacy does not explain all such grants to churches of censuales, predominantly women and children. In some instances it clearly was a device to reunite families and to resolve the conflict between maternal ascription and the inheritance of property in the male line. For example, Eckart, a servant of Saint Peter’s, had married Die­mut, who belonged to the Benedictines of Tegernsee. Since Eckart feared that as nonmembers of Saint Peter’s familia she and her children would not have a right to his fief, he persuaded Abbot Berthold of Tegernsee (1206–17) to allow Diemut to give herself to Saint Peter’s as a censualis. Sonnleitner’s study suggests that patrilocal peasant households became the norm in Salzburg between the twelfth and fourteenth centuries as lords ceased to farm their own demenses and assigned to the peasants their own holdings, and that maternal ascription had to be adjusted to fit this new reality.

Such gifts of censuales were especially appealing if the husband belonged to a church and the wife to a lay lord; in such cases the donor could earn eternal rewards for his gift. Shortly before his death about 1150, for example, the nobleman Meinhard of Ibm gave Saint Peter’s fifteen serfs as censuales, including four mothers with their ten children. Such donations also appealed to churchmen for

18. SUB 1:799, no. 59. See also SUB 1:805, no. 74; 3:139, no. 638.
19. SUB 1:563, no. 655.
21. SUB 1:530, no. 527.
the same reason. Elizabeth, the daughter of Henry Clener and Wendala, who were censuales of the church of Salzburg, had married a serf who belonged to the Cistercians of Reun. At her request and with her parents’ consent, Archbishop Eberhard II, wishing to help the monks, conveyed Elizabeth and her children to Reun in 1221 on the same terms on which she had served Salzburg. Donations of this type, which also served to reunite families, may have been perceived as especially meritorious.

Reuniting families in this fashion may have been spiritually beneficial, but it entailed a material loss for the donor. Most lords expected to be compensated if their serfs contracted an extrinsic marriage. The easiest thing was simply to exchange individual serfs, usually the wives and their children. For example, Rachewin, who belonged to the familia of Herrenchiemsee, had married Pezala, a serf of the cathedral chapter. The two churches agreed in 1204/7 that Pezala and her offspring would belong to Herrenchiemsee. In return Mathilda Scherz, a famula of Herrenchiemsee who had married a burgher of Salzburg, and her children were to serve the cathedral canons. It is worth observing that in these cases the women and children assumed their husbands’ or fathers’ legal status.

Such an exchange of female serfs formed the basis of the oldest extant general convention that survives from the Austro-Bavarian area, an agreement between Archbishop Conrad I and the Benedictines of Admont, “that all women who pertain to the church of Salzburg and who had married or would marry serfs of the monastery of Admont, or any other man who was subject to the abbey’s jurisdiction, or who lived on the monastery’s lands, were to be subject in perpetuity with their children to the law of Admont; in return, serfs of Admont were under similar circumstances to pass with their children under his jurisdiction.” Far from incorporating older customs, the agreement may have been written down because it replaced maternal with paternal ascription. When Eberhard II confirmed the accord in 1209, he explicitly linked paternal ascription with the inheritance of property in the male line and patrilocality: “If a serf subject to our law marries a woman of the church of Admont, or if a serf of the said church marries a woman of our church, whether they are censuales who owe a payment of gold or men of whatsoever condition, by mutual agreement the woman will always follow the man in her person, properties, real or personal, and in the future of her progeny.” The breakup of the demesne and the grant of individual, increasingly

23. SUB 3:50–51, no. 573. See also 1:461–62, no. 382; 557–58, no. 634.
25. SUB 3:125–27, no. 626. See also SUB 3:7–8, no. 539. Censuales generally made an annual payment of three or five pennies, but there are occasional references to altar dependents who owed a payment in gold. The usual payment was a pound of gold, or a seiga as it was known in the vernacular (SUB 1:355–56, no. 196), whose value was fixed at eight pennies in 1147/67 (SUB 1:418, no. 306), at ten pennies in 1199/1214 (SUB 1:497, no. 451), and at nine pennies in 1242/64 (SUB 1:764, no. 372). Eberhard’s reference to such gold-paying censuales was probably intended to mean that the agreement applied to even the most privileged members of the familia save the ministerials.
hereditary tenures to peasants were major factors in the shift from maternal to paternal ascription in the High Middle Ages.

The archbishops and Admont assumed that the number of archiepiscopal serfs who married men belonging to Admont would be approximately equal to the number of Admont’s women marrying men who pertained to the archbishop—that is, that on balance neither side would profit unduly from such an arrangement. Fear that one side might gain from this type of agreement may have prompted the more common way of dealing with cross-marriages, namely, the division of the children. Such an arrangement may also have recommended itself to lords because it took into account the respective rights of both parties to each couple and their offspring and property.

Such divisions could take the form of an agreement about specific individuals. For example, Dietrich Hulzener, a serf who belonged to Gerhoch II of Bergheim-Radeck, had married Elizabeth, a serf of Saint Peter’s. Gerhoch and the abbey agreed about 1230 that the couple’s children, whether born before or after their parents’ marriage (Dietrich and Elizabeth had engaged, it seems, in some pre-marital sex), were to be divided equally. If only one child survived, that one and his or her children were to belong jointly to Gerhoch and the abbey.26 One wonders if Gerhoch, whose own children had been divided between Salzburg and Passau in 1213,27 perceived the similarity between himself and Dietrich.

Joint ownership of serfs was a potential source of conflict, and lords often tried to make alternative arrangements if the couple had only one child or an uneven number of children. For example, two serfs of Saint Peter’s had married women who belonged to the cathedral chapter. The canons agreed in 1278 that if one of the couples had only a single child, that one would belong to the abbey, but the second child would go to the chapter and so forth in alternating order; that is, slight preference was given to paternal ascription.28 In 1309 Archbishop Conrad IV allowed his serf Christina, the daughter of Pfriller of Laufen, to marry Heinrich Gaglhamer, a retainer of the cathedral chapter, but stipulated that their children were to be divided equally. If the couple had an uneven number of children, the ownership of each child would be determined by its sex—a boy would belong to his father’s lord, a girl to the mother’s master.29

Lords could also make general agreements about the cross-marriages of their serfs, based on the understanding that the offspring were to be divided between the two lordships. For example, in 1268 Duke Ulrich III of Carinthia and his cousin Archbishop Ladislaus granted the members of their familiae permission to intermarry whenever they wished on condition that all the children were to be

26. SUB 3:380, no. 844. Later examples of lords’ dividing the children of cross-marriages are SUB 3:597–98, no. 1050; Regesten 1:19, no. 136; 20, no. 144; 29, no. 210; 125–26, no. 979; 168, no. 1306; 2:59, no. 485; 3:19, no. 188; 21, no. 204.
27. See above, introduction at note 7.
29. Regesten 2:105–6, no. 915.
divided equally between Carinthia and Salzburg. If there was only one child, he
or she (they were careful to specify that this stipulation applied to both boys and
girls) was to belong to the mother’s lord—maternal ascription—but was required
to marry a spouse who served the father’s master.30 Such general agreements show
that cross-marriages between serfs of different lordships were fairly common by
the thirteenth century, if not already in the twelfth, in spite of opposition to the
practice and the problems it caused. It was inevitable that the serfs of different
lords who lived in close proximity to one another would intermarry, especially if
they wanted to avoid a consanguineous marriage.

Some lords were apprehensive that other lords might deliberately encourage
their serfs to contract extrinsic marriages in order to enlarge their masters’ man-
power or obtain a claim to additional land. This fear was expressed in an agree-
ment that Archbishop Frederick II and Saint Peter’s reached in 1278. Frederick
authorized his and the abbey’s men, whether they were burghers (cives), peasants
(rustici), or tenants (coloni), to intermarry without causing offense or incurring a
fine, provided the children were divided equally and neither party promoted such
marriages too zealously. Only knights and persons of knightly rank (milites et per-
sonae militares) were excluded from this arrangement, presumably because the
abbey did not have a sizable military force of its own.31 Such fears were not totally
unwarranted. The archiepiscopal ministerials, Otto of Walchen and his brother
Adalbero II, acknowledged in 1254 that they had lost the grace of Archbishop-
Elect Philip because among many other misdeeds they had brought his men and
their property under their own control through extrinsic marriages.32

An extrinsic marriage could also be arranged deliberately to resolve a conflict.
Abbot Richer of Saint Peter’s (1242–59) announced in 1249 that the physician
Henry and his wife Diemut, whose son Dietmar had killed an abbatial serf, wished
to atone for their son’s crime by arranging for another of their sons to marry one of
the monastery’s retainers and provide her with half a house as her widow’s dower.
Their own lords, the cathedral canons, consented to this method of atoning for a
homicide.33

The problems caused by cross-marriages were further complicated if the part-
ners did not share the same legal status. The general principle was, as has already
been noted, that the children assumed the status of the parent of inferior rank.
This custom determined the fate of the descendants of Engelbert of Siezenheim,
a retainer of Saint Peter’s, who had married the noblewoman Mathilda. Their
children were legally abbatial serfs, but Abbot Henry II (1167–88) freed their
daughter Adelaide and five grandchildren from all servile exactions except an an-

31. SUB 4:107, no. 100. On Saint Peter’s ministerial age, see John B. Freed, “Die Dienstmann-
schaft von St. Peter,” in Festschrift St. Peter zu Salzburg, 582–1982, Studien und Mitteilungen zur
Geschichte des Benediktiner-Ordens und seiner Zweige 93 (Salzburg, 1982), pp. 56–78.
32. SUB 4:28, no. 30.
33. SUB 4:3–4, no. 4.
nual payment \((census)\) of five pennies. In this instance Engelbert’s servile status took precedence over maternal ascription, though his descendants were eventually granted the preferred position of \(censuales\).

In the Carinthian case of 1265 cited at the beginning of this chapter, however, maternal ascription took precedence over the father’s inferior birth. There was a comparable case about 1160. Liutold, a serf who belonged to the cathedral chapter, wished to marry Bertha, a free \(Barschalk\), but her father Wilher, a bailiff, objected out of fear that she might lose her special status. The canons finally agreed that the couple’s children were to be \(Barschalken\), and Liutold and Bertha were married at the public court that the cathedral provost held in the Chiemgau.

It is impossible to tell how exceptional the canons’ decision was.

These were the complicated, often conflicting rules that governed servile marriages in Salzburg, at least after 1150. In theory maternal ascription was the norm, but in reality the inheritance of property in the male line and patrilocality may have placed greater weight on paternal ascription. It may be that the individual and general agreements that began to be made in the mid-twelfth century regulating such unions were a response both to the acceptance of the legality of extrinsic servile marriages and to the establishment of patrilocal peasant households farming their own quasi-hereditary tenures as lords ceased to farm their own demesnes. Lords may have reaffirmed the principle of maternal ascription, buttressed with the authority of Roman law, in the second half of the thirteenth century precisely because the principle was so frequently ignored. Lords could deal with such extrinsic marriages individually or with general agreements that involved either an exchange of serfs, usually women, or more commonly a division of the children. Which solution was adopted may have depended on the specific circumstances; for instance, it may have been considered spiritually meritorious for a lay lord to give a serf, female or male, to a church. It remains to be seen how these rules were applied to the ministerials.

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34. SUB 1:552, no. 612.
35. SUB 2:406-7, no. 290. It is not clear whether there was some sort of religious ceremony or whether Liutold and Bertha merely exchanged vows publicly. The \(Barschalken\) may have been the completely Germanized descendants of the Roman population that had survived in the eastern Alps until the Carolingian period. On them see Dollinger, \(L’évolution\), pp. 316–31; Dopsch, \(Geschichte Salzburgs\) 1/1:217–18. Klein, “Die bäuerlichen Eigenleute,” p. 173, n. 2, thought the evidence was too fragmentary to judge how frequently maternal ascription may have taken precedence over the father's inferior status. In contrast, Schulz, “Zum Problem,” pp. 97–98, considered it the norm.
Liechtenberg on Salzburg in 1190, it was stipulated that if Ulrich married outside the familia without the archbishop’s permission, he would forfeit both his paternal alods and the fief that Archbishop Adalbert II had assigned to him. For the rest, it is necessary to infer from reconstructions of the ministerials’ genealogies how the archbishops of the time dealt with such cases. The evidence for the thirteenth century is considerably more abundant. In general the ministerials’ extrinsic marriages were handled in the same way as the serfs’, except that such unions, like Gerhoch II of Bergheim-Radeck’s with Bertha of Lonsdorf in 1213, were usually treated individually because of the importance of the persons involved.

The topic of marriages between ministerials and those of higher or lower social status than their own can be disposed of quickly. The ministerials themselves were concerned about marrying their inferiors. The archiepiscopal ministerial Tront, who was still identified as a “servitor” of Saint Rupert’s, expressed this sentiment very clearly when he conferred an alod on Saint Peter’s in 1104/16. The monks were to take actual possession of the property after the death of his wife if “their sons were no longer alive or had not been legally married, namely, to an equal or to a person of superior rank.” Tront’s concern may reflect the fact that it was only in the late-Salian period that the ministerials came to be seen as the superiors of the censuales, that is, that the ministerials’ preeminence within the familia was established beyond question.

There seems never to have been any doubt that the child of a marriage between a noble and a ministerial was unfree. This was true if the father was a nobleman, as was the case with Ulrich II of Sims (see chapter 1), or if the mother was a noblewoman, as with Diemut of Högl, Salzburg’s richest ministerial heiress, who was through her mother Euphemia of Moosen the niece, stepdaughter, and half-sister of counts. The archbishops undoubtedly enforced this custom because it brought noble families and their possessions under the primates’ direct control.

As far as can be inferred from reconstructions of the ministerials’ genealogies, maternal ascription predominated in the twelfth century, at least when the mother was an archiepiscopal ministerial. The enforcement of this principle explains how several families of comital ministerials entered the archbishop’s service before

36. SUB 2:642–45, no. 475. See below, chapter 5 at note 19. In addition, the archiepiscopal ministerial Otto of Berg-Weingarten was permitted in the mid-twelfth century to confer a property he had redeemed from Herrenchiemsee on whomever he wished because his wife, the noblewoman Irmgart (MB 2:314, no. 103), was not a member of the archiepiscopal familia (SUB 2:529, no. 381).

37. SUB 1:320–21, no. 145.


40. In the fourteenth century it still required a formal imperial act of manumission to sanitize the marriage of a nobleman to an imperial ministerial. See Aloys Schulte, Der Adel und die deutsche Kirche im Mittelalter: Studien zur Sozial-, Rechts- und Kirchengeschichte, reprint (Darmstadt, 1958), pp. 24–27, 325–30. I have discovered no evidence that this ever occurred in a marriage involving an archiepiscopal ministerial.
Seigneurial Constraints on Ministerial Marriages

1200. The Steftings, who transferred their allegiance from the counts of Burg- 
hausen to their nephews, the counts of Plain, after the formers’ extinction in 1168, 
are an excellent example of how maternal ascription worked to the archbishop’s 
advantage (see genealogy 2.1). The Steftings were the descendants of Magan I 
of Türken, who had married the unnamed daughter of another Burghausen min-
isterial, Henry I of Stefling, and adopted his father-in-law’s toponymic surname. 
Between 1171 and 1174 their son Otto I of Stefling married a certain G., widow of 
of the archiepiscopal ministerial Henry of Siegsdorf. Otto I’s and G.’s sons During 
and Ortolf II were, like their mother, archiepiscopal ministerials. But Henry IV of 
Stefling, who was probably a descendant of one of Otto I’s brothers, was still in the 
Plains’ service in the mid-thirteenth century.41 In a similar fashion the archbishops 
procured the services of the Schnaitsee-Gutrats, who had been ministerials of 
Margrave Engelbert of Kraiburg (d. 1173),42 and of Rüdiger of Saalfelden, whose 
father was a Plain ministerial.43

41. Reindel-Schedl, Laufen, pp. 219–21. Her reconstruction of the Stefling genealogy requires 
some modification. Otto I of Stefling’s marriage to Henry of Siegsdorf’s widow occurred not after 
1168 but between, 1171 and 1174 (Berchtesgaden, p. 329, no. 154 [on the date, see pp. 326–27, 
no. 150]; Raitenhaslach, pp. 4–5, no. 3). Although Otto I was often listed as a witness among the 
archiepiscopal ministerials, there is no specific evidence that he became, as she asserted, an archiepis-
copal ministerial himself. Finally, Reindel-Schedl made During and Ortolf II the grandchildren of Otto I 
because she identified Otto I’s son Otto II, who was mentioned only in 1204, when he was called 
a youth (SUB 3:53–54, no. 576; 57–58, no. 579), as the father of During and Ortolf II. I suspect 
that Otto II may have been the same person as Ortolf II because Otto could be used as an alternative 
form of Ortolf (SUB 1:342, no. 177); besides, Otto II was too young to be the father of During and 
Ortolf II, who also appeared in documents in the first decade of the thirteenth century (SUB 1:734, 
no. 311; 3:117–21, no. 622). As for the knight Otto of Siegsdorf, who was named in 1242/64 (SUB 
1:763, no. 370) and whom Reindel-Schedl identified as Otto II, I think that he was really one of the 
Steftings’ men, because Ortolf conferred the manor in Siegsdorf he possessed by hereditary right on 
the cathedral canons in 1252 (Regesten 1:19, no. 134).

42. Kuno I of Schnaitsee, the progenitor of the later Gutrats, was identified on several occasions 
as a ministerial of Margrave Engelbert, a younger son of Duke Engelbert of Carinthia (1124–35), 
who had obtained the Spanheimers’ Bavarian holdings (MB 2:293 ff., nos. 36, 41, 89, 101; see also 
CF, pp. 99–101, no. 133). By the 1140s Kuno was already in the archbishop’s service, and he was 
listed with his son Kuno II among the archiepiscopal ministerials in 1160 (SUB 2:228–29, no. 151;
489–92, no. 350). This change of allegiance was a consequence of his marriage to the archiepiscopal 
ministerial Bertha of Berg (MB 2:295, no. 44; 308, no. 83; SUB 1:599, no. 29; 633–34, no. 99). For 
a discussion of the possible political background to Kuno I and Bertha’s marriage, see chapter 5 at 
ote 11.

43. The archiepiscopal ministerial Rüdiger of Saalfelden (1193/95–1234) was the son of the Plain 
ministerial Ortolf I and his second wife Adelaide, who was almost certainly the sister of the archi-
must be amended, however. I had tentatively identified Grimold and Ortolf II, who were Plain minister-
ials, as the sons of Rüdiger’s older half-brother Herrman. But Grimold and Ortolf were identified in 
1220 and 1234, respectively, as Rüdiger’s sons. Ortolf’s widow Petrisa subsequently married 
another Plain ministerial, Otto I of Oberndorf. See Joseph Ernst Ritter von Koch-Sternfeld, Salz-
burg und Berchtesgaden in historisch-statistisch-geographisch- und staatsökonomischen Beyträgen, 
2 vols. (Salzburg, 1810–18), 2:42–43, no. 22; and Ernest Geiss, “Geschichte des regulirten Augustiner-
Chorherren-Stiftes Högelwörd,” Beyträge zur Geschichte, Topographie und Statistik des Erzbisthums 
München und Freising 4 (1852): 332–33, esp. nn. 12 and 13. I am perplexed, however, about how 
Ortolf’s remarried widow could have given her consent to a transaction he witnessed. I do not know in
## Genealogy 2.1 Stefling-Türken

<table>
<thead>
<tr>
<th></th>
<th>G. Otto I</th>
<th>Magan II</th>
<th>Kuno I</th>
<th>Ortolf I</th>
<th>Henry III</th>
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<tr>
<td>Otto II</td>
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<td>During</td>
<td>Salzburg</td>
<td>Parish Priest</td>
<td>Salzburg</td>
<td>Ministerial</td>
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<tr>
<td>Ortolf II?</td>
<td>1208-1247/55</td>
<td>Tarsdorf</td>
<td>1200/14-</td>
<td>d. 1252/55</td>
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<td>Adelaide</td>
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<td>Conrad I</td>
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<td>Steinkirchen</td>
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<td>Salzburg Ministerial</td>
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</table>

| Diepold of Stefling       | before 1139 |
| Burghausen Ministerial    | ca. 1120-1139 |

| Henry I of Stefling       | before 1147 |
| Burghausen Ministerial    | ca. 1120-1161/64 |

| Hildegard of Stefling     | before 1147 |
| Burghausen Ministerial    | before 1147 |

| Magan I of Türken         | before 1147 |
| same as Henry I of Stefling | 1142-1161/64 |

| Henry II                  | 1161/64 |
| Burghausen Ministerial    | before 1147-ca.1180 |

| Eberwin of Stefling        | ca.1130- |
| Burghausen Ministerial    | 1161/64 |

| G. Otto I widow of Stefling | before 1165-1171/74 |
| Henry of Siegsdorf         | 1204 |

| Magan II of Plain          | ca. 1176-1189 |
| Plain Ministerial          | ca. 1180 |

| Kuno I of Plain            |          |
| Plain Ministerial          |          |

| Ortolf II of Plain         |          |
| Plain Ministerial          |          |

| Henry III                  |          |
| Plain Ministerial          |          |

| Adelaide Unnamed           |          |
| m. Conrad I of Steinkirchen |          |
| Salzburg Ministerial       |          |

| Otto II                   | 1204      |          |        |          |           |
| During                    | Salzburg  | Parish Priest | Salzburg | Ministerial | Plain |
| same as                   | Ministerial | of         | Ministerial |          | Ministerial |
| Ortolf II?                | 1208-1247/55 | Tarsdorf | 1200/14- | d. 1252/55 | 1240/57 |
|                           |           | 1200/14  |        |          |           |
|                           |           |          |        |          |           |
| Adelaide                  |           | Unnamed  |        |          |           |
|                           |           | m.       |        |          |           |
|                          |           | Conrad I |        |          |           |
|                          |           | of       |        |          |           |
|                          |           | Steinkirchen |       | Salzburg Ministerial | |
|                           |           |          |        |          |           |
It would be interesting to know what role, if any, the archbishops played in arranging marriages that proved to be so advantageous to Salzburg—an answer will be assayed in chapter 5—and to what extent the archbishops’ success in increasing the size of their own retinues in this way contributed to the political decline and eventual disappearance of the comital houses. If the twelfth-century archbishops did take advantage of the custom of maternal ascription and, quite possibly, deliberately manipulated their ministerials’ marriages for Salzburg’s benefit, then the sudden appearance about 1200 of agreements regulating the ministerials’ marriages may reflect more than the accidental survival of documents. Other princes, more formidable rivals than the Bavarian comital dynasties, may have forced the archbishops to accept a more equitable division of the children of a cross-marriage and, more important, their crucially significant rights and holdings. Such conventions, both general and individual ones, balanced maternal and paternal ascription in ways similar to the accords that lords made about more lowly members of the familia. The particular terms were probably determined by the overall political situation, though concessions to a church may still have been deemed a pious act. The political ramifications of the extrinsic marriage of a prominent ministerial explain why princes preferred to deal ad hoc with the marriages of powerful retainers.

The political context is most evident in two donations that King Ottokar II made to Salzburg on 3 June 1276. At the request of his vassal Eckart of Dobrenge (today Dobrenje, Slovenia), who belonged to the church but had married one of the king’s Styrian subjects, Ottakar gave Salzburg three of Eckart’s daughters.\textsuperscript{44} The king also dealt on the same day with the case of Nicholas I of Stadau, who had lost the grace of his lord Archbishop Frederick II, because he had subjected himself to the king’s authority by marrying a daughter of Conrad of Saurau, a Styrian knight. So that Nicholas could regain the archbishop’s favor, Ottokar gave Nicholas’s firstborn child to Salzburg; the couple’s other children were to be split equally between Ottokar and Frederick.\textsuperscript{45} In these two instances Ottokar II surrendered his rights as the lord of Eckart’s and Nicholas’s wives to their children—even Nicholas, like Otto I of Stefling in the twelfth century, had entered the king’s service as a result of his marriage—because it was politically expedient to pacify the archbishop on the eve of Rudolph of Habsburg’s attack. The political background is less obvious in other agreements, but in many cases it undoubtedly influenced the relative weight attached to maternal versus paternal ascription.

\textsuperscript{44} UB Steiermark 4:351–52, no. 591. Pirchegger, Untersteiermark, pp. 31–32, called Eckart an archiepiscopal ministerial, but though he was listed among the ministerials, I can find no evidence that Eckart was specifically identified as one.

\textsuperscript{45} UB Steiermark 4:352, no. 592. Lang and Metnitz, Salzburger Lehen, p. 235, no. 249, called Nicholas an archiepiscopal ministerial, but I can find no definite evidence for such an identification.
A general convention between Bishop Ekkehard of Gurk (1196–1200) and Duke Berthold VI of Andechs-Meranien (1180–1204) placed greater weight on paternal than maternal ascription, doubtless to protect property rights inherited in the male line. The two parties agreed that if a Gurk ministerial married a ducal ministerial who lived in Carinthia or Carniola, the children were to be divided equally. If there were an unequal number the firstborn, that is, the chief heir if it was a boy, was to belong to the father’s lord; the rest were to be divided equally. If only one child survived, he or she (the agreement was explicit on this point) would succeed the father in accordance with both feudal and patrimonial law; but that one’s children, if there were any, would be divided equally between Gurk and Andechs-Meranien.46 Since Gurk was an archiepiscopal proprietary bishopric, it is quite possible that the same rules applied to a marriage between the archbishop’s and duke’s ministerials.

In contrast, Duke Leopold VI of Austria (1198–1230) and Bishop Gebhard of Passau (1222–32) attached greater significance in 1223 to maternal ascription. They agreed that the children of any of their ministerials or any other members of their familiae who had intermarried or would do so in the future were to be divided equally between them. If only one child survived (or if there were an unequal number) that one was to belong to the mother’s lord. The child would have the right to marry a member of either the ducal or the episcopal familia, but any offspring were to be divided equally between the two princes. The same was true if the son of such a union married a woman of free condition (Leopold and Gebhard appear to have considered it unlikely that a free man would marry a woman of servile condition).47 Their successors, Duke Frederick II (1230–46) and Bishop Rüdiger, renewed the agreement in 1244 but were less specific. They simply agreed that their ministerials and “others of lesser condition” could intermarry freely, provided they and their inheritances were divided equally.48 It would be fascinating to know how Bishop Rüdiger himself, whose own nephews and nieces (the Bergheim-Radecks) had been split in this fashion in 1213, felt about the practice and about the linkage of the ministerials with men of “lesser condition.”

Only one such general convention involving the archiepiscopal ministerials survives. Count Meinhard III of Görz (d. 1258), who like Eberhard II was a Hohenstaufen partisan in the battle with the papacy, granted his vassals (fideles) permission in 1242 to marry members of the archiepiscopal familia whenever they wished. The couples’ children were to be divided equally, and each child was entitled to an equal share of the paternal and maternal inheritance, both fiefs and

46. MC 1:271–73, no. 369. Bishop Otto of Passau and Duke Henry of Lower Bavaria agreed in 1262 that the children of their ministerials’ cross-marriages would be divided equally but that the firstborn would belong to the father’s lord. Breinbauer, Otto von Lonsdorf, p. 142.
47. BUB 2:74–75, no. 246.
In this instance the equal division of the children was linked to an equal partition of the inheritance among them.

The archbishops seemingly preferred to handle their ministerials’ extrinsic marriages case by case. Almost always such settlements involved a division of the children, which Rudolph of Habsburg described in 1278 as the customary procedure required by common law. In the oldest extant accord of this type from Salzburg, Eberhard II and Duke Leopold VI of Austria agreed in 1208 that the unnamed son (Reimbert III?) and an unnamed daughter of the Styrian ministerial Reimbert II of Mureck, who had married the archiepiscopal ministerial Elizabeth, were to belong to Salzburg “in accordance with certain and ancient law” (maternal ascription). The couple’s other two daughters, Gertrude and Elizabeth, were assigned to the duke. If Reimbert and Elizabeth had a second son, he was to belong to Leopold, and any other children they might have were to be divided equally. Each child was entitled to an equal share of both parents’ property. Another provision in the agreement reveals how much emphasis the archbishop and duke placed on maternal ascription. Not only was Reimbert’s only son assigned to Salzburg, but Duke Leopold VI was obliged to give the church two other ministerials—the brothers Meinhard II and Godfrey II of Hornburg, who came from a less important family—to obtain even Gertrude and Elizabeth. It may be that the archbishop and the duke reached this accord only after Reimbert and Elizabeth already had four children because Eberhard, whose predecessors had

49. SUB 3:532, no. 983. On the same day the count conferred the older daughter of his “beloved friend” Henry of Scharfenberg (today Svibno, Slovenia) on Salzburg (SUB 3:531, no. 982). Emperor Frederick II appointed Meinhard imperial governor of Styria and Carniola in 1248, and he succeeded his father-in-law in 1253 as the count of Tyrol.

50. Regesten 1:109, no. 850. On this occasion the king permitted an unnamed Saldenhofen (today Vuzenica, Slovenia) to marry the archiepiscopal ministerial Hartnid of Leibnitz. Rudolph described her as a royal ministerial because Styria had escheated to the crown, but the Saldenhofen were in reality Styrian ministerials. For a genealogy of the lineage, see MC 4/2, Stammtafel IX. The only late medieval case I could find where the children of a cross-marriage were not divided involved Otto II of Weissenegg, son of the Bamberg ministerial Otto I (MC 5:322–24, no. 508), who had entered the archbishop’s service in the 1280s (Ottokars Österreichische Reichchronik 1:383, lines 105–14). Otto II, who had married Catherine Ungnad, a Bamberg ministerial (MC 5:377–78, no. 589), swore to Archbishop Conrad IV in 1303 that all his children were to belong to Salzburg (MC 7:73–74, no. 184). The archbishop may have enforced strict paternal ascription in this case because his rights to Otto II were so dubious that the bishop of Bamberg was unwilling to agree to a division.

51. SUB 3:109–10, no. 617. Reimbert II’s son Reimbert III appeared between 1224 and 1235 (UB Steiermark 2:305–7, no. 214; 425, no. 322) and was dead by 22 March 1242 (SUB 3:532–34, no. 984). Elizabeth’s family of origin was not given, but I believe she may have been a Leibnitz. Three archiepiscopal ministerials witnessed the 1208 agreement. One of them was an otherwise obscure ministerial Godfrey Keltze of Leibnitz (SUB 3:639–40, no. 1095) who did not appear again until 1231, significantly enough in a document involving the Murecks (SUB 3:411–13, no. 868). He then witnessed a number of documents that dealt with the disposition of the Mureck patrimony after the death of Reimbert II, who had outlived his son (SUB 3:532–34, no. 984; 623–24, no. 1078; 631–32, no. 1086; 642–43, no. 1097). Godfrey’s presence on such occasions suggests that he was Elizabeth’s kinsman. The possible political background of this agreement will be discussed in chapter 5 at note 22.
profited from maternal ascription, was reluctant to concede to Leopold any rights to Reimbert II's children.

Yet five years later when Salzburg and Passau divided the children of Gerhoch II of Bergheim-Radeck and Bertha of Lonsdorf, the archbishop obtained the two oldest children even though Gerhoch was his ministerial. It may be that greater weight was placed on paternal ascription in this case because the couple had a say in the decision. That is, the agreement may reflect Gerhoch's own patrilineal self-consciousness, and King Frederick II may have been asked to confirm the accord because its marked preference for paternal ascription was deemed unusual. In any case, the "certain and ancient law" was flexible enough to permit an emphasis on either maternal or paternal ascription if it suited the princes' purposes.

As with the serfs, the princes sometimes worried about the fate of the only or odd-numbered child—in 1225 the patriarch of Aquileia and the bishop of Gurk defined the "odd" child as the eldest. Duke Otto III of Lower Bavaria (1290–1312) and Archbishop Conrad IV agreed in 1291 that the children of the archiepiscopal ministerial Rüdiger of Eichham and his Bavarian wife, Hildegard of Inzing, were to be divided between them. If there were an unequal number, the "odd" child, if it was a boy, was to be assigned to his father's lord (Salzburg) or if it was a girl to its mother's lord (Bavaria). In this case the assignment of the only or odd-numbered child was determined by sex, but the arrangement also ensured that if the child was a boy the archbishop would retain control of the Eichhams' lordship.

To summarize, the ministerials' marriages were subject to the same restrictions that governed the marriage of any member of the familia. Indeed, the agreements that Austria and Passau made in 1223 and 1244 stressed that the same rules applied to the ministerials and to individuals of "lesser condition." In theory, extrinsic marriages were prohibited; in fact, as the numerous extant agreements and genealogical reconstructions show, such unions were common. Failure to obtain the archbishop's consent to marry outside the familia could lead to the confiscation of the ministerial's possessions—a punishment that was enforced in at least one famous case, the marriage of Karl of Gutrat to the Austrian ministerial Margaret of Zöbing. Seigneural customs dictated originally that all the children of a ministerial cross-marriage belonged to the mother's lord, and the archbishops took advantage of this right in the twelfth century to obtain the services of a number

52. SUB 3:171, no. 666. See above, introduction at note 1.
53. Other examples of such divisions involving archiepiscopal ministerials are 1232, Adelaide of Stefling and Conrad I of Steinkirchen, an Ortenburg ministerial (SUB 3:425–27, nos. 882a, 882b; UB Raitenhaslach 1:195, no. 238); 1272, Gebhard II of Felben and Adelaide of Freundsberg, a Bavarian ministerial (SUB 4:73, no. 73); 1280, the hypothetical marriage of the hoped-for heir, regardless of sex, of Otto of Walchen, brother of Archbishop Frederick II, to a Bavarian retainer (Regesten 1:121, no. 938); and 1311, Frederick of Goldegg and the Styrian ministerial Elizabeth of Liechtenstein (Regesten 2:118, no. 1023; 3:17, no. 170).
55. Regesten 2:10, no. 82. For other examples, see SUB 3:563–64, no. 1013; 4:93–94, no. 87.
of important ministerial lineages. The inheritance of property in the male line meant, however, that greater consideration had to be given to the rights of the husband’s lord, particularly if he was a rival prince. About 1200, therefore, it became customary to divide the children of the ministerials’ extrinsic marriages, and this may explain the sudden proliferation of both general and individual agreements regulating such unions. The arrangements varied, determined in part by the specific political situation, but it is striking how often the firstborn child, especially if a boy, obtained the father’s status, thus ensuring that the most important part of the lineage’s inheritance would not be alienated to another lord through marriage. Ironically, it was at least in part the church’s own prohibition of consanguineous marriages that forced the ministerials to contract extrinsic unions.

Canonical Constraints on Ministerial Marriages

Like all Christians, the ministerials were subject to the church’s prohibition of consanguineous marriages and the extension of these rules to affines—that is, relatives by marriage—and spiritual kindred. There has been considerable scholarly controversy in recent years about how well the church enforced its teachings, particularly the prohibition of marriages within the seventh degree of kinship, which remained in effect until the Fourth Lateran Council in 1215, but these arguments have concentrated on the high aristocracy and not on the lower strata of society.

Georges Duby argues that at the beginning of the twelfth century there were two antithetical models of marriage. The lay model emphasized endogamy, the possibility of divorce, and family control of the choice of marriage partners in order to prevent the fragmentation of a lineage’s patrimony among too many heirs and to ensure the survival of the dynasty in the male line. The church, by contrast, stressed exogamy, the indissolubility of marriages, and the importance of the partners’ personal consent in constituting a valid union. During the course of the twelfth century both sides were forced to compromise, in part because the laity utilized the church’s prohibition of consanguineous marriages as a pretext to obtain divorces, most notably those of Louis VII and Frederick Barbarossa. In the new synthesis that lasted until this century, the laity accepted ecclesiastical control of marriage, including the church’s strictures on divorce and remarriage; but in 1215 the church modified its opposition to endogamous marriages by limiting its prohibition to marriages within the fourth degree.56

Constance Brittain Bouchard maintains in opposition to Duby that the French nobility was familiar with the teaching of the church and that French nobles in the tenth and eleventh centuries rarely married a relative closer than a fourth or fifth cousin. Donald C. Jackman has in turn criticized Bouchard for looking only at intermarriages between lineages and not also tracing cognatic lines of ascent, a considerably more difficult task. His investigations of marriages among the high German aristocracy during the reign of Emperor Henry II (1002–24) indicate that marriages between second cousins (3:3 degree) were deemed unlawful, even though they occurred, but that annulments were not mandatory in the case of a 4:3 union (second cousins, once removed). The enforcement of these rules was a highly selective political decision.

Investigations of how well the church’s teachings were obeyed by the French and German high nobility, whose choice of suitable spouses was even more limited than the ministerials’ and whose marriages often had enormous political and familial ramifications, have little bearing on the ministerials in the archdiocese of Salzburg in the twelfth and thirteenth centuries. Their own choices were complicated by the ambiguities in the archbishop’s position: as a churchman he was expected to enforce rules that promoted exogamy, but as a seignior he encouraged endogamy by prohibiting extrinsic marriages. Even after 1215, the approximately twenty lineages of greater archiepiscopal ministerials could not normally marry their peers within the familia without violating the church’s teachings, and the problem grew steadily worse as the number of eligible lineages dwindled. Regrettably, there are no hard data on how the ministerials handled their dilemma. Because the natal families of most women are unknown, it is not possible to trace the ascendants of any ministerial couple with sufficient accuracy to find possible violations. Nevertheless, there is circumstantial evidence—most notably the extrinsic marriages themselves—that the ministerials avoided consanguineous unions, if for no other reason than that extrinsic marriages were a sign of their liberation from the confines of the familia, but that the ministerials probably paid less attention to the extension of the rules to affines and their spiritual kindred.

There is one twelfth-century example from the archdiocese that fits Duby’s model of an endogamous marriage designed to preserve the patrimony of a great noble clan: the marriage of Rudolph of Falkenstein (1099, d. after 1133) and Gertrude of Weyarn (d. by 1133), the parents of Count Sigiboto IV of Falkenstein (b. 1126). They were either second cousins (3:3 degree) or possibly even first cousins once removed (2:3 degree). That Sigiboto IV concealed this flagrantly


consanguineous marriage in the genealogy he included in the *Codex Falkensteinensis*, even though it meant obscuring the source of his own name and was intended only for his and his sons’ use, shows that his parents’ marriage had become a source of considerable embarrassment to him.\(^59\) The count’s reticence suggests in turn that such consanguineous marriages were no longer tolerated by the second half of the twelfth century in the Austro-Bavarian area. The only known cases of persons with ties to the archdiocese who received papal dispensations for contracting such marriages occurred after 1290 and involved individuals who belonged to princely and comital houses and whose divorce would have had unwanted political consequences.\(^60\) The laity in the archdiocese appears thus to have accepted the kind of compromise Duby describes.

The best evidence that the ministerials avoided marriages within the prohibited degrees, however, is the extrinsic marriages themselves. Everline Oberhammer, who examined the marriages of members of the Austrian and Styrian *Herrenstand* between 1200 and 1500, found that more than half the known marriages of the Styrian lords, almost all of whom were of ministerial rank, were with non-Styrians. Like the archiepiscopal ministerials, the Styrians had no other choice, because the number of dynasties of Styrian lords was reduced from twenty-five in 1300 to twenty by 1350, to ten by 1400, and to only four by 1500.\(^61\) In addition, Oberhammer could find only a few cases where a couple was related within the fourth degree, and all these marriages occurred after 1350.\(^62\) There is no way of knowing, however, whether her failure to find such marriages before 1350 is simply due to a lack of evidence or proves that such unions did not happen. Still, the Styrian magnates were more likely to find a suitable marriage partner whom they could marry legally among the approximately seventy lineages that belonged to the Austrian *Herrenstand* about 1300 than within their own smaller circle of peers,\(^63\) particularly because such intermarriages had been completely legal in territorial law since the Georgenberg Compact of 1186.\(^64\) Since most of Styria


\(^60\) The nobleman Frederick, advocate of *Mersch*, and Agnes, sister of Count Frederick I of Ortenburg (1233–1304), discovered after their marriage that they were related in the fourth and third degrees. They received a dispensation in 1290 at the request of Duke Albrecht of Austria, whose wife was Count Frederick’s sister-in-law (MC 6:101–2, no. 151). Count Meinhard VI of Görz, who was related in the fourth degree to his wife Countess Catherine of Pfannberg, received a dispensation in 1341 to prevent a feud between their houses and because Meinhard was not a partisan of Louis the Bavarian (Regesten 3:123, no. 1241).


\(^64\) BUB 1:85–90, no. 65, article 6. The Georgenberg Compact, the so-called Styrian Magna Carta, was issued in anticipation of the Babenberg acquisition of the duchy and confirmed the rights of the Styrian ministerials. See Heinz Dopsch, “Die Ministerialität des Herzogtums Steiermark zur Zeit der Georgenberger Handfeste: Ihre rechtliche, gesellschaftliche und politische Stellung,” in *800*
was under the archbishop's spiritual jurisdiction, the extrinsic marriages of the Styrian lords offer additional indirect evidence for the observance of the canonical prohibitions in the archdiocese.

As for the archiepiscopal ministerials, they too contracted a significant number of extrinsic marriages. The Steflings, whose genealogy has already been discussed in this chapter, are one example. They entered into three marriages where the wife's identity or legal status is known: the marriage of Magan of Türken to the daughter of Henry I of Stefling within the Burghausen familia; the marriage of Otto I to the widow of Henry of Siegsdorf, which resulted in the transfer of the lineage's allegiance to Salzburg; and the marriage of the heiress Adelaide of Stefling to an Ortenburg ministerial. Two of the three known Stefling marriages were thus extrinsic ones (see genealogy 2.1). In addition, a daughter of During or Ortolf II of Stefling may have married a Goldegg, that is, a fellow archiepiscopal ministerial. Other lineages present a similar picture. For example, the Pettaus, who may have been especially prone to extrinsic marriages because they lived in southern Styria, contracted nine external marriages (six men, three women) and only six internal ones (two men, four women) in the twelfth and thirteenth centuries (see genealogy 3.3). The same pattern can be seen among the Schnaitse-Gutrats, who lived within the principality: seven extrinsic unions (five men, two women) but only two intrinsic ones (one man, one woman) (see genealogy 3.6).

Needless to say, this evidence must be used with caution. It is possible that extrinsic marriages were more likely to leave a trace because of the problems they caused, and an examination of cognatic lines of ascent, if the evidence permitted such an analysis, might reveal kinship even in these unions. In spite of these caveats, the ministerials' external marriages, generation after generation, are a

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65. Archbishop Frederick II indicated in 1272 that his cousins Otto VI and Conrad II of Goldegg had obtained the bailival court (Pflegericht) in Taxenbach in the Pinzgau after the extinction of the lords of Stefling (SUB 4:75–79, no. 76). In addition, Otto VI served as the archiepiscopal judge in Tittmoning in 1307 (UB Raitenhaslach 1:458–59, no. 543). This court had also been in During of Stefling's possession at his death (Regesten 1:133, no. 1036). Since the Goldeggs succeeded the Steflings in both Taxenbach and Tittmoning, there may have been a family link between the two lineages.

66. Freed, "German Source Collections,” pp. 87–111. I have included among the extrinsic marriages Otto of Königsberg's marriage to the Styrian ministerial Richza of Rohitsch (today Rogatec, Slovenia), though I have not included it in the genealogy.

67. Freed, "Crisis,” pp. 118–21; and above, n. 42. The marriages that are not documented in these two places are Kuno II and Ita of Diebering (SUB 1:448–49, no. 363a; 664–65, no. 170; 2:637, no. 468; 3:209–10, no. 698b); Kuno III and Gertrude of Mureck (SUB 1:739, no. 320; 3:517–19, no. 968); Kuno IV and a Tettelham (UB Raitenhaslach 1:159–61, nos. 188, 189; 175–76, no. 209); Ita of Gutrat and Henry II of Töring (SUB 1:500, no. 458; 509, no. 473a; 3:493–94, no. 941); and Otto II and Kunigunde of Liechtenstein (Urkunden des Cistercienser-Stiftes Heiligenkreuz im Wiener Walde, ed. Johann Nepomuk Weis, FRA 2/11 [Vienna, 1856], Anhang, pp. 309–11, no. 8).
powerful argument that they avoided consanguineous unions, while at the same
time asserting their liberation from the familia by doing so. One other unanswer­
able question must at least be broached: To what extent did the enforcement of
the church’s teachings contribute to the political decline of the comital houses by
forcing their handful of ministerials to find suitable spouses elsewhere, often to
the archbishop’s temporal advantage?

Oddly enough, there is more explicit evidence from the archdiocese about pro­
hibited marriages to affines than about consanguinous unions, and this may mean
the laity paid less attention to these rules in arranging marriages. The chief piece
of evidence is the transcript of a divorce case on the grounds of affinity from the
diocese of Gurk in 1266. The parties were Lord Henry, a knight who belonged to
the garrison of Strassburg, the bishop’s chief castle, and his wife Lady Mathilda.
The case had originally been heard by the provost and archdeacon of Gurk (no
record survives of this), but Mathilda had appealed to Bishop Dietrich II (1253–
78). He had in turn delegated the appeal to the dean of Gurk, who had cited the
parties to appear. Her appeal was rejected when she failed to come, and she was
subsequently excommunicated for contumacy. At Henry’s request Bishop Diet­
rich referred the case back to the provost for a final decision. The provost and
two assessors he had appointed then heard the witnesses individually in private;
their testimony was recorded by a notary, and the provost sealed the transcript.
Mathilda was summoned to appear at a specified date to hear the witnesses and
their depositions, but after she again failed to come, she was excommunicated
once more for contumacy, and the notary’s transcript was made public.

The first and most important witness was Engelram Putzo of Strassburg, a Gurk
ministerial and the episcopal vidame.68 He testified that Henry and Mathilda were
related in the third and fourth degrees of affinity because her first husband Lord
Eberhard and her second husband Henry had been blood relatives. When Engel­
ram was questioned about how he knew this, he traced Eberhard’s and Henry’s
lines of ascent back to their common ancestor. After further questioning, Engel­
ram added that he belonged to the same lineage. Lord Dietrich Crezske, another
knight in Strassburg,69 said the same thing and stated that he had learned this from
his servants. The judges heard identical testimony from five other witnesses, in­
cluding Engelram’s son Gebhard Putzo.70 Pressed by Henry’s advocate, the judges
ruled that Henry and Mathilda were related in the fourth degree of affinity because
of the consanguinity that existed between Mathilda’s first and second husbands
and therefore declared the marriage null and void.71

68. On Engelram’s identity, see MC 2:127–28, no. 684. A Henry of Strassburg, who may have
been Mathilda’s second husband, was identified elsewhere as Engelram’s nephew (MC 2:98–99,
no. 649).


70. On Gebhard’s identity, see MC 2:98–99, no. 649.

Henry’s willingness to incur, in his own words, great “expense and effort” to procure a dissolution of his marriage and the very fact that the elaborate proceedings not only were recorded in considerable and careful detail but also survive show that this was an unusual case. The preservation of the transcript is even more surprising because the parties were not great nobles or even members of powerful ministerial lineages like the Gutrats but individuals at the very fringes of thirteenth-century noble society—ministerials and knights of the bishop of Gurk. Unfortunately there is no way to know, without additional background information and comparable lawsuits, why Henry was so eager to end his marriage and whether the unusual feature of the case was that affines who were related in the fourth degree had married in the first place or that such a marriage was now annulled.

Nevertheless, three important conclusions can be drawn from the proceedings. First, Engelram Putzo and the other witnesses were remarkably well informed about their own and each other’s ancestry—so well that they could in fact avoid a marriage within the prohibited degrees if they wished to do so. This raises the question whether there was collusion among the witnesses and possibly the judges as well. It was Henry who wanted the divorce, and it was his kinsmen and friends who testified on his behalf. If everyone in Strassburg knew that affinity was an impediment to Henry and Mathilda’s marriage, why had they been permitted to marry in the first place? In other words, were Henry and his relatives, like Duby’s twelfth-century French nobles, employing affinity as a legal pretext to dissolve an unwanted union? Second, the cathedral canons and parish priests who participated in each step of the proceedings were quite familiar, even in a backwater like Gurk, with the legal niceties of the church’s teachings. This suggests that ministerials could readily have obtained this information from their clerical relatives. As it happens, the families of origin of two of the clerics involved in the lawsuit are known: Bishop Dietrich was a Marburg, one of the ministerial dynasties that belonged to the Styrian Herrenstand,72 and Provost Frederick came from a family of minor Gurk ministerials, the Tannenberg.73 Third, if a marriage between affines who were related in the fourth degree was dissolved because it threatened, according to Henry’s advocate, their eternal salvation, it is hard to imagine that consanguinous unions were tolerated in the archdiocese.74

73. Provost Frederick called himself Frederick of Tannenberg in 1258 (MC 2:78–79, no. 629). A Frederick of Tannenberg had been identified in 1195 in an episcopal charter as a Gurk ministerial (MC 1:267–68, no. 362). See also MC 2:7–9, no. 540.
74. There is one other case from the archdiocese before 1343 involving affines. Pope Benedict XII authorized Archbishop Henry in 1339, after he had investigated the case, to grant a dispensation to Henry called Lamp, a squire, who had married Elizabeth of Teising, presumably a member of the family of knights and burghers of Salzburg who bore that name. They had discovered after their marriage that Henry had been related in the fourth degree to Elizabeth’s first husband (Regesten 3:113, no. 1123). On the Teising, see Dopsch, Geschichte Salzburgs 1/1:401, 405.
Finally, although marriages between spiritual kinsfolk were also prohibited, in actual practice little weight seems to have been attached to the bond between a godchild and a sponsor. I have found no example of a person’s making a donation to a monastery in memory of his or her godparent. As was the case in the Carolingian period and as is true today in Latin America, baptism was an opportunity to link the sponsor to the child’s natural parents at the time of the sacrament rather than to forge a future personal bond with the godchild. The few references to the institution in the sources from the archdiocese stress the coparental aspect of the relationship.

Rapoto II of Ortenburg, count palatine of Bavaria (1208–31), stated that he had sponsored Otto V of Goldegg, son of Otto IV and Lady Kunigunde, and afterward had given two serfs to his cofather Otto. According to his account book, in December 1292 Duke Otto of Carinthia (1295–1310), who along with his father was at war with the archbishop, spent eight pounds for copaternity (“conpaternitate”) in Windisch-Matrei in the East Tyrol, presumably to keep the allegiance of his supporters in this disputed region. Most interesting of all, in September 1297 Archbishop Conrad IV sealed the peace that ended his long war with Albrecht of Austria by lifting the duke’s unnamed daughter out of the baptismal font.

Still, it is striking how unimportant godparenthood appears to have been in the archdiocese during the High Middle Ages. Otto IV of Goldegg may have asked the count palatine to sponsor his infant son, but he named his child Otto, not Rapoto, a name that would have been a reminder of the Goldegg’s ties to the Ortenburgs. The only other reference to godparenthood from the archdiocese underscores the institution’s relative insignificance. In 1151/67 a Wolfram—perhaps Wolfram of Offenwang because his kinsman (cognatus), the archiepiscopal ministerial Wolfram I of Harphesham, headed the list of witnesses—gave the cathedral canons a property he had obtained from his own godfather Altmann or from Eberhard, his son’s godfather. If Wolfram could not remember this fact because he was, presumably, not very close to either man, it suggests that the ministerials may inadvertently have married their spiritual kinsman or kinswoman because no one bothered to check affiliations that had little bearing on their lives.

76. SUB 3:396, no. 856. The notice states that Rapoto gave the serfs to “eodem Ottoni conpatrinmo.” A *patrins* is a godfather, but it is hard to see why anyone would refer to his godson as his cogodfather. My guess is that Rapoto was referring in fact to Otto IV and that the word in question should really be *conpatri*.
78. Ottokars Österreichische Reimchronik, 2:931–32, lines 382–441. Lynch, *Godparents*, pp. 126, 169, noted that lifting a child from the font was seen as the decisive moment in creating a godparental relationship and that members of the secular clergy received children from the font until the thirteenth century. Archbishop Conrad’s sponsorship of Albrecht’s daughter is thus a very late example of this practice.
79. SUB 1:653–54, no. 143. On the two Wolframs, see SUB 1:397, no. 275a; 412–13, no. 295.
Of the contradictory external constraints on the ministerials' choice of marriage partners, the requirement that they marry within the archiepiscopal familia was derived from their legal status as serfs. But all Christians were subject to the second proscription: the prohibition of consanguineous unions and the extension of these strictures to affines and spiritual kinsfolk. The growing concern about extrinsic ministerial marriages and the increasing number of them in the twelfth and thirteenth centuries suggest that in a conflict between the two behavioral norms the latter carried more weight.

This preference for extrinsic marriages should not be attributed solely to piety, however. Whereas great nobles like the counts of Falkenstein—whose choice of suitable marriage partners was even more limited by the twelfth century than was the ministerials’—contracted endogamous marriages to stop the alienation of their patrimony to alien lineages, a marriage outside the familia was a token of the ministerials’ rise out of servitude. At the same time, extrinsic marriages often served the archbishops’ political purposes as well. In the twelfth century the archbishops may deliberately have enforced, for example, the canonical prohibitions on consanguineous unions and used the system of maternal ascription to weaken the Bavarian comital houses by obtaining the services of their men. In a paradoxical way the sudden proliferation about 1200 of both general conventions and specific agreements dividing the children of extrinsic ministerial marriages, the most visible reminder of the ministerials’ personal servitude, may be a tribute both to the archbishops’ success in enforcing the church’s teachings and to the growing political and social importance of the ministerials, which made their marriages a matter of the utmost princely concern. The next chapter will examine the restrictions the ministerials imposed on themselves in their choice of marriage partners.