THE PERMEABILITY OF BORDERS: DRAFTING ROMANIAN LAST WILLS IN THE SEAT OF SIBIU DURING THE EIGHTEENTH CENTURY*

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In the early morning, on the 28th of May 1773, Joseph II entered Sibiu. Already displeased with the "completely ruined citadel" near the Heltauer gate, his sight was soon drawn from the "nicely and evenly cultivated area" around the city to the small and "abhorrent" Gypsy-inhabited suburb that had arisen outside the city walls.[1] Joseph's displeasure would extend from landscape to people and practices, and particularly to administration.

Nine years before Joseph's journey, in the depth of winter, Valentin Grau, the Villicatssecretär[2], was rushing through the same "abhorrent" settlement in an attempt to locate a particular shack. It was not Grau's first foray into the area. On this particular occasion, his presence had been specifically requested by the elderly Gypsy Dutke, the widow of Mihai Koste. Feeling that her "bodily strengths were diminishing with each year's passing", Dutke had decided to have her last will and testament committed to

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[1] Ileana Bozac, Teodor Pavel, eds., *Die Reise Kaiser Josephs II. durch Siebenbürgen im Jahre 1773,* vol. I. (Klausenburg: Zweite Ausgabe, Rumänische Akademie, Zentrum für Siebenbürgische Studien, 2007), 602, 604.

[2] The Villicat was the Stadthanneamt, according to Heinrich Herbert, "Der innere und äussere Rath Hermannstadts zur Zeit Karls VI. Mittheilungen aus den Magistratsprotocollen," *Archiv des Vereins für Siebenbürgische Landeskunde* 17 (1883): 351. The Villicatssecretär also fulfilled the role of scribe for the divisions under the jurisdiction of the Vorstadteilamt, most likely the department of the Teilamt dealing with the city's suburbs. See Georg Eduard Müller, *Stühle und Distrikte als Unterteilungen der Siebenbürgisch-Deutschen Nationsuniversität 1141–1867; verfassungsrechtliche Forschungen* (Hermannstadt: Krafft und Drotleff, 1941), 278.

paper while her reasoning was still sound. The widow recounted that her niece Julliana, married to a certain Nikula Kasak, had been caring for all her necessities for the past 25 years. She had shown her aunt nothing but love, as opposed to her other nieces and nephews, who had not even thought to "quench her thirst with a drop of water". The elderly woman had therefore decided that, should her niece continue to care for her, she and her husband would receive as a sign of gratitude the shack she currently inhabited along with all her possessions.[3] Grau wrote down the widow's disposition, and received 1 Hungarian florin in payment of his services, somewhat more than was customary. The same sum went to Christian Kloß, a master weaver in the city, who served as witness to the drafting of the document.[4]

What do these two apparently unrelated fragments have in common, apart from their shared setting, near the Heltauer gate, in one of Sibiu's aesthetically-unpleasing hinterlands? While not readily apparent, they both reflect the existence of jurisdictional boundaries, which overlapped ethnical and social-economic borders. Inside the city walls, legally-empowered Saxons benefitted from the offices of the Magistrate, an institution which oversaw, among other things, the proper devolution of estates upon individuals' passing. Outside its gates, in the various "Maierhöfen" and the shanties surrounding this provincial centre, Romanians, Gypsies and Protestant exiles from the Austrian Crownlands lived in a legally grey area, neither completely under the control of the urban authorities nor benefitting fully from the array of rights granted to the urban citizens.[5] Further away from the city gates stretched the seat of Sibiu, where villages were in the great majority of cases inhabited both by Romanians and Saxons. While Joseph's description emphasizes the visible aspects of this boundary, Valentin Grau's activity in the service of an elderly Gypsy widow offers a glimpse into its permeability in a decisive circumstance: the drafting of final dispositions. Although administrative borders between city and suburbs, and between semi-urban and rural areas may have been striking in the most visible social-economic terms, they did not overlap perfectly with jurisdictional fault lines. What is more, adaptation to a dominant legal culture drawing from the urban, administrative centre did not necessarily entail the erasure of local particularities, still visible in the mediated discourses present in various legal documents.

The present paper examines precisely how this permeability of borders was made

[3] Serviciul Județean al Arhivelor Naționale Sibiu (hereafter abbreviated as SJANS), Magistratul Orașului și Scaunului Sibiu – Testamente C, Document no. 13, fol. 21r.

[4] Ibid, fol. 21v. Valentin Grau signed the document as *secret. Villic., tanquam teste ad id specialiter requisite*.

[5] The Saxon administration, and especially the Saxon patriciate, preferred to extend its possessions with gardens placed in the suburbs, rather than cede this land to Romanians or the Austrian Transmigrants. The complaints lodged by these groups against the city's authorities had already reached the Emperor by the time he conducted his visit. See Angelica Schaser, *Reformele iosefine în Transilvania și urmările lor în viața socială. Importanța edictului de concivilitate pentru orașul Sibiu.* Traducere de Monica Vlaicu (Sibiu: Hora, 2000), 121–123; Georg Müller, "Die ursprüngliche Rechtslage der Rumänen im Siebenbürger Sachsenlande," *Archiv des Vereins für Siebenbürgische Landeskunde,* 83. Band, 1&2. Heft (1912): 253.

manifest in the legally pluralistic milieu of the seat of Sibiu, during the latter half of the eighteenth century. It is guided by two main threads: on the one hand, it delves into the practice and circumstances of will-making in the case of the Romanians inhabiting the various villages surrounding Sibiu; on the other hand, it attempts to identify some specific characteristics of the language employed in Romanian final dispositions, without falling into the pitfall of over-interpreting repetitive statements and taking the writer's voice for that of the testator. This focus serves to highlight to what extent the 'cultures of formality' present in urban, dominant Saxon testamentary contexts bent to accommodate the issues encountered by other individuals and families of other ethnicities and denominations.[6]

1. The institutional and legal frameworks of succession in the seat of Sibiu during the eighteenth century

For almost three centuries, on the Saxon lands, the same legal code underlay how wills were to be drafted, in whose presence, and who was entitled to receive what upon the death of one's relatives. The pathways of inheritance followed the provisions of the law of the land (Eigenlandrecht), comprised in the work entitled *Statuta Iurium Municipalium Saxonum in Transilvania*.[7]

The Saxons had received the right to draft their own civil laws on the basis of their historically-grounded juridical and self-administrative privileges, into which central authorities in Transylvania were allowed no ingression. The provisions of the Statuta would then apply to all of the Saxon inhabitants of the Königsboden (*fundus regius*), but were in fact extended to include members of other ethnicities present in this jurisdictional enclave.[8] Indeed, the all-encompassing character of the Saxon jurisdiction predated the codification of the custom, as the University had already decided in 1543 that all inhabitants of this "closed territory" were subjected to its laws.[9] While the jurisdictional legal pluralism that characterized the overall province was not as visible on the Königsboden as it was in other areas, a kind of "weak" pluralism continued to manifest itself through variations in legal language and practices, taking place throughout early

[6] On the concept of 'Cultures of Formality', see Ian F. McNeely, *The Emancipation of Writing. German Civil Society in the Making, 1790s–1820s* (Berkeley [u.a]: University of California Press, 2003), 32–35. In Sibiu and its surroundings, several such 'cultures of formality' could be distinguished during the eighteenth century, owing to the emergence of the Viennese administration.

[7] I have used the 1721 German edition of the *Statuta*, published in Friedrich Schuler von Libloy, *Siebenbürgische Rechtsgeschichte. Zweiter Band: die siebenbürgischen Privatrechte,* Zweite durchgehends vermehrte Auflage (Hermannstadt: Buchdruckerei der v. Closius' Erben, 1868). All subsequent notes refer to this edition, unless otherwise stated. A comparison between the original German print of 1583 and this edition has yielded almost no differences, at least in the second book, which dealt with family, inheritance, and testamentary law.

[8] Martyn Rady, *Customary Law in Hungary. Courts, Texts and the Tripartitum* (Oxford: Oxford University Press, 2015), 156.

[9] Mária Pakucs-Willcocks, ed., *,zu urkundt in das Stadbuch lassen einschreiben'. Die ältesten Protokolle von Hermannstadt und der Sächsischen Nationsuniversität*, Quellen zur Geschichte der Stadt Hermannstadt, vol. 5 (Hermannstadt – Bonn: Schiller Verlag, 2016) 348, entry no. 198.

modernity.[10] The existence of a variation of practices, especially in terms of inheritance rights, was also enabled by the inconsistencies present in codified custom, which could not be adequately resolved by appealing to Roman or canon law. To a certain extent, during the latter half of the eighteenth century, this led to the emergence of several 'cultures of formality' as well as to stark deviations from the prevalent Saxon customary framework, especially in regards to testamentary succession.

Roman law served as a subsidiary law to the Statuta, a fact explicitly mentioned by Fronius in the first section of the work.[11] The Saxons had therefore also taken over, along with the model provided by the Justinian Novels regulating testamentary and intestate succession, an inherent uncertainty in maintaining equity between the claims of kin and the freedom of individual dispositions.[12] The other source of the Statuta, medieval German customary law, was not without issues itself: prior to codification, the partible inheritance practiced in certain territories meant that "the devolution of property was as often decided by emotions and sibling jealousies as it was by legal precepts".[13] The gaps and uncertainties in Saxon codified custom, though filled at least partially by Roman law, allowed for the development of various strategies, primarily aiming to ensure that testators' wishes took precedence over the residual rights of relatives. How these uncertainties were translated into other ethnic milieus on the Saxon lands was another matter altogether.

The institutional framework underlying the devolution of property on the Saxon lands only briefly pre-dated the codification of custom, and became increasingly differentiated with time. Between 1522 and 1565 the first Stadtbuch of Sibiu recorded various mentions of estate division, will-making, and inheritance trials, which suggests that these issues fell under the supervision of the Bürgermeister and the Magistrate. As the final version of the Statuta was undergoing revision in the 1570s, the Small Council saw it fit to imitate the example of nearby Brașov and establish a Theilamt, in order to relieve themselves of the onerous tasks related to the supervision of inheritance proceedings. The Theilamt, or division office, was charged with overseeing the partitioning of estates and gained currency in the great majority of Saxon cities during the sixteenth century.[14] It was mentioned for the first time in 1567 in Brașov, and had already appeared as a

[10] Lauren Benton and Richard J. Ross, *Legal Pluralism and Empires, 1500–1800* (New York&London: New York University Press, 2013), 3–7.

[11] *Statuta,* I. Buch, 1 § 5 and 1 § 6.

[12] Béla Szábo, "Die Rezeption des Römischen Rechts bei den Siebenbürgen Sachsen," *Publicationis Universitatis Miskolciensis. Sectio Juridico et Politica* IX (1994): 175.

[13] Erica Bastress-Dukehard, "Negotiating for Agnes' Womb," in Matthew P. Romaniello, Charles Lipp, eds., *Contested Spaces of Nobility in Early Modern Europe* (Farnham: Ashgate, 2011), 58.

[14] The institution of the *Theilamt* in early modern Transylvania has recently attracted the interest of Romanian and Hungarian historians. Enikő Rüsz-Fogarasi has written for instance on the Theilherren as instruments of social disciplining, in "Judele divisional – factor al disciplinării sociale?," in Toader Nicoară, ed., *Disciplinarea socială și modernitatea în societatea modernă și contemporană (sec. XVI – XXI)* (Cluj-Napoca: Accent, 2011), 32–41. Other more comprehensive studies are those by Kóvacs Kiss Gyöngy and Kiss András. Moreover, the Theilamt was said to handle divisions where minors where involved, but in fact began handling much more than that (including divorces).

distinct branch of the Small Council in Sibiu in 1573.[15] The evolution of the urban landscape was reflected in the subsequent split of the office into two departments: one for the upper or main part of the city, and one for the lower part (Pars Superior, Pars Inferior). This process of separation was attested to by the existence of distinct registers of division (*Theilungsbücher* or *Theilungsprotocolle*) for each of these urban spaces, beginning with 1670. A third Theilamt appeared in 1739 for the seat of Sibiu, as a result of the requests lodged by the central officials (*Stuhlsgericht* or *Judicat*) in charge of overseeing petty civil complaints, who could no longer handle the high inflow of petitions and ensuing trials regarding inheritance from the seat's inhabitants. Another branch of the Theilamt handled the cases of division in the city's suburbs, the so-called Vorstadt. Scholars have noted that this branch existed prior to 1801, but was not an entirely self-standing unit: the Stadthann and the Marktrichter fulfilled the roles of first and second divisor, while the protocolling was left to the Villicatssecretär. The nearby villages of Heltau and Stolzenburg also received their own such institutions prior to the nineteenth century. Still, these village offices were subordinate to their central-level counterpart (the Stuhltheilamt), where the protocols of estate divisions were to be submitted at the end of each year, and where unsatisfied heirs could appeal the decisions of their local officials.[16] Each of the two urban offices of division comprised three positions: two Theilherren or divisors, accompanied by one Theilschreiber, who acted as secretary.[17] The equivalent institution for the inhabitants of the seat of Sibiu had much the same structure.

Practically, the tasks fulfilled by the Theilherren amounted to what in English-speaking areas was designated as 'probate', or the proving of a will. Probate jurisdiction was more clearly defined, while testamentary jurisdiction – where testaments were to be sent – was broader, reflecting the overlap in attributions between the Magistrate of Sibiu and the Saxon University.

The early Romanian purveyors of Enlightenment values in eighteenth century Transylvania were well aware of the fact that the Romanians inhabiting the Königsboden were placed under the jurisdiction of the Saxon law. Some of its members therefore strove to make its provisions accessible to non-German speakers in rural milieus by undertaking several Romanian translations of the Statuta. The significance of these translations, copies of which presumably circulated in Romanian-inhabited villages, was also revealed by their authorship: Samuil Micu Klein undertook one such endeavour himself.[18] However, the efforts to ensure that Saxon authorities could properly communicate with the Romanian villagers from the Königsboden in matters of law were somewhat one-sided. Towards the end of the eighteenth century, some Saxon offi-

[15] Müller, *Stühle und Distrikte*, 277–278.

[16] Müller, *Stühle und Distrikte,* 278–279.

[17] In the village setting, an inhabitant who was sworn in, along with one of the village elders and a notary were responsible for conducting the estate inventory and partitioning it under the supervision of the *Pupillen-Inspektor*.

[18] G. H. Tontsch, "Die rumänische Übersetzung des Eigenlandrechts von Samuil Micu-Clain," *ZfSL* 2. Jg (1979/1): 41–83.

cials evidenced an interest in creating instruments that would facilitate such exchanges of information, namely German-Romanian dictionaries: though initially meant for the sole use of their authors and quite limited in scope, these would gain some currency in time.[19] The interest in the Romanian language would nevertheless remain mired on a cultural-historical level, insufficiently profound to overcome the political and juridical fault lines that divided the Saxons and Romanians in the villages surrounding Sibiu. It would take specialized actors and able scribes to translate wishes, complaints, and fears, while at the same time keeping within the boundaries of proper legal language.[20]

A fluid jurisdiction rather than a clear-cut administrative unit, the seat of Sibiu included several categories of settlements, classified according to juridical status, in relation to the city's Magistrate or to other landowners.[21] With few exceptions – such as Cisnădioara – the 58 villages in question were inhabited both by Romanians and by Saxons. Less than half of them were located on the Königsboden, and the majority were placed in a dependent relation either to Sibiu itself or to the seat's administration. Within these two categories were the villages of Răşinari (De. Reschinar), Avrig (De. Freck), Mohu (De. Moichen), Săcădate (De. Szakadat), Veştem (De. Vestem), Gura Râului (De. Gurarou) and Poplaca (De. Poplaka). The majority of the testaments to be further discussed stem from these primarily Romanian-inhabited settlements.

2. Sources

The present study is based on 122 final dispositions left by Romanian testators in the seat of Sibiu between 1723 and 1800. These were forwarded to the city archives of Sibiu sometime after the 1720s, when this branch of the Magistrate was re-organized as a self-standing department meant for the preservation and ordering of documents, and Martin Schuller was appointed as archivist (or vice-notary).[22] Around the same decade the Magistrate also began to require the proper observation of protocolling in all instances related to the transmission of property and the care of orphans and widows.[23]

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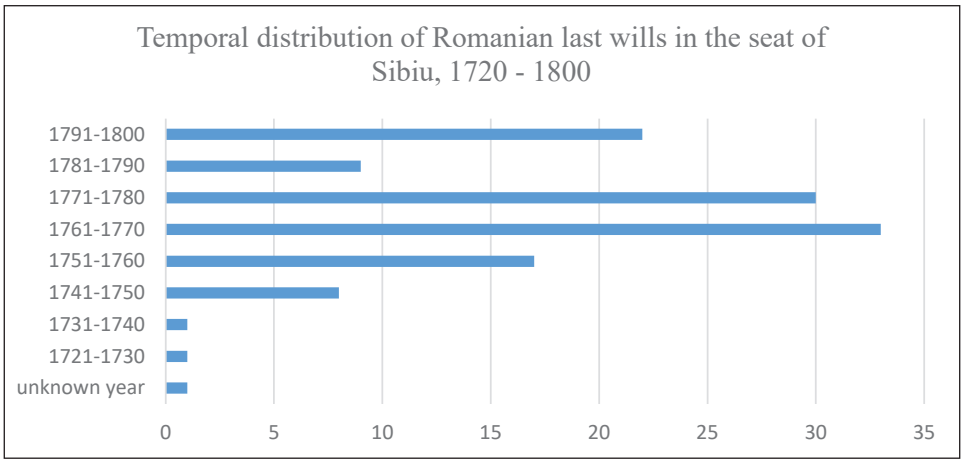
[19] Stefan Seinerth, *Geschichte der Siebenbürgisch – Deutschen Literatur im achtzenten Jahrhundert* (Cluj-Napoca: Dacia Verlag, 1990), 28–29.

[20] In 1740, the Magistrate ordered that 'in case anyone from the citizenry or the inhabitants of the seat will wish to forward any memorial to the Magistrate in the future, he or she will have these drafted either by the notary or by a sworn secretary, and otherwise no memorial written by others will be accepted.' See Heinrich Herbert, "Die Rechtspflege in Hermannstadt zur Zeit Karls VI. Mittheilungen aus den Hermannstädter Magistratsprotocollen," *Archiv des Vereins für Siebenbürgische Landeskunde* 27 (1896): 40.

[21] An overview of each village's duties towards the Magistrate or towards other landowners has been provided by Müller, "Die ursprüngliche Rechtslage der Rumänen", 85–250.

[22] Herbert, "Der innere und aussere Rath", 414.

[23] Franz Zimmermann, *Das Archiv der Stadt Hermannstadt und der sächsischen Nation* (Hermannstadt: Verlag des Archives, 1887), 20.



The great majority of wills in this sample were drafted during the latter half of the century, displaying a distribution similar to that of the more numerous Saxon wills kept in the same archival fund.[24] For more than 68% of the documents the place of drafting was recorded properly either at the beginning or at the end of the disposition: 20 were drafted in the city itself, 18 in Freck, 14 in Szakadat, 9 in Poplaka, 7 in Reschinar, 3 in Zoodt (Ro. Sadu), Baumgarten (Ro. Bungard) and Vestem, 2 in Guraro, Großau (Ro. Cristian) and Moichen (Ro. Mohu). For the rest, neither the exact provenance of the testator nor the place of drafting were recorded. It may however be safely assumed that these documents also pertained to inhabitants of the same villages surrounding Sibiu, who were able to access specialized help in setting their final dispositions to paper and in having them preserved in the archive. The great majority of such documents – regardless of where they had been written – bore the mention that they were opened by the Stuhltheilamt, confirming that the testators whose estates were to be divided hailed from within the seat's boundaries. Even those testaments where the place of recording was given as *Hermannstadt* or *Cibinium* referred, without exception, to Romanian testators who made the journey to the city – or lived on its outskirts, in the peripheries established during the eighteenth century – in order to find someone to commit their wishes to paper.[25] Their wills were also opened by the representatives of the seat's office of division, and the devolution of their estates was overseen by the same institution.

[24] Wills were not always forwarded to the city's archives as self-standing documents, but were in some cases appended to the protocol and inventory following the division of the deceased's estate, and afterwards bound in the Theilungsprotocoll (register of divisions). However, compared to the wills kept in the specially-designated archival fund, the number of documents bound into registers is much lower. While not necessarily approaching significance from a statistical standpoint, the present sample of wills appears to be representative (i.e. no documents were discarded due to bias, and presumably all testaments forwarded to the archive were kept).

[25] In many cases, especially towards the final decades of the century, the page of the division protocol where the division of a testator's estate was recorded was also noted on the final folio of

The impact of the German administrative milieu was felt heavily: the majority of wills were written in German (65), in the usual Kurrentschrift used at the time by German-speaking clerks, employed either by the church or the lay administration. Somewhat more than a third were written in Romanian (46), and a few documents were committed to paper in Hungarian (8) or in Latin (3). Of those drafted in Romanian, only 17 were written in the Cyrillic alphabet, the rest having been recorded with Latin characters. As shall be discussed further, the city administration appointed specialized actors in order to make legible such final dispositions to its Theilherren, who were less inclined to parse Cyrillic writing.

3. The circumstances of will-writing and the activity of scribes

The ways in which both Romanian testators and Saxon (or Romanian) authorities endeavoured to shape the predominant legal culture in order to accommodate specific issues were discernible in the day-to-day practice of composing final dispositions. A bird's-eye-view of this particular type of legal composition is still necessary and worthwhile, even though such writings were merely one type of artefact among other early modern juridical documents, moulded by the contexts in which they were produced.[26]

Final dispositions can be regarded as a composite image of their writers' professional provenances, the legal and cultural milieus in which they emerge, and their subjects' own backgrounds. Certain factors played a greater part in shaping the potential pathways such documents could take, such as the degree to which a certain legal system relied upon the subsidiarity of Roman law or the circulation of particular formulary books. Nevertheless, individual choice, whether that of the scribe or of the document's subject, still played a considerable part in directing formulations and expressing concerns. While it is not generally a straightforward process to disentangle one from the other – writer from testator from context –, merely acknowledging the entanglement does not suffice.[27]

Romanian last wills are exemplary from this perspective, as the layers of the legal subjects' concerns and the scribe's training, though intertwined, can be more easily

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the document. Despite the existence of a separate Theilamt for the city's suburbs, I have found no indication that those final dispositions whose testators stemmed from the Vorstadt were proved by this branch. Without exception, the wills written in the city by various officials bore the mention 'opened and proved by the Stuhlteilamt'.

[26] Since Natalie Zemon Davies, a host of historians has dealt with this issue, with greater or lesser success. More recent are Kathryn Burns, "Notaries, Truth, and Consequences," *American Historical Review* 110 (2005): 350 – 379, and Laurie Nussdorfer, *Brokers of Public Trust: Notaries in Early Modern Europe* (Baltimore: The Johns Hopkins University Press, 2009).

[27] This debate has mainly focused on preambles and religious expression, and found greater resonance in English-speaking milieus. See for instance Alsop, J.D. "Religious Preambles in Early Modern English Wills as Formulae," *Journal of Ecclesiastical History* 40, 1 (1989): 19–27, and Margaret Spufford, "The Scribes of Villagers' Wills in the Sixteenth and Seventeenth Centuries and Their Influence," in Margaret Spufford, *Figures in the Landscape: Rural Society in England, 1500–1700* (Aldershot: Ashgate, 2000), 28–41.

pulled apart than in cases where writer and subject shared a common linguistic and cultural background. While this was certainly due to social and educational disparities between writers and those who entreated them to put pen to paper in their service, the specificities of Romanians' testaments cannot be reduced to this type of inequality.

Where then and under what circumstances did Romanian testators have their final dispositions drafted?

The Statuta allowed for several types of wills: testators could either compose their final wishes themselves, summoning two or three "credible male persons" to attest to the resulting document's authenticity or, as in the majority of cases encountered in the city, solicit the presence of these "honourable men" during the devising.[28] It was also possible – though not explicitly noted – to have a will composed by an instance of authority, either lay or ecclesiastical. Romanian testators generally appealed to the second and third options, a sign of both the limited literacy skills typical of rural milieus and of the necessity to have an intermediary figure of authority who could broker trust between the Magistrate and its subjects. This is not to say that Saxon wills from the city of Sibiu were at the time solely composed by the testators themselves, or that a majority of Saxon testators showed much higher degrees of literacy. Rather, Romanian wills shared many characteristics in terms of their production with Saxon wills from rural areas: the same middling administrative figures, such as the previously noted Valentin Grau, attended to the less privileged in hearing their final wishes, regardless of ethnicity or provenance.

Final dispositions generally began with a more or less detailed description of the circumstances of drafting, sometimes noting where this process occurred. The location of drafting ranged from the abodes of these figures of authority to the testators' own homes, or even the residences of the local representatives of the administration, the village judges. Where a will was produced, and in whose presence, indelibly left a mark on the proceedings themselves and on how the final dispositions were put to paper. In early April of 1762, Bukur Opriș and his wife Iuone from Poplaka sought out Valentin Grau in his residence ("coram nobis infrascriptis") and vented their worries that, having reached an advanced age without having borne offspring, they were left with no one to care for them. The secretary of the Villicat then "honored their equitable request" to have a final disposition drafted in favor of a certain Barb Muntjan and his wife Marianne, who promised to care for the Opriș family until their passing.[29] The will was then witnessed by – presumably – the village priest Radu, a Iuon Njak, and a Koman Njan, "as summoned witnesses".

Similarly, in 1779 Oprea and Dobra Marku from Poplaka travelled to Sibiu and sought out the officials of the Theilamt who were charged with overseeing divisions in the seat. Around 9 in the morning, the couple found Georgius Kain, an Assessor[30], and Michael Goekelius Hoch, the department's secretary, willing and able to hear their

[28] *Statuta*, II. Buch, 5 § 4.

[29] SJANS, Magistratul Orașului și Scaunului Sibiu – Testamente O, No. 2, fol. 2r.

[30] An Assessor would have also had some kind of legal background in this context, and would have served as an observer of various legal proceedings.

wishes and commit them to paper. On behalf of the couple, Kain and Hoch then crafted an elaborate disposition in favour of their nephew Scherban Spetar. The young man had reportedly served them faithfully for the past three years and had promised to continue doing so until their death, and was therefore left a yearly income of 15 Hungarian florins until his uncle and aunt's passing. Moreover, having obtained the agreement of Scherban's father, Dobra's brother Sztojka Spetar – also present at the proceedings –, Dobra bequeathed her nephew her entire third of the communion of goods she shared with her husband.[31] Scherban would in turn renounce his claim on his share of his father's estate, to the advantage of his younger brother Buckur. In a practiced economy of gestures typical for such proceedings – a friendly Vergleich between relatives leading to an equalization of shares – "and for more security, this Sztojka shook hands with his sister Dobra, and remained, according his statement and after all notions advanced, content".[32] The couple's trust in the officials of the Theilamt seemed to withstand the test of time. On December 10th, 1794, almost fifteen years after the initial document had been recorded,

> "Opre Markul and his wife Dobra from Poplacka appeared [before us], [and] both produced the present, prudent testament and asked that it be opened and made known to them again, because of the long time [which had passed] its content had faded from their memory, and [as] their foster child Serban Spata cared for them to this day, they did not want him to incur damages for the efforts he had already made".[33]

Samuel Soterius, a senator on the Small Council, who at the time headed the seat's division office, consented to this "just demand", opening the document and reading it anew to the couple, who re-confirmed its validity. Their foster child's yearly wage for services rendered was increased to 20 Hungarian florins, on the condition that he would not only continue to care for them, but also ensure their burial according to the usual custom, and "take care of the proper Szerindar and Pomana". Finally, reflecting on the unforeseeable – that Serban would perish before them – they instructed the writers to extend the validity of their "legacy" to the young man's heirs.[34] Also present were the same Georgius Kain, still working as an Assessor, and Johann Christoph Streck, an Actuar.[35] While it is possible that the couple found no one closer to home able to interpret the document, it is more likely that due to the value attached to the formality of the

[31] According to Saxon law, the communion of goods (*communio bonorum*) was established at marriage. Of the entirety of the common estate, one third (*Drittheil*) was allotted to the wife, and two-thirds (*Zweytheil*) to the husband. After a spouse's passing, their relatives were entitled to inherit up to two-thirds of their respective share. An individual could only bequeath freely one third of their share.

[32] SJANS, Magistratul Orașului și Scaunului Sibiu – Testamente M, unnumbered, fol. 83r–83v.

[33] SJANS, Magistratul Orașului și Scaunului Sibiu – Testamente M, unnumbered, fol. 84r.

[34] SJANS, Magistratul Orașului și Scaunului Sibiu – Testamente M, unnumbered, fol. 84v.

[35] Actuaries became increasingly common during the early nineteenth century, especially in German-speaking areas. For instance, David Sabean, in *Property, Production, and Family in Neckarhausen, 1700–1870* (Cambridge: Cambridge University Press, 1991), 74, notes that: "The Actuar was a trained

proceedings, they deemed it wiser to return to the recording instance. In this way, they avoided potential accusation of having tampered with it, and the ensuing annulment of their carefully crafted provisions.

Most often, it was not the testators who travelled to the writer, but the writer who plied his trade in their residences. The same Valentin Grau would acquiesce in 1770 to the special request made by Oprea Angyelinne, a local resident of the Mayerhoffen surrounding Sibiu, to travel 'to the Mayerhoff where he had come to live/: because he found himself in great illness:/, not only to hear his last will, but also to commit it to paper'.[36] Grau was accompanied this time by Michael Enyeter, designated as "Gubernial Cancellist" – most likely a secretary or scribe in the Gubernial administration –, another recurring figure in the context of will-writing in the non-Saxon milieu.

Romanians seeking to find someone who could translate their wishes into 'proper legalese'[37] often appealed to members of the clergy. Whether Orthodox, Greek-Catholic, or even Lutheran, these individuals benefitted from a great degree of trust in the community, which often transcended confessional boundaries.

In the case of final dispositions drafted by Romanian clergy, the influence of ecclesiastical literature circulating from the territories beyond the Carpathians was felt in various ways. Generally, the documents in this sub-category, written in Romanian, either in the Latin or in the Cyrillic alphabet, were designated as *kartje*, with the variant of "carte".[38] Stan and Marina Motronje from the same village of Poplaka had a *kartje* drafted "to leave at their son's hand", as the document written "word for word with the saying of Sztan Motronje" by the village priest Njagoe noted.[39] However, some wills were also referred to as "diate", the specific term employed for this type of document in the Romanian Principalities East and South of the Carpathians.[40] In 1762, a certain Ana, wife of Ioan Măsaru, who claimed to hail from "Makidonia, in the Turkish Lands", had decided that "until I am seized by the end of life, and while my mind is yet unspoiled and still healthy, to make a diate and to prove my thoughts to my confessor (Ro. *duhovnik*) and to the holy Church of the Greek people".[41]

A special category of intermediary actors, who had among their attributions that of recording Romanians' final dispositions, were the 'Wallachian city scribes' or 'Translators of Wallachian language'. These individuals were appointed by the town as the official writers of documents in Romanian using the Latin alphabet. They also often translated documents that had already been written in Romanian (and Cyrillic) into

accountant who took over much of the work earlier done by the Amtsschreiber. [He] handled revising mortgage volumes and keeping the increasingly complex financial records of the village."

[36] SJANS, Magistratul Orașului și Scaunului Sibiu – Testamente A, No. 13, fol. 23r.

[37] McNeely, *The Emancipation of Writing*, 42–27.

[38] SJANS, Magistratul Orașului și Scaunului Sibiu – Testamente B, No. 45, fol. 91r.

[39] SJANS, Magistratul Orașului și Scaunului Sibiu – Testamente M, No. 17, fol. 41r.

[40] See for instance Elena Bedreag, "Succesiunea testamentară între voința individuală și cea a neamului în Moldova secolului al XVII-lea," in *Analele Științifice ale Universității "Alexandru Ioan Cuza" din Iași. Istorie*, LIX (2013): 165–179.

[41] SJANS, Magistratul Orașului și Scaunului Sibiu – Testamente M, unnumbered document, fol. 29r.

German, in order to enable the Saxon authorities to better parse their meaning. In 1736, Antoni Nicolau was nominated in this office, while in 1740 this position was occupied by Grigor, the son of Preda. Other Romanian scribes who took down in writing the final dispositions in the villages around Sibiu were Macarius Pop Surdan (1761)[42] and Joseph Istrath, who designated himself as 'Trans. Ling. Vall'.[43] Such an office brought with itself a yearly salary of 50 Hungarian Gulden, two pails of fruit, and two fathoms of wood.[44] Around mid-century, the same Gregorie Preda still held the office, and designated himself as 'the writer of the town of Sibiu for Romanian', and noted that he had written down the final dispositions of a Romanian couple 'with their sayings and teachings above, and with the knowledge of the judge Mik. Binder'. He was repaid for his services with 1.37 florins. Almost one year later, Preda took the same document back to Poplaka, the testator's place of origin, to be signed by several local witnesses. These testified that "we, those who are undersigned, also signed this charter [brought] by himself the writer Gligorie to our village here and held before us, as its contents have been approved by everyone".[45]

Regardless of who took down testators' final dispositions, their pronounced ceremonial character as legal documents was visible in their attendance as well in their setting. Among many will-writing instances, the figure of the village judge emerged as central to the proceedings. This particular type of position, as well as the individuals occupying it in sixteenth to eighteenth-century Transylvania have recently been the object of an extremely detailed and revealing work.[46] Their appearance at villagers' bedsides when a will was being written was only one of their varied attributions. Akim Plescha, village judge (Dorf Richter) of Moichen appeared as witness to Bukur Oltean's testament, written down in 1793, along with several other neighbours and a "sworn man", Barb Simion.[47] In 1751, in Poplaka, the will of Vasile and Stanca Ciontea was sealed and signed by the witnesses in the home of the village judge Many Barb, designated as "sude".[48] The other witnesses were all village jurors, the same kind of "sworn men" or "Geschworenen" who were imbued with a great degree of trust both by the community and the urban or seat-level authorities.[49] Finally, the village judges might come to have a hand in the recording proceedings themselves, by dictating a proper beginning to the testators' final wishes, and therefore inserting themselves and their authority as guarantees for the legal standing of the document. The will left by Oprea

[42] SJANS, Magistratul Orașului și Scaunului Sibiu – Testamente, Folder D, unnumbered will, fol. 11r.

[43] SJANS, Magistratul Orașului și Scaunului Sibiu – Testamente, Folder B, Document no. 45, fol. 91r.

[44] Herbert, "Der innere und aussere Rath," 414.

[45] SJANS, Magistratul Orașului și Scaunului Sibiu – Testamente, Folder C, Document no. 3, fol. 3.

[46] Livia Magina, *Instituția judelui sătesc în Principatul transilvaniei* (Cluj-Napoca: Editura Mega, 2014).

[47] SJANS, Magistratul Orașului și Scaunului Sibiu – Testamente O, No. 14, fol. 28v.

[48] Livia Magina has noted the various spellings and translations of this term in other milieus and documents. See Magina, *Instituția judelui sătesc*, 109–121.

[49] SJANS, Magistratul Orașului și Scaunului Sibiu – Testamente C, No. 3, fol. 3r.

and Stana Opriș initially revealed not this elderly couple's fears and complaints, but the implicit brokerage position of the village judge:

> "Being I, Potru Dragomir, judge (Ro. *jude*), along with the village elders, and coming before us this man, namely Oprea of Opriș with his wife, with Stana, so that it be known that, as God has given us this trouble (ro. *nevoje*), and being afraid that we will spend (ro. *munka*) everything, we have called to our house the esteemed elders, so as to reveal that which we want".[50]

By explicitly stating they were summoned and present at the proceedings in the initial lines of the document, the village judge lent both this and the village elders' authority to the proceedings. It also had the often-encountered effect that the voices of the testators, beginning after the formulaic phrase "so that it be known that…", were interwoven with this declaration of presence and authority.

Having one's will drafted in one's own home, in the presence of figures of authority, either lay or administrative, could also function as a kind of reckoning with those relatives who had not fulfilled their duties, and therefore might take on the form of a lengthy complaint and a retribution for past misdeeds. The testators would have been in a position of power, almost daring their relatives to counter their provisions and accusations in the presence of priests and witnesses. One such case is the revealing final disposition left by Anna Orbotte or Orbotjasza from Czoodt, which deserves to be recounted more fully:

> "In the year 1770, I, Anna Orbotjasza being on death's door, have summoned to my house my brothers and sisters, see brothers that I have called you here to my home, and there is a priest and a friend here to bear witness of what I leave you, so that you will not upset your brother-in-law, because look, see I leave you everything. Because of my will (ro. *kartje*) you should make no further division after my death, and remain with these that I leave, namely …[here follows a description of what pieces of land each is to receive], and these plots I leave from my share. And the place in the delnitze I leave to my son Thoader of Comane so that you will not meddle there, and who should dare to meddle, that man will not obtain God's forgiveness. […] And who should dare to break what has been written above, that man will not be forgiven by God, neither in this world nor in the next, as this is what I, Anna, have left with your agreement".[51]

Anna's testament, written in Romanian with Latin characters by a priest named Thoader, and witnessed by a certain Bukur Czimpojarul, was the result of very public proceedings. By summoning her entire side of the family before her, the testatrix meant for her disposition to leave a discernible imprint in their memory, so as to avoid further protestations after her passing. This type of arrangement was not untypical

[50] SJANS, Magistratul Orașului și Scaunului Sibiu – Testamente O, No. 10, fol. 20r.
[51] SJANS, Magistratul Orașului și Scaunului Sibiu – Testaments O, No. 9, fol. 19r.

for Romanian rural wills, where often the entirety of living kin would be entreated to appear before their dying relatives in order to make sure that, beyond the written form, final dispositions had been heard from the testators' mouths, in a performance revealing the authority the speaker held in the kin group.

Anna's concerns that her brothers and sisters might attempt to meddle in her husband's affairs after her passing proved to be unfounded. Less than one month later, her widower Roman would agree to a friendly Vergleich with her four siblings. It appears that Anna and Roman's son Thoader had also passed away in the meantime, as Roman was said to be "lacking bodily heirs". Roman also agreed to leave to one of his brothers-in-law a black hoe worth 1,20 Hungarian Florins, with the condition that all remaining household items, "without exception", would be left to him. All parties "had shaken hands" to strengthen the agreement, and pledged to uphold this renewed contract, which was then committed to paper in the appropriate protocol of division. The office of division in turn "promised" to validate it.[52]

Among the other kinds of individuals present at testamentary proceedings in rural Romanian milieus were those with property, as for instance the *possessionati ex Vestem*[53], representatives of the lower nobility – a certain Ioan Klain, designated as *fatze nemesaske din Szad*[54] – or those collectively described as "honourable men" (*oameni de omenie*), a term that usually referred to village jurors.[55] It should also be noted that the role of witness – and village juror – was not fulfilled exclusively by Romanians, especially in mixed Romanian-Saxon villages. The "honourable sworn men Martin Binder and Simon Krauß" were for instance present in Freck (Avrig) in 1767, following Opra Scholda's explicit request "to the Amt, that two sworn men be assigned" in order to hear – and most likely also record – the elderly man's donations of land to his son.[56] In the same year, Iuon Orsa's donation of land to his brother, again recorded in Freck, was witnessed by several *Altschaftsm*änner, the equivalent of the Romanian "village elders" previously mentioned, a group that included both Saxons – Daniel Krauß and Martin Binder – and Romanians – Onye Stenile and Maxim Stan. A certain Mattes Krauß, designated as "vill.", most likely the current village judge, presided over the proceedings.[57]

4. Bending language

The content and form of final dispositions were influenced by more than just the circumstances under which they were produced. In the case of early modern witness depositions, it has been noted that, despite the – notaries and other scribes –power that came with wielding the feather and knowledge of the law's twists, and turns "testimonies

[52] SJANS, Magistratul Orașului și Scaunului Sibiu – Testaments O, No. 9, fol. 18r – 18v.
[53] SJANS, Magistratul Orașului și Scaunului Sibiu – Testamente C, No. 9, fol. 10v.
[54] SJANS, Magistratul Orașului și Scaunului Sibiu – Testamente M, unnumbered document, fol. 47v.
[55] SJANS, Magistratul Orașului și Scaunului Sibiu – Testamente G, unnumbered document, fol. 48v.
[56] SJANS, Magistratul Orașului și Scaunului Sibiu – Testamente O, No. 7, fol. 15r.
[57] SJANS, Magistratul Orașului și Scaunului Sibiu – Testamente O, unnumbered, fol. 23r.

did not all sound alike".[58] Witnesses in judicial proceedings, like testators, left indelible traces of their own intentions and language even in the final version of documents. On the other hand, repetitive formulations, even concerning the most basic of affectively-charged statements like one's love of one's spouse, hint at the fact that language and form in final dispositions should be examined critically.[59]

This section proposes to achieve precisely this: to examine how regularity in expression was tied to the work of certain writers or to a specific denominational or cultural adherence, and what could be said to be characteristic of the entirety of the language employed in Romanian wills, beyond repetitive formulas. Moreover, it argues that it is necessary to examine the proceedings and their results from the scribes' perspectives, in order to assess the extent of the mediating and interpretive character of their activities.

It is clear that the language of wills, like that of written testimonies, followed certain pre-set patterns. Some reflected the widespread use of similar formulary books, and the continuities in legal expression that could partially be ascribed to common underlying legal systems such as Roman law. In this first category belonged such phrases as those referring to the scribe's agreement to hear and take down in writing the testator's intentions: expressions such as "not only to put their last will to paper, but also to attest to it for future security"[60] appeared very often, in a number of variations. For instance, one of the few notaries who was also active in the Romanian village setting around Sibiu during the latter half of the eighteenth century, a certain Petrus Hartmann, noted the following towards the end of a final disposition he recorded in Szakadath:

> "We certify now that all that is above-written, was the final instruction and will of the aforementioned Moisin Mihay, and was sealed with a finger-seal, because they are not skilled in writing; and that we have not only brought the same to paper according solely according to his wish and in accordance with the truth".[61]

Hartmann's use of an expanded formula was typical for the late eighteenth century, and appeared throughout both Romanian and Saxon final dispositions. Most scribes with a background in administration – mainly notaries or employees of the offices of division – used variants of it. Valentin Grau, with whom the present study began its enquiry, noted in 1761 that he had been "suppliantly asked to bring [the testator's] final

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[58] Elizabeth S. Cohen, "She Said, He Said: Situated Oralities in Judicial Records from Early Modern Rome," *Journal of Early Modern History* 16 (2012): 418: "Furthermore, for all the shaping power of the law and its servants, testimonies did not all sound alike. That variety itself testifies to the speakers' own contributions."

[59] Kathryn Burns, "Notaries, Truth, and Consequences," *American Historical Review* 110 (2005): 354 "To read in a will for the first time of a deceased person leaving her spouse property "out of the love I bear him" is to wonder about the history of mentalités, of love and affection; to read this standard phrase for the fifth or sixth time is to wonder about the conditions of notarial production of wills."

[60] SJANS, Magistratul Orașului și Scaunului Sibiu – Testamente O, No. 2, fol. 2r.

[61] SJANS, Magistratul Orașului și Scaunului Sibiu – Testamente M, unnumbered document, fol. 68r.

wishes to paper", when serving in the capacity of scribe in the village of Vesten, while he was employed as a village Actuar.[62]

Still, some formulations seemed to be a reflection of writers' preferences, and, as in the case of testimonies, although they "were not exactly what had been said, […] corresponded to something such a person would likely find sayable".[63] The same Valentin Grau, confronted with situations wherein a testator's relatives had not apparently displayed a sufficient availability to help their elderly kin, often noted that the former had not even had the benefit of having their "thirst quenched with a drop of water". The same expression was used in the above-noted wills of Dutke Costea and Oprea Angyelinne, but also in Dumitru Lapedat's testament of 1752[64], and in Anna Barbu's final disposition, written in 1757. It was most likely meant to show that when the testator had been ill and in a time of need, their kin – who would be reprimanded in the course of the document – "had not even provided them with the smallest of care".[65] Grau's mode of expressing what must have been a frequent occurrence among already overburdened families represented a clear example of a "scribal habit", as this formulation did not occur in any other testament apart from those he authored.[66]

Certainly, other kind of formulations, pertaining to the primordial canon-law function of wills, were also present regardless of writer or testator. What is noteworthy is that the confessional divisions between the Orthodox Romanian testators and their Lutheran Saxon contemporaries were felt in particular ways in this respect. For instance, the ever-present German formulation in Saxon wills according to which "nothing is more certain that death, and nothing more uncertain than the hour of its coming" (i.e. based on the Latin original of *mors certa, hora incerta*) found its way into Romanian Orthodox wills in the following form: "Since the future occurrences are unseen, and remain unknown even to the angels, as only to God all is known".[67] Still, some Romanian testators who had their final dispositions committed to paper in German remained with the tried and true expression, which emphasized one's mortality and insecurity in the face of death: "da ich sterblich bin, die Stunde aber meines Todes nicht weiß".[68]

More interesting perhaps are not the overused formulations pertaining to a will's scope or legal character, but those specific to the Romanian milieu in early modern Transylvania. One such case is that of the so-called *afurisenie*, the imprecation employed as a ritual way of ensuring the dispositions of the deceased would not be meddled with after their passing. While the *afurisenie* usually had extra-ecclesiastical manifestations in the village setting, it could also be uttered – and committed to writing – by ecclesiastical figures. Repertoires of such imprecations circulated in Transylvania during

[62] SJANS, Magistratul Orașului și Scaunului Sibiu – Testamente C, No. 9, fol. 10r.
[63] Cohen, "She Said, He Said," 418.
[64] SJANS, Magistratul Orașului și Scaunului Sibiu – Testamente L, No. 9, fol. 12r.
[65] SJANS, Magistratul Orașului și Scaunului Sibiu – Testamente B, No. 22, fol. 36r.
[66] Cohen, "She Said, He Said", 424.
[67] SJANS, Magistratul Orașului și Scaunului Sibiu – Testamente M, unnumbered, fol. 29r.
[68] SJANS, Magistratul Orașului și Scaunului Sibiu – Testamente N, No. 4, fol. 5r.

the eighteenth century. These primarily assumed a punitive character, by invoking the wrath of God for those deeds that would go unpunished by secular authorities.[69] In the absence of strong Romanian central authorities to safeguard the proper transmission of their estates, at least a third of Romanian testators in the present sample included such clauses in their final dispositions. It is also possible that, while a certain degree of trust must have existed between testators and the Saxon notaries and clerks who attended to their summonses, the Romanian inhabitants of the villages surrounding Sibiu attributed increased security to their dispositions when they included this clause.

What forms could such clauses assume, and to what extent did they depend on the language and the identity of the scribe? Usually, they were briefly stated at the end of the document, following or sometimes replacing the usual clause in which the witnesses attested to the authenticity of the disposition. Oprea and Stana Opriș, whose case was previously discussed, had their scribe note that "should any of our kin rise up, either of my own or those of my woman's, to break this letter, and this reckoning, those who did not want it so will have to account [for their deeds] before God with their souls at the dreadful Judgement".[70] Vasile and Stanca Ciontea, from the village of Poplaka, had it written down that those "who should not keep to this [document] or try to break it, should be accursed (*afurisit*) by the 318 saintly fathers"[71], while Mani and Ana Geloe from Reschinar would have it recorded that "who should break this, that which I leave, he should be broken by the Lord Jesus upon his second coming".[72] Either Romanian testators felt that this type of malediction belonged in the text of a final disposition, just as scribes underlined the state of their clients' mental capacities (i.e. that they were sound of mind, even if of failing body) and that they had recorded everything as it had been said, or the scribes associated this kind of clause with Romanian testaments, and included it as they would have other general formulations. The first variant proves to be more likely, given the forms that this maledictory clause assumed in German-language wills.

For instance, in the case of Ion Danciul's will, the German scribe added towards the end of the document an "annexed clause, that he who should not comply completely with this final disposition or would change it to the slightest, he should be as cursed and damned as Judas, here in this world and there in the eternity [to suffer] aggravation!"[73] Similarly, Opre and Stanca Savul's scribe, Carl von Franckenstein, an amanuensis to the Judicat in the city, attempted to give the same possibly befuddling expression a more formal character, or at least a formal character that would agree with the cultural milieu with which he was familiar. He recorded that "everything that was above-noted, both parties engage to adhere to, and to leave to be fulfilled steadfast, cum anathemate,

[69] Florin Valeriu Mureșan, *Satul românesc din Nord-Estul Transilvaniei la mjilocul secolului al XVIII-lea* (Cluj-Napoca: Institutul Cultural Român, Centrul de Studii Transilvane, 2005), 270–271.
[70] SJANS, Magistratul Orașului și Scaunului Sibiu – Testamente O, No. 10, fol. 21r.
[71] SJANS, Magistratul Orașului și Scaunului Sibiu – Testamente C, No. 3, fol. 3r.
[72] SJANS, Magistratul Orașului și Scaunului Sibiu – Testamente G, unnumbered document, fol. 50r.
[73] SJANS, Magistratul Orașului și Scaunului Sibiu – Testamente D, No. 8, fol. 14r.

and certify with their undersigned names and finger-seals".[74] Finally, some German writers, such as Johann Bell, the Lutheran parish rector of Freck in the 1760s, found ways to both accommodate the sensibilities of those who wished to see that their final dispositions were ritually certified, and the cognitive dissonance arising from including such formulas in what had originated as a pious document. When attending to a certain Barb Boille on his death-bed, in the presence of several "honourable men", and after recording the testators' bequests to his wife, he added that this was done "with this Condition, that anyone who would obvert this, should be *Afurisit* or accursed (*Verflucht*)".[75] While not precisely a condition, in the sense of a bequest conditioned by the fulfilment of some task, the malediction clause was framed in such a way as to be both palatable to the writer and sufficiently strict for the testator. Electing to simply give the original Romanian term – which someone must have supplied during the proceedings – followed by its literal German translation seemed to be an appropriate compromise.

Overall, Romanian wills were a more uneven category of documents, when seen from the perspective of their form and content, compared to their Saxon counterparts. More often than Saxon wills, regardless of whether they had been written by a Romanian priest or by a Saxon civil servant, Romanian final dispositions had a tendency towards narrativity, performativity, and orality. In this sense they were closer to contemporary witness depositions, which in other European milieus "suggest evidently oral practices".[76] It is certain that fewer wills were written for Romanian testators in the seat of Sibiu than for the Saxons in the urban centre, and that rural would-be testators would have had a lower degree of exposure to such matters than their urban counterparts, who might have had a chance to participate in such proceedings as witnesses, depending on their social-economic and professional status.

Viewed from the perspective of external formalities, Romanian wills were more likely to be lacking the basic requirements for their validity: clear names, dates, and places of recording were missing in many cases. Significant errors could be made by scribes, thus potentially affecting the substance of the document. When in 1786, an elderly Gypsy couple – Motoi and Thodora Tintu – had their mutual final disposition heard and drafted by Johann Carl von Scharffenbach, despite the careful recording of the testators' ages (he was 70, and she around 65), their provisions and bequests to one another, the date and place, along with the names of witnesses, a major error did find its way into the instrument. It would however only be noticed five years later, when Thodora returned with the document to the village Actuar Georg Roth, who added the following:

> "The first husband of the undersigned testator Thodora was called Motoi Tintu, and it was his name that was written down and signed instead of that of her latest husband,

[74] SJANS, Magistratul Orașului și Scaunului Sibiu – Testamente S, No. 17, fol. 33r.
[75] SJANS, Magistratul Orașului și Scaunului Sibiu – Testamente B, No. 34, fol. 65r.
[76] Cohen, "She Said, He Said," 424.

> Alleman Susken, purely out of the Concipient's mistake. That all this is so, admitted the surviving party Allen. Susken himself, and will be recorded here for future notice".[77]

However, beyond their sometimes lacking external formalities, Romanian wills often displayed what has been deemed "a grammatically slippery form of reported discourse".[78] Rarely did a testament keep the same 'voice' throughout its course, generally jumping from recording instance's perspective to that of the testator, sometimes including those of witnesses or relatives present. When witnesses were the ones to recount what the testator had said, yet another layer would be added to the text, which frequently jumped from 1st person singular (the writer), to 1st person plural (witnesses), and back to 1st person singular or 3rd person singular (generally the testator). When a final disposition was problematic, sometimes village authorities might themselves intervene in the proceedings, noting for instance that one party had indeed wronged the other, although their interventions are usually well-delimited from the main text. These repeated shifts in tense and speaker make the resulting text somewhat convoluted.

More significantly, some Romanian wills displayed a kind of performative character. Anna Orbotte's (or Orbotjazsa's) final disposition began with the testatrix's reported summons of her kin to her home, noting that "there, brothers, I have called you here to my home" (*iate fratzilor kevam kiemat aitsy in kassa mea*), addressing her siblings directly as a means of strengthening her claims.[79] Testators also reported what had been said to them and how they had reacted, as a way of explaining how they had come to devise certain provisions. A certain Dobra let it be committed to paper in 1751 that "I, Dobra, God's servant, had it in my mind to leave to the Church my share, and I went to the priest Koman, to leave it, and my son Toma having heard that I [want to] leave it to the Church said mother, better that you leave it to your son".[80] Dobra's strong pious concerns would not be entirely swayed by her son's intervention, as she did leave a substantial portion for services in her memory, without omitting a malediction clause directed against those who would go against her wishes. This kind of intervention, and reported speech should be viewed through the lens of what has been deemed "situated orality", which implies that different types of speech patterns and forms of oral language might surface in written documents[81], depending on their character, and that they should be given their due attention, without automatically dismissing them as part of a rural, oral culture, ill-equipped to face the challenges of its literate counterpart.

Witnesses who reported what had transpired during testamentary proceedings were also wary of distorting the testator's meaning, and would also sometimes note that the oral character of the will-making left traces of uncertainty. As Ilie Dumitru laid on his death-bed in Szakadath, his two neighbours, Onye Tomi Lupe and Konstandin Filip, heard his final disposition, and recounted the events thusly:

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[77] SJANS, Magistratul Orașului și Scaunului Sibiu – Testamente T, No. 35, fol. 68r–68v.
[78] Cohen, "She Said, He Said," 421.
[79] SJANS, Magistratul Orașului și Scaunului Sibiu – Testamente O, No. 9, fol. 19r.
[80] SJANS, Magistratul Orașului și Scaunului Sibiu – Testamente D, unnumbered, fol. 11r.
[81] Cohen, "She Said, He Said".

> "We the under signed confess with our souls, that Ilie Dumitru of Szakadate in sickness of death, before us, left a plot to his grandson Ilie, Maria's son, because he also had served his grandfather in certain ways. That is what we have understood from the sick man's words, but it is true that he could not speak clearly and only his son-in-law Toma Asta said, father-in-law, do you leave the plot at the back of the garden to Ilie, and he said yes, yes, and later on we understood with great difficulty from his own words that if he should rise from this sickness, the plot would undergo division".[82]

As in the case of witness depositions, writers did not always control the speaker's flow of words, regardless of whether the end-result corresponded to the norms of the culture of formality to which they were supposed to adhere. In various narrative digressions present in such documents, "speakers often launched into long meandering sentences with bumpy grammar and dubious logic that sometimes turned back on themselves".[83] These digressions were to a certain extent allowed, even though they had less to do with the scope of the will – prescribing what was to happen to the testator's share of the estate after their passing – and more with the testators' willingness and insistence to clarify why this document was deemed necessary in the first place. They also offered key insight into testators' view of what was necessary to be included in such a document, as a means of justifying its provisions. Beyond such details, which could certainly be reproduced in a stereotypical language, specific to one scribe or another, there were also snippets of concerns that did not immediately relate to the substance of the provisions, but to the broader tensions present in Romanian villages around Sibiu in the latter half of the eighteenth century. A telling example was the will of Oprea and Stanca Savul, committed to paper by Carl v. Franckenstein in 1764 in Sibiu. The lengthy document attempts to follow the narrative of the elderly couple's life, noting that, after they had "firstly sent their prayers to God in the Wallachian way", they had launched into an extended digression concerning the length of their marriage (40 years), the birth and passing of their two children, and their lack of hope to beget any other heirs. Following several bequests to other kin, who in turn had pledged to care for them in their old age, Opre and Stanca noted that:

> "all remaining goods, having whichever names they liked, [are] to fall to the Wallachian church in Czoodt, and not to the united one." Moreover, "should it again be assumed, as it is now the talk amongst the crowd, that they, alongside the rest of the non-united, will have to leave their living-place, namely Czoodt, or that even this newly-built non-united church will be taken away, and no non-united house of God will remain, then they testate the rest of their goods to that non-united church which will prepare them at death, and will commit them to the earth".[84]

[82] SJANS, Magistratul Orașului și Scaunului Sibiu – Testamente D, No. 18, fol. 32r.
[83] Cohen, "She Said, He Said," 425.
[84] SJANS, Magistratul Orașului și Scaunului Sibiu – Testamente S, No. 17, fol. 32v–33r.

Should Carl von Franckenstein, presumably a Lutheran Saxon who might have also been concerned with the prospect of re-Catholicisation that was sweeping Transylvania at the time, not have allowed the elderly couple's digression, we would not have perhaps learned about the fears and concerns of the Orthodox inhabitants of Czoodt. Despite having little to do with the substance of the will itself, this digression allowed a glimpse into a shared concern – the intentions and actions of the Habsburg monarchy in its Transylvanian territories – that was expressed in a non-formulaic way, and offered insight that might not have occurred in Saxon wills.

Conclusions

Returning to the legal borders separating urban and rural jurisdictions, it should be noted that their permeability was due both to the actions of Romanian subjects, who saw themselves as entitled to dispose of their estates, and to the activity of various categories of scribes, be they Romanian or Saxon, lay or members of the clergy. The stark lines drawn in Romanian historiography between these two categories – subjects and authorities –, while to a certain extent highly visible in the more tumultuous events of the late eighteenth century, could also lose their sharpness in day-to-day matters. This is not to say that these instances of collaboration, and displays of trust were typical for the area or the period. Rather, they revealed a facet of multi-ethnical and multi-denominational coexistence that had allowed the Transylvanian system to function for centuries, despite the numerous conflictual states and the inherent and quasi-permanent state of inequality persisting between the dominant Saxon administrative milieu and its Romanian subjects on the fundus regius.

Final dispositions, regardless of their authorship, did not completely erase the voices and specific concerns of their testators. Albeit in an often double-mediated manner, these documents allowed glimpses into what Romanian testators considered appropriate testamentary proceedings (i.e. public, involving kin), how they envisaged grounding their dispositions (i.e. in a narrative or performative manner), and the extent to which they lent their trust to figures of authority who had not stemmed from the same background. This double mediation occurred once when an oral will was dictated to witnesses and scribes, and for a second time when it was translated into the lingua franca of the administration, namely German. Despite this, the specific "culture of formality" determined by the constraints and expectations of rural life and the denominational adherence to the Orthodox church still shined through in such documents.

While the circumstances of production played a heavy role in determining the final from of testaments, alongside the process of interpretation, which occurred when a scribe attempted to translate specific family concerns, the testators' beliefs and judgements often swayed the course of the document, making room for various narrative digressions.

On their side, scribes who were less intimately familiar with the Romanian milieu attempted to respect the accuracy of their clients' oral expressions, even striving to find

ways in which to express untypical clauses, such as the malediction, in a manner that would have been intelligible to their central-level counterparts, the clerks of the seat's office of division.

PERMEABILITATEA GRANIȚELOR: REDACTAREA TESTAMENTELOR ROMÂNEȘTI ÎN CADRUL SCAUNULUI DE LA SIBIU, ÎN SECOLUL AL XVIII-LEA

Rezumat

Studiul urmărește modul în care testamentele românești realizate în scaunul Sibiu în secolul al XVIII-lea au fost realizate, atât din perspectiva circumstanțelor în care acestea au fost scrise, cât și din cea a tipurilor de actori istorici care au intermediat acest proces de translație a nevoilor și cererilor specifice ale populației românești. Această privire de ansamblu asupra anumitor tipuri de limbaj care apar în aceste documente a servit la a reliefa faptul că granițele juridico-administrative dintre oraș și sat, și dintre mediul administrativ săsesc și testatorii români puteau într-o anumită măsură să fie caracterizate drept permeabile, sugerând interferențe în viața de zi cu zi a comunităților etnice, în general privite ca antagonice. Studiul subliniază necesitatea unei abordări comparative, incluzive, în tratarea documentelor seriale de secol XVIII, având în vedere similaritățile structurale și funcționale profunde ale acestora, indiferent de proveniență.