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Chapter 2

Family Firms and Family Constitution – A Management Perspective

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Abstract

This chapter presents the current research status of family constitutions from an economics perspective. It locates the family constitution as part of the family and business governance structure of a family firm and the owner family. The typical structure and content of a family constitution are introduced. The chapter focuses on the status of research about family constitutions and provides a structured map for future research. With regard to extant research, it must be stated that the stock of literature is small. The contributions to literature are categorized in surveys; conceptual contributions; survey data; small sample, qualitative, empirical studies; and big sample, quantitative, empirical studies. The latter group includes three studies with a separate family constitution variable. This small number symbolizes that the family constitution still is an under-researched area. Therefore, family constitution research is far away from being able to answer central questions of advice-seeking owner families like, for example, whether a family constitution affects family performance, firm performance, or both; or whether the development process of a family constitutions disposes of an effect on family or firm performance separately from the hypothesized effect of the family constitution document.

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2.1. Introduction[1]

This chapter presents the current research status of family constitutions from an economics perspective. A short, quite superficial overview of the research on family firms from an economics perspective will precede the main argument, given that some of our readers will have a legal background on this topic (Section 2.2). Section 2.3 puts the family constitution in perspective within the governance system of family firms, which does not only contain business governance but also the element of family governance. The family constitution is one instrument of family governance. Its typical content as well as its connection to the governance codex of family firms are presented in Section 2.4. Subsequently, the family constitution of family Hoyer (HOYER GmbH Internationale Fachspedition) is looked at as a real-life example. Section 2.5 outlines the research status of the economics literature. As is the case for academic law literature, there is only limited research we can draw upon. This is also the reason why consultancy literature is included in this chapter since it contains valuable information from the daily work with family firms. This being said attention needs to be drawn to the fact that these brochures will at least partially be published as marketing instruments. The main focus is put on the empirical research in the section on academic studies. They can be clustered in studies with large samples, which are analyzed econometrically, and studies that have their focus on one singular case or a small number of cases, which are then analyzed qualitatively. Studies with a large sample are to be distinguished into those which consider the family constitution as a separate variable or as part of a composite family governance variable. Only the results of the former type will allow imminent conclusions on the effects of a family constitution. In Section 2.6, ideas are developed concerning paths the inevitable further research on family constitutions could or should take. A short summary in Section 2.7 concludes this chapter.

2.2. Are Family Firms Special? A Primer on Family Firm Management as a Field of Research

The economic research on family firms is still a comparatively young branch of general business administration. The first journal related specifically to this topic was the *Family Business Review*. First published in 1988, it is still today one of the

[1]This chapter draws on Mengers and Prigge (2017), but it is significantly revised and updated, representing the research status as of 2022.

leading journals in this field. In its coexistence – and its rivalry – of management's various sub-disciplines the research on family firms is still not fully recognized as an independent discipline. Yet some structures have been established internationally, which allow for researchers to get organized and discuss the topic. Amongst them can be found for example Ifera (International Family Enterprise Research Academy), the Strategic Interest Group (SIG) Family Business Research which takes place within EURAM (European Academy of Management), and the yearly Workshop on Family Firm Management Research within EIASM (European Institute for Advanced Studies in Management). In 2016, German researchers on family firms formally organized the research group Family Business as part of the Förderkreis Gründungs-Forschung (FGF).[2] Complementary to genuine economic concepts research on family firms foremost is based on psychological imports. The exchange with the discipline of law is at a very early stage.

When reflecting on the question if family firm research should be granted the status of its own independent sub-discipline, ultimately the following questions should be considered: Are family firms different? Do they differ from other companies? And more considerably: What defines a family firm?

Family firm researchers have been dealing with this question of the right definition and it has not been decided as of today. This question cannot and must not be resolved now but the following can be said: If the majority of shares is in the hands of the family and there is a willingness to hand the company over to the next generation, then this defines a family firm (refer to Brigham et al., 2014 for the long-term orientation of family firms). It is disputable if family members have to take positions on the top boards of the company.[3] The size of the company is undeniably not a critical feature for the definition of a family firm: Family firms can be small or big; the decisive difference from non-family firms is the central role of the family. Therefore, the terms family firms and small-and-medium enterprises (SMEs) should not be understood as synonyms.

The three-circle model is an established, simple, yet surprisingly differentiated form to display the accentuated significance of the family and to systematize the different roles (Tagiuri & Davis, 1992).

In comparison to non-family firms, the family is added as a third circle, while business and ownership circles are present in family firms as well as in non-family firms. A family member can have no further relationship to the company (besides the natural closeness of the firm and the family); he or she can be a family member and shareholder, can be operationally employed in the family firm or can be active as a shareholder. This classification already shows some of the many roles family members can engage in. When talking about the involvement in the family firm, one could differentiate between non-leading positions, positions within the operational governance of the company (management) or within supervisory or advisory boards. The term "family" itself contains a great deal of

[2] Subsidizes research on the foundation of firms.

[3] An elaborate discussion about the definition can be found in Harms (2014), and Alderson (2012) discusses the differences between family firms and non-family firms.

heterogeneity: Conflicts between generations are a known phenomenon within the families standing behind the family firm. Potential for conflict can be found in questions like the spouses' participation in the company in terms of employment or their role as shareholder (cf. the empirical dissertation by Schäfer, 2016); similar questions can be asked for illegitimate partnerships as well as for adopted or extramarital children. The "family" can include people who have become part of the family through their longstanding (professional) relationship (Angus, 2005, p. 7).

The pure presence of the family in a family firm in comparison to non-family firms does neither automatically lead to the conclusion that these two types of firms differ nor does it justify research on family firms as its own discipline. For this to happen, there has to be a specific effect of the family on the family firm. Quite known is the quote by Peter Zinkann, late executive director at Miele: "Family firms have an enormous advantage and an enormous disadvantage, and both is the family. A family at peace is the best that can happen to a company, a family at strife the worst" (quoted from Wimmer, 2007, p. 30). The family can be an asset but also a liability for the company. It is an asset when the family functions as an active, reliable, and long-term oriented shareholder, what hundreds of thousands of free float shareholders of a Bearle-Means-enterprise never could do.[4] It will be a liability to the company if for example family conflicts threaten to paralyze it.

This is where economic research on family firms has started and has developed many approaches and concepts throughout the past years, concerning why and how family firms are different, why and to what extent the owner-families can turn into the "enormous advantage" or the "enormous disadvantage" for the company.[5] According to the Resource-Based View (Habbershon & Williams, 1999), the family brings particular resources to the company. Sirmon and Hitt (2003) name as potential positive resources human capital, social capital, patient financial capital, "survivability capital" (the family will help out in case of the company's distress) and lower agency costs. But family resources can also give a negative impulse – for example certain forms of altruism (Carney, 2005) or – more generally speaking – the interpersonal potential for conflict: There are numerous examples of cases of failed family firms due to selfish acts, distrust, missing arrangements for heritage, or non-existent rules for succession (to only name some of the reasons). Close personal relationships between family members,

[4]A Bearle-Means-enterprise (Bearle and Means 1932) entails a publicly traded company, where control and ownership are separated. Management controls the company's resources, while the shares lie exclusively in the hands of a multitude of free-float shareholders. They act rationally passive (free-rider-problem) and typically display no connection to the company.

[5]Even a short outline of the different approaches would go beyond the scope of this chapter. Therefore, the quite superficially mentioned terms have to suffice in this context. For continuative overviews and further references, the interested reader is referred to the *Sage Handbook of Family Business* (Melin et al., 2014).

which have been naturally governed by trust and altruism, can suddenly turn into a dilemma, for example when succession and the attribution of roles between siblings are not clarified. Envy and distrust toward family members with an allegedly preferred treatment provide another source of conflict (Achleitner et al., 2010). All of these conflicts cause costs of various types through lost time, opportunities, labor, motivation, and so forth.

Do family firms perform better or worse than non-family firms due to these family firm-specific resources or does it make no difference at all? The superiority of (future) family firms is comparatively well documented in the founding generation. Unsettled remains the question if this is due to the founding effect or the family effect. From the second generation onwards, the evidence is inconsistent.[6] But this is not the whole extent of complexity in terms of the performance question of family firms. The empirical studies use the typical measures for company success, accounting ratios as well as – for listed companies – measures related to the capital market like dividend yield, value relations, and market-to-book relation. But don't families maybe follow non-financial goals with their companies, so that they would measure success differently and therefore be inadequately accounted for by the standard measures mentioned above? Gómez-Mejía et al. (2007) have introduced into the discussion of non-financial goals a highly influential concept with their Socio-Emotional Wealth (SEW) (more about SEW refer to Berrone et al., 2012). A family firm may have underperformed according to the usual standard measures but considering the SEW the family can consider the expired business year as successful.

At the end of this short overview, the complexity for another main variable in such studies is pointed out: So far researchers mainly have differentiated between family firms and non-family firms, just like a 0/1-variable. Black or white. Yet even the three-circle model in the beginning of this chapter has already shown that the connection between the family and the family firm can be diverse. The family could exclusively take on the role as shareholders and even act passively within this role, they could additionally also take on influential positions within the company, only to name the two extremes for a simple constellation. It is plausible that the influence of the family on the company differs in both cases; the same should be true for the resources, which they make available to the company. It is also quite obvious to assume further characteristics – ultimately a continuum – between the two extreme poles of exercise of influence and allocation of resources by the family. Consequently, efforts within family firm research are being made in order to develop the discrete differentiation between family firms and non-family firms toward more continuous measures. One influential concept in this context is the F-PEC Scale, presented by Astrachan et al. (2002). The F-PEC Scale allows us to determine the degree of familiness in a family firm with a continuous value

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[6]Further details in the overview article by Amit and Villalonga (2014); limited to Total Shareholder Return as a measure for success Grelck et al. (2017) summarize the evidence and undertake their own study on listed German family firms, which does not show a general superiority of family firms.

between zero and one. Using its indicators, the F-PEC Scale goes beyond the family's purely *potential* influence on the company through ownership and placement on boards (Power) and the duration of family ownership (Experience), by providing a Culture Subscale.

However, data for this sub-index can empirically only be raised through surveys which means it relies on the collaboration of the sample family firms. This is the reason why this scale has rarely been completely used, that is to say including the Culture Subscale; these studies include Klein et al. (2005) and Holt et al. (2010). A related but also competing concept is the FIFS (Family Influence Familiness Scale) by Frank et al. (2017) which has already raised some attention.

2.3. The Family Constitution's Position in Family and Business Governance

G20 and OECD (2015) define corporate governance as follows:

> Corporate governance is a set of relationships between a company's board, its shareholders and other stakeholders. It also provides the structure through which the objectives of the company are set, and the means of attaining those objectives, and monitoring performance are determined.

This is quite a general definition: It doesn't provide an organizational goal, for example, maximizing the market value. It rather shows that corporate governance is a universally applicable concept which is not only useful to the profit-organization. Ultimately, the goal is to create a governance structure in such a way, that the organization's resources can be applied efficiently and that the organization's stakeholders are satisfied. This applies to the profit-oriented listed company as much as to the non-profit government organization collecting donations. Even though corporate governance is interpreted in a broad sense, recommendations usually are limited to the organization (the business), in which the operational activities take place. Due to the assumed central role of the owner-family in a family firm, family governance is added to the notion of business governance when dealing with family firms. Governance of the family has only found its way into family firms in recent years. After all, through the strategic, conceptual, and especially not directly measurable considerations, there is an effort which not every family will consider as necessary and therefore might not take it into consideration at all. However, also in this case, it is better to take precautions than to heal the wounds afterward.

Family governance therefore represents the "organisation of the owner-family" (INTES et al., 2021, pp. 41, 49). Family governance's "basic aim is to create a tight relationship between the family and the business and ensure a functioning business-owning family – one that acts in unison to safeguard the long-term existence and well-being of the business and does not put the business at risk through destructive conflicts." (Süss-Reyes, 2014, p. 141)

So the owner-family defines rules and guidance within the framework of these two governance-sectors, for them to act and lead by. In order to do this, the family uses different instruments on the level of the company as well as the family. Family governance is the hinge between the owner-family and the family firm. It contributes to the family being an asset as opposed to a liability for its company. As usual for governance structure also the family governance disposes of various instruments. In addition to the family constitution, one could mention, for example, a family council, a family office, a family meeting, a family day, family education, family philanthropy or a conflict management. The entirety of family governance instruments in place should probably be considered as a system, meaning that there can be substitutional as well as complementary relationships between single components of the system. The scope of this chapter does not allow us to follow this through any further,[7] nor is it possible to go more into depth of the other components mentioned above.[8] Much rather a more detailed look shall be taken at the family constitution. It can be considered as the core of family governance since often within the constitution other instruments of family governance will be treated and it even might include other components of business governance.

2.4. Typical Content of Family Constitutions

There exists more than one denomination for the document which is called family constitution in this chapter: family charta, family protocol, family codex, or even family business governance constitution (Fleischer, 2016, p. 1510). Fleischer defines the family constitution as a

> written document in which the owner family writes down their collective set of values and their goals for the company taking into account the potential conflicts between company, family, and ownership. There are two distinctive differences between the family constitution on the one hand and the articles of association and the shareholder agreement on the other hand: Firstly, the family constitution is typically signed by all family members, both shareholders and non-shareholders. Secondly, according to widespread understanding, it is only morally, but not legally binding for the signatories. (Fleischer, 2016, p. 1510; own translation)

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[7]Refer to Rediker and Seth (1995) as well as Prigge (2008, 2010) for further references. Gnan et al. (2015) empirically study the family governance instrument family council and find out that partially the business governance instruments of shareholders' meetings and Board of Directors substitute ownership and monitoring in their governance function.

[8]Refer to for example, Hauser (2002), Kellersmann and Winkeljohann (2006, 2007), von Andreae (2007), Fabis (2009), Lange (2009), Koeberle-Schmid et al. (2011) as well as Siebels and zu Knyphausen-Aufseß (2012).

However, a discussion has been started among legal scholars about the actual binding effect of the family constitution (Fleischer, 2016, 2017; Prütting, 2017).

According to Baus (2013, p. 135), the family constitution has the goal "to create a functioning owner-family which is aware of its responsibility to generate sensible rules about the distribution of power and money, about the goals for the family, about conflict resolution mechanisms and the collaboration of the family." In Germany, there is a special correlation between the Governance Codex for Family Firms and the typical content of family constitutions.

Indications and suggestions for potential actions found in the typical corporate governance codices like the German Corporate Governance Codex in Germany are partially compulsory and are founded on implicit assumptions, which are only rarely applicable in family firms (Klein, 2009, p. 64). Furthermore, it has been shown that family firms introduce governance structures which are quite different from non-family firms (Bartholomeusz & Tanewski, 2006) which is the reason why the Governance Codex for Family Firms has been developed. The Codex was initiated by a consultancy, which has also worked on the content and its revision, to a great extent in collaboration with family firm owners and researchers.[9] In the meantime, the Codex is available in its 4th edition (INTES, FBN Deutschland und Die Familienunternehmer 2021).

The Governance Codex for Family Firms is supposed to be a reference for the owners of a family firm to develop their own individual leadership and monitoring structure.

> The Code supports owner families to ask the relevant questions about their family business governance and to find tailor-made answers appropriate for the specific set-up of family and company. The owners could document their answers in their individual family code (family constitution, family charta, governance constitution). In turn, this only morally binding document is the foundation for setting-up the provisions under company and inheritance law as legally binding documents.[10]

Presumably, the content of the Governance Codex provides orientation for the content of the family firm governance. Looking at said Codex therefore makes sense in order to approach the typical content of a family constitution. The

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[9]Initiatives and studies led by consultancies are not a rare appearance in the sector of family governance in order to create demand and demonstrate competency. This is a phenomenon which can be observed internationally (Fleischer, 2016; Parada, 2015; Prigge & Thiele, 2019).

[10]INTES, FBN Deutschland, ASU Die Familienunternehmer: Governance Kodex für Familienunternehmen. "Kodex." http://www.kodex-fuer-familienunternehmen.de/indexamplephp/kodexample Own translation. Accessed on 23.12.2021.

following chapters can be found in the Codex (INTES, FBN Deutschland and Die Familienunternehmer 2021, p. 7):

1. The self-conception of the owners

    Establishing suited governance structures belongs to the responsible and successful leadership of a family firm. Among these structures are values and goals, dealing with other stakeholders' interests as well as the significance of keeping the company a family firm.

2. The structure of owner rights and duties

    The Codex describes universal and individual design parameters which deal with the realization of responsibility as the highest instance of decision-making.

3. Supervisory and advisory board

    This aspect deals with the basics of this non-mandatory board, like its tasks and inner structure, its composition as well as its members' remuneration and accountability.

4. Company management

    This chapter describes the tasks and composition as well as the remuneration and accountability of the managing board.

5. Measurement and disposition of earnings

    In order to ensure capital and liquidity across generations, various aspects are pointed out about the determination and the use of the financial result.

6. Transfers of ownership, withdrawal from the group of owners

    A family firm should ensure that shares stay within the family which results in a limited freedom of transferability and sale of shares.

7. Special features of indirect ownership

    New chapter included with the 4th edition. It addresses specific issues that must be observed when the family firm is held indirectly, e.g., by a family foundation.

8. Handling of assets not tied up in the family business

    New chapter included with the 4th edition. It considers specific governance issues related with assets held outside the family business, e.g., for the purposes of risk diversification or preparing inheritance tax payments.

9. Family Governance

> Even though also on this topic no schematic advice can be given, it is important to be well organized as the owner-family. Sharpening the feeling of belonging together, the identification with the company, and avoiding or solving potential conflicts belong to this aspect.

The 10th and last chapter is dedicated to creating the family's very own individual governance codex – the family constitution. In its first nine chapters, the Codex makes suggestions about questions, which might need rules, but mostly without giving implicit guidelines about the content of these rules. This approach seems to make sense in the light of the great heterogeneity amongst family firms, which are addressed by the Codex (Prigge, 2013). The family constitution and other, legal documents like the articles of association will then contain the rules individual to the family (INTES, FBN Deutschland and Die Familienunternehmer 2021, p. 48).

Potential content for family constitutions can also be found in textbooks dealing with the topic of family constitution. According to these books, a family constitution will most likely include the following chapters: foreword, values, goals, roles, boards, instruments, final remarks, and appendix (Felden et al., 2019, p. 393)[11]:

- Preamble
    - o Foreword
    - o Definition of the scope
- Values
    - o Values for family and company
- Goals
    - o Goals for family and company
    - o Financial goals
    - o Expectations toward growth, yield, and dividends
- Roles
    - o Significance of the family for the company
    - o The family as shareholder
    - o The family as management
    - o The family on the advisory board
    - o Employment and service of family members
    - o Responsible for the family
    - o Responsible for the company
    - o Spouses

[11]Felden et al. (2019, p. 393) inspired by: Baus, Kirsten: *Die Familienstrategie. Wie Familien ihr Unternehmen über Generationen sichern*. 3rd edition. Wiesbaden Gabler: 2011. [own translation].

- Committees
  - o Family council
  - o Family office
  - o Family manager
- Instruments
  - o Management of conflict
  - o Family activity
  - o Family education
  - o Family philanthropy
- Final Remarks
  - o Final remarks and signature line
- Appendix
  - o Family tree
  - o Rules for marriage, testamentary, and endowment contracts
  - o Rules for changes of shareholders
  - o Rules about qualifications
  - o Rules about the information policy in- and outwards
  - o Rules about the qualification of potential successors in ownership and management

During the search for relevant topics of a family constitution, one might look at research and identify the "success patterns of multi-generational family firms" as a useful source. Wimmer et al. (2009) have looked for such patterns and identified seven so-called paradoxes, "the handling of which the authors have found to be key to the longevity of companies" (Wimmer et al., 2009, p. 148). These paradoxes give another insight into the special challenges of family firms, as described by the three-circle-model in the beginning:

Paradox I:	Family-led influences as resource and threat to the company
Paradox II:	To be loyal toward their own closed family and the wider family ties
Paradox III:	To account for short-term (individual) shareholders' interests and ensure the company's future in the long run
Paradox IV:	To fulfill equal-opportunities expectations by the family and attend to the inequality demands of the company
Paradox V:	To grow respecting the entrepreneurial autonomy
Paradox VI:	To maintain entrepreneurial transformability and preserve (family) traditions
Paradox VII:	To satisfy expectations to protect the family and ensure the performance of the company and its management.

To conclude this section, a closer look will be taken at the family constitution of family Hoyer and thereby their company HOYER GmbH Internationale Fachspedition (hereafter HOYER) from Hamburg.[12] Currently active in the company

[12]More information to be found at www.hoyer-group.com/en/. Accessed on 23.12.2021.

is the second generation of four siblings. Mr Thomas Hoyer used to be CEO and has now been heading the advisory board for a couple of years. Two of his sisters alternate in the advisory board, the third sister is responsible for the family. Operations are led by non-family managers. Until recently each of the siblings held 25%, in the meantime, the transfer to the third generation has begun involving twelve people. The following statements are based on the family constitution from 2006[13] as well as on two conversations which one of the authors was able to lead with Mr Thomas Hoyer.

Mr Thomas Hoyer started dealing with the governance at HOYER very early on. In the beginning of the 21st century, it became clear that – at least for a certain period of time – the management would consist exclusively of non-family managers for the first time in the company's history. Mr Hoyer wanted to change from management to the advisory board due to his age. The third generation wasn't and still isn't ready to take on a leading position at HOYER. At the same time, it was obvious that with the third generation the family structure would become more complex and therefore also more prone to conflicts. Mr Thomas Hoyer took an active approach to this matter by contributing to the group that developed the first version of the Governance Codex for Family Firms in 2004. He also belonged to this group and was therefore part of the revision processes in 2010 and 2015. The exchange with other group members as well as the input from a consultancy which was also part of the codex-development supported the four siblings of the second generation in generating their family constitution. They signed it in August 2006. The document is kept in everyday language. Currently, the second and third generations are revising the family constitution. Hereafter, the content of the 2006 version is summarized.

Before the signatures in the beginning there is a statement that the family constitution can be altered at any time but that amendments are in need of "the overwhelming willingness of the shareholders." Every family member at the age of 16 receives the document. As shown hereafter the family constitution consists of the following chapters: foreword, values and goals, rules, institutions.

Foreword

The foreword sets as its highest goal the continuation of HOYER as a family firm. The family constitution is addressed to all members of the family including the spouses and children, next to the four siblings. However, it looks like only the four siblings have worked on the family constitution as shareholders. There ought to be unity within the family without thinking about family branches. With regard to the values, the family constitution makes reference to those characteristics which laid out the success for the founder of the company Walter Hoyer: entrepreneurial thinking, hard work, discipline as well as personal responsibility toward the company and its employees.

[13] Family Hoyer's family firm constitution is printed in Plate et al. (2011, p. 554 et seq.).

Values and Goals

This chapter is by far the longest. It is divided into the "Credo for the company" and the "Credo for the family." The former details which implications the overall goal, to keep HOYER a family firm, has on profitability, dividend policy, and share capital quota. The part "optimal leadership" defines the family's system of values and goals as an orientation for the exclusively non-family management. Furthermore, the family's role in the company's boards and within the company is defined. Finally, the Credo for the company highlights the solidarity of the family and the company as well as social responsibility for the employees. The Credo for the family clearly defines the rule "company first." This main rule influences the rules on the employment of family members, dividend payments, and payments upon exit of shareholders. Furthermore, behavior rules are described for the interaction of the family members.

Roles

The distribution of the roles between the four siblings has been described in the beginning (Mr Thomas Hoyer as chairman of the advisory board, two sisters alternating as members of the board and the third sister as responsible for the family).

Institutions

This last part deals with three institutions: the shareholders' assembly shall also be used "to discuss important matters only in the circle of shareholders." The primary objective of the annual family day is the company. Topics listed as examples are family culture, the transmission of values, preparation of succession, management of conflict, and career planning. The charitable Friedel-und-Walter-Hoyer-Foundation receives a share of the company's profits on an annual basis.

Since the whole process was accompanied by an influential consultancy and took place parallel to the first creation of the Governance Codex for Family Firms, it is not surprising to find many of those elements which are classified as typical by the consultancy literature in Hoyer's family constitution. The central role of the family constitution for the governance of the family and the company is also supported by the Hoyer example: The family constitution deals with the responsible for the family, family activities (family day), family philanthropy (foundation), shareholders' assembly, advisory board and management.

2.5. Current Status of Literature

Overall, there exists little academic management literature on family constitutions so far. Even though the portfolio is – slowly – growing, in general Gersick and Feliu's (2014, p. 212) evaluation can still be agreed with:

> So far the literature on family mission statements and constitutions is primarily descriptive; (…) We could not identify any

> formal study aggregating governance provisions from a large sample of family constitutions, or assessing the impact or specific benefit of family mission statements on governance or family firm performance.

This is also the reason why the consultancy literature cannot be ignored. It gives an impression of the distribution and handling of family constitutions. At the same time, it has to be clear that, after all, these studies are instruments used by consultancies to create demand for family governance instruments and who want to be its competent service provider.

2.5.1. Status of Literature – Consultancy Literature

This overview is limited to the consultancy literature for Germany. So far, PwC (May et al., 2015; Schween et al., 2011; Vöpel et al., 2013), partially together with the pioneers of family firm consulting, INTES, which meanwhile belongs to PwC, and KPMG (Koeberle-Schmid et al., 2016) have published empirical brochures. Each one of the four studies contains a specification, how many of the questioned family firms have a family constitution. It ranges from 16% to 35%.[14] There is conformity that a family constitution rather exists in bigger and older family firms with several family shareholders (Schween et al., 2011, p. 15). Koeberle-Schmid et al. (2016, p. 39) contribute that there is a bigger spread when the family is organized in clans.

Partially, the consultancy literature hints at a connection between the family constitution and the success of the company,[15] however, these claimed connections do not live up to scientific standards; at least no documentation can be found in these brochures accordingly. Schween et al. (2011) show more connections in their consultancy study, which is the only one dealing exclusively with family constitutions: Trigger for the creation of the constitution was not current conflicts but the succession within the circle of shareholders and conflict prevention. The impulse to create a constitution was predominately initiated by the shareholders. The main expectations toward the family constitution clearly are the preservation of peace and stability as well as the promotion of unity and identification; increasing the economic success is clearly subordinated. Families

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[14]Two dissertations from the academic area can be added about the distribution of constitutions: Papesch (2010) shows that 4% of 173 questioned family firms have a family constitution, for Ulrich (2011) it is zero of 16.

[15]Higher profit margin for companies with family constitutions (Schween et al., 2011, p. 26). May et al. (2015, p. 20) phrase this slightly more carefully: Between family governance mechanisms and success of companies — measures: turnover, profitability, employee growth rate, and market share in comparison to the most important competitors according to voluntary disclosure of companies — there is no direct, statistically significant correlation, but an indirect one: Family governance instruments improved solidarity and capability to change of the owner family; both having a positive impact on company success.

and family firms with constitutions are organized in a more structured way than their pendant without a constitution: Written rules for many aspects of business as well as of family governance are substantially more frequently fixed.

These findings are highly welcome in light of the low level of knowledge about family constitutions. At the same time, for the interpretation the same holds true as mentioned above for the correlation with the economic success: As far as can be told, the correlations have been assessed purely bivariately, meaning the influence of further factors has not been considered. Furthermore, the interpretation of the direction of causality has to be treated carefully. For example, the data do not clearly show if families are better organized because they have a family constitution or if families have a family constitution because they already are better organized.

The consultancy brochures keep emphasizing the importance of the creation process itself (for example, Schween et al., 2011, pp. 22–21, 36–38). Based on this, it is not clear what would lead to the assumed conflict avoiding impact in the end: the document itself or would it also be the creation process, i.e., the discussions, the decisions, the exchange about expectations and requirements, or both? Family business professors Montemerlo and Ward (2011, p. 47), who are also quite active in family business consulting, state: "We believe the process of developing the family agreement is more important than its contents."

The family itself writes its constitution (May et al., 2015, p. 12). The content is neither of legal nature nor is it partially pre-written for the family members to take note of it and then have it disappear in a drawer. This document is supposed to live and be lived. And the autonomous writing and phrasing are part of this. This way every family member is not only given the feeling but also the opportunity to make an input, to create and therefore become part of the whole process. The probability is very high that there will be discussions during the creation process, emotions will be awoken, and fights cannot be avoided. Often the consultants accompany the family during this process of creating the family constitution and can moderate and smooth (Fogel, 2003, p. 44).

If the family firm takes the family business governance model as guidance, it can deduct that the family constitution should be adapted when the structure and complexity of the company or the family change over time. It is essential to take care of and work regularly on the document (Schween et al., 2011, p. 38).

2.5.2. Status of Literature – Scientific Literature

Scientific articles can be systemized as depicted below in Table 2.1.[16] A single article might be classified into several sections, for example, the theoretical hypothesis development under 2) Conceptual Contributions, while the empirical analysis itself might fall under 4) or 5).

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[16]This literature survey does not include the contributions assembled in this book. The only exceptions are Graves et al. (2023) and Ulrich and Speidel (2023).

Table 2.1. Classification of Family Constitution Research.

I. Surveys
Gersick and Feliu (2014); Suess (2014); Mengers and Prigge (2017)
II. Conceptual Contributions
Berent-Braun and Uhlaner (2012); several studies from the Research Institute for Family Business of the Vienna University of Economics and Business (e.g., Lueger & Frank, 2012; 2015; Lueger & Suchy, 2012; Korunka & Nosé, 2012); Botero et al. (2015); Parada (2015); Arteaga and Menéndez-Requejo (2017); Arteaga and Escribá-Esteve (2021)
III. Survey Data
Ulrich and Speidel (2023)
IV. Empirical Studies: Small Sample, Qualitative
Several studies from the Research Institute for Family Business of the Vienna University of Economics and Business (e.g., Lueger & Frank, 2012; 2015; Lueger & Suchy, 2012; Korunka & Nosé, 2012); Parada (2015); Jungell et al. (2016); Jungell and Wincent (2017); Matias and Franco (2020)
V. Empirical Studies: Large Sample, Quantitative
a) Separate Family Constitution Variable
Arteaga and Menéndez-Requejo (2017); Arteaga and Escribá-Esteve (2021); Graves et al. (2023)
b) Family Constitution Part of a Composite Family Governance Variable
Berent-Braun and Uhlaner (2012); Parada (2015); Michiels et al. (2015); Parada (2015); Laveren and Molly (2017)

Ad I. Surveys

Gersick and Feliu (2014), Süss-Reyes (2014) and, with a focus on family constitutions, Mengers and Prigge (2017), present still current literature overviews of family governance overall with their own chapters on family constitution.

Ad II. Conceptual Contributions

Next to their empirical analysis (see in Vb)) Berent-Braun and Uhlaner (2012) also contribute to the theoretical foundations by applying concepts from the organizational social capital as well as from group dynamic and teambuilding in order to explain the correlation between family governance practices and company success.

The research institute for family firms at WU Vienna around Professor Hermann Frank is very keen to bring scientific approaches and revelations closer to practice using real-life examples (Lueger & Frank, 2012, 2015). Their theoretical basis often is system theory. Frequently, the real-life examples also look at the family constitution. Not all of the real-life examples can be analyzed here, some examples have to suffice: Lueger and Suchy (2012) describe a family with a clear distribution of roles within their company. Due to this division of roles, overlapping work areas are reduced, mutual expectations are structured and therefore potential lines of conflict are minimized. In another real-life example by Korunka and Nosé (2012, p. 154), the role theory by Katz und Kahn (1966) is mentioned, which points out "that the role inhabited by a person in most social situations, especially within organisations, significantly contributes to the understanding of their individual behaviour." This justifies that a distinct assignment of roles, as it is for example worked out in family constitutions, leads to a better understanding of the tasks and the responsibilities within the company and the family.

The conceptual article by Botero et al. (2015) depicts a similar line of arguments by leaning foremost on the concepts of organizational justice and equity theory in its theoretical part (more in-depth in the family firm context, see Barnett & Kellermanns, 2006). Expectations and anticipations, which every family member has toward the others and the company, are often not talked about. A family which takes its time intensively once and then routinely recurrent to develop their family constitution, has a forum allowing to publish within the family otherwise unknown expectations and thereby also potentially latently existent conflicts. The compilation of the family constitution's content hereby represents the step taken from purely so-called psychological contracts, which usually everyone keeps to themselves, to a universal consent within the family and the company. Botero et al. (2015) hence theoretically substantiate the importance which is attributed by the consultancy literature to the creation process.

Parada (2015) has presented an extensive dissertation on governance in family firms. She presents a theoretical frame (category II in our systematic) and executes two empirical studies on this basis: a big-sample quantitative analysis (category Vb) and a qualitative study with three cases (category IV). In both cases, the sample is taken from Spanish family firms.

In her theoretical part, Parada works out possible determinants of the governance structure of family firms and owner families on the basis of different theoretical approaches (Parada, 2015, pp. 75–93). She divides these determinants into three groups: legitimacy reasons, family contingent factors, and business contingent factors.

Concerning the governance structure, Parada differentiates between family governance (family meetings and family constitution) and business governance (board of directors and executive committee), so in total four elements. She divides their determinants into two big categories: Striving for legitimacy and striving for efficiency. Generally speaking, legitimacy is the result of conformity with formal regulations and social norms (Parada, 2015, p. 68). In this specific case, Parada investigates two variables for legitimacy: The affiliation to organizations and other professional associations [+][17] as well as the weight of the business

[17] [+]/[-]/[0] shows on a 5%-level a significant positive/ a significant negative/ no significant correlation between the determinants and the existence of governance instruments in Parada's regression analysis (Parada, 2015, p. 129).

logic relative to the family logic within the company's policy of the owner-family [+]. Striving for efficiency, so to say the strive of the owner-family to govern the company as efficiently as possible and therefore among other things secure the survival and the transfer to the next generation, represents by far the bigger category of determinants. The determinants of the strive for efficiency are further systemized into the sub-categories family (concentration of shares [+]; which generation is dominating [+]; number of overlapping generations [0]; number of family members in the company's management [0]; agreement of values between the family members who work in the company and those not active in the company [+]) and the sub-category company (company size [+]; company age [0]; internationalization [+]; diversification [0]).

The empirical big-sample study (sample size: 918 companies) shows that family firms apply 1.62 of the four governance instruments on average (Parada, 2015, p. 124). There is no itemization of the four instruments, but it seems that the family constitution has the least distribution (Parada, 2015, p. 123). With regard to its order of appearance, the results indicate that the board of directors is introduced first, followed by the management's committee, the family council, and finally the family constitution (Parada, 2015, p. 123). The real-life examples back the findings that the family constitution is introduced rather at a later point (Parada, 2015, pp. 229–230). This result undermines the advice given in the survey of the consultant's literature to take caution with regard to the direction of causality. Most of the determinants are statistically significant for the number of used governance instruments in the actual regression analysis; please refer to the indications in square brackets. Separate results for individual governance instruments do not exist, thus, this also not the case for the significance of the family constitution.

In the conceptual part of their paper, Arteaga and Menéndez-Requejo (2017) develop an agency theory-based reasoning why having a family constitution might enhance family firm performance. Their reasoning addresses the classical agency problem between owner and manager (agency problem I), the agency problem between majority and minority shareholders (agency problem II) as well as intra-family agency problems (agency problem IV) (refer to Villalonga et al., 2015 for this numbering of agency problems). Moreover, Arteaga and Menéndez-Requejo derive from theory reasons why the performance effect of a family constitution might not be identical across family firms. More specifically, they posit that the origin of the CEO (family or non-family), the dispersion of (family) ownership, and the generational stage of the family business moderate the link between family constitution and company performance.

Arteaga and Escribá-Esteve (2021) aim to unveil the antecedents of the adoption of family councils and protocols. Based on social systems theory, they define four types of family firms (founder-centric, protective, consensual, and business-evolved) which differ with regard to their communication needs and analyze for which type of family and family firm family constitution and family council might be particularly appropriate tools to address these communication needs. Their empirical results support their theoretical reasoning (see below).

Ad III. Survey Data

Ulrich and Speidel (2023) have presented overview data originating from a survey of 65 big German family firms – among them 37 with a family constitution. Some of their most interesting findings shall be named here: The existence of a family constitution neither correlates with size or age of the company nor with the number of generations. 97% of the families with family constitution named as their main goal connected to the family constitution an emotional additional value, only 3% were hoping for an effect on the company's success as their most important goal. 75% of families with a family constitution have already made amendments to their constitution; the first revision usually occurred after three to four years.

Ad IV. Empirical Studies: Small Sample, Qualitative

Next, the real-life examples are being looked at. The studies of the research institute for family firms at the WU Vienna have already been discussed earlier. They belong to this category of small sample qualitative studies just as much as the part of Parada's dissertation (2015) in which she analyzes three Spanish family firms in detail. This has also already been looked at above. Jungell et al. (2016) explore in their real-life studies of 17 family firms in Europe, Asia, and the USA, how the families have handled the situation when the hitherto mutual consent is questioned through changes in the family, company, or the environment. Before these changes occurred, all of the owner families already disposed of a document about family politics, by which the authors understand, amongst others, recorded values, behavior codices, family plans, and family constitutions. Hence, the authors are enabled to look at the role of this document in a situation of conflict. In a companion working paper, Jungell and Wincent (2017) discuss the divergence (the authors call it "decoupling") between the paper version of the family constitution and practice in family and company life. Matias and Franco (2020) analyze in an exploratory case study on a Portuguese family firm how the family constitution shapes the succession process.

Ad V. Empirical Studies: Large Sample, Quantitative

Only few empirical studies with big samples about the family constitution are known to the authors. In the majority of the studies, the family constitution is not a separate variable but part of a composite variable, most of the times joint with further family governance instruments, so that no independent conclusion can be drawn about the family constitution. Only Arteaga and Menéndez-Requejo (2017), Arteaga and Escribá-Esteve (2021), and Graves et al. (2023) so far have presented a big sample study with a separate family constitution variable. This small number of studies already document the research deficit.

Ad V.a) Separate Family Constitution Variable. Arteaga and Menéndez-Requejo (2017) analyze a sample of 530 Spanish family businesses from 2003 to 2013. Half of the sample firms disposed of a family constitution. Results show that the existence of a family constitution increases future firm performance (measured with return on assets) significantly. More refined analyses with interaction variables reveal that this relation does not hold generally, but that the performance-enhancing effect of a family constitution is significant for family firms with a non-family CEO, for family businesses with multiple family owners, and for family firms in later generations.

Based on a sample of 490 Spanish family firms, Arteaga and Escribá-Esteve (2021) compare four clusters of companies, who apply either a family constitution, a family council, both instruments or none of these instruments, for significant differences. They find that the existence of a family constitution seems to be dependent on family (generation, and family involvement in management and ownership) and firm characteristics (size, and management and governance characteristics). More specifically, family constitutions were significantly more prevalent in bigger, second or later generation companies in which there was a family CEO and where family ownership was highly concentrated.

Graves et al. (2023) have conducted a big sample analysis with 396 Australian family firms. They researched the correlation between a number of business governance and family governance instruments on the one hand and the company's success on the other. The governance instruments were not aggregated and analyzed as a composite variable but separately, so that distinct results about the family constitution (more precisely: "family constitution/code of conduct") are available. The company's success is not calculated based on the annual statements or data from capital markets; instead, the success variables are based on survey results. They are summarized into three aggregated success measures through factor analysis: family-oriented performance, financial performance, and non-financial performance. 16% of the sample companies dispose of a family constitution. The regression analysis yields a positive significant correlation between the family constitution and financial performance but no significant connection to the other two success measures. Concerning the financial performance, the results support the above-mentioned indications in consultants' studies about the family constitution's impact on company's success; in this case however profoundly better based on facts. In contrast, the positive effect on the family also indicated by consultancy brochures cannot be affirmed.

Ad V.b) Family Constitution as Part of a Composite Family Governance Variable. The big-sample analysis from Parada's dissertation (2015) which has already been discussed above also belongs to this category of studies.

Berent-Braun and Uhlaner (2012) use regression analysis to look at the correlation between family governance practices and company's success of 64 family firms from 18 countries. Family governance practices are a composite variable for family constitution, family behavior codex, family council, existence of formal communication mechanisms, and the presence of distinct selection and responsibility criteria. The company's success is not measured objectively but is rather based on the subjective impression of the questioned family firms. The aggregated family governance practices are significantly positively (1%-level) connected to the company's success; a separate analysis for the family governance practices does not take place.

Michiels et al. (2015) also present a big-sample empirical study. For 295 Belgian private family firms, they analyze if intra-familiar principal-principal-conflicts between active and passive family shareholders show a correlation to the dividend policy and if family governance practices have a moderating effect on this correlation. The 0/1-variable family governance instrument has the value 1, if there is a family constitution, a family forum or both. The moderating effect of this variable is statistically significant; the use of at least one of the family governance instruments makes the dividend policy more efficient. In this case, there is also no separate analysis for the family constitution.

Laveren and Molly (2017) present preliminary evidence for a sample of 407 Flemish family firms. Family governance instruments considered are family forum and family constitution. The family governance variable is 0 if no instrument is applied, 1 if one instrument is in place, and 2 if both instruments are used. Laveren and Molly analyze the link between family governance and succession planning. The preliminary results in the first draft of their paper indicate that the existence of family governance instruments in a family firm improves succession planning. This effect is particularly pronounced in smaller companies with less restrictive requirements with regard to business governance, pointing at a potential substitutionary effect between business and family governance instruments.

2.6. Paths of Future Research

The literature overview has shown that there is some progress in comparison to Gersick and Feliu's (2014) evaluation, yet the family constitution is far away from being an over-researched topic. Which direction could future research take?

Botero et al. (2015) name in their outlook four fields of research for the topic of family constitution:

1) Which entrepreneurial families (don't) use the instrument family constitution?
2) Creation process of a family constitution
3) Does the distribution of family constitutions differ geographically?
4) Effect of the family constitution on family harmony and company success

All of these aspects, except for the third one, are incorporated in the research program roughly presented hereafter in Fig. 2.1, which could easily be complemented by an international comparison component. So far, a holistic concept model of the family constitution is missing in order to grasp the whole range of this area. At its core, it should depict the influence of the creation process on the document as well as the influence of the creation process and the document itself on the development of the company and the family. In doing so, the possibility should be contemplated that the creation process could have its own, meaning dissociated from the document, and influence the family and the company. The question of what initiated the first creation as well as the revision of the family constitution also belongs to this model core. Potentially the initial creation process has to be analyzed separately from the following revision cycles. Forces from which a uni- or a bidirectional correlation with the model core can be expected could be grouped around this model core. The very extensive approach by Parada (2015) can be used as a starting point for this analysis.

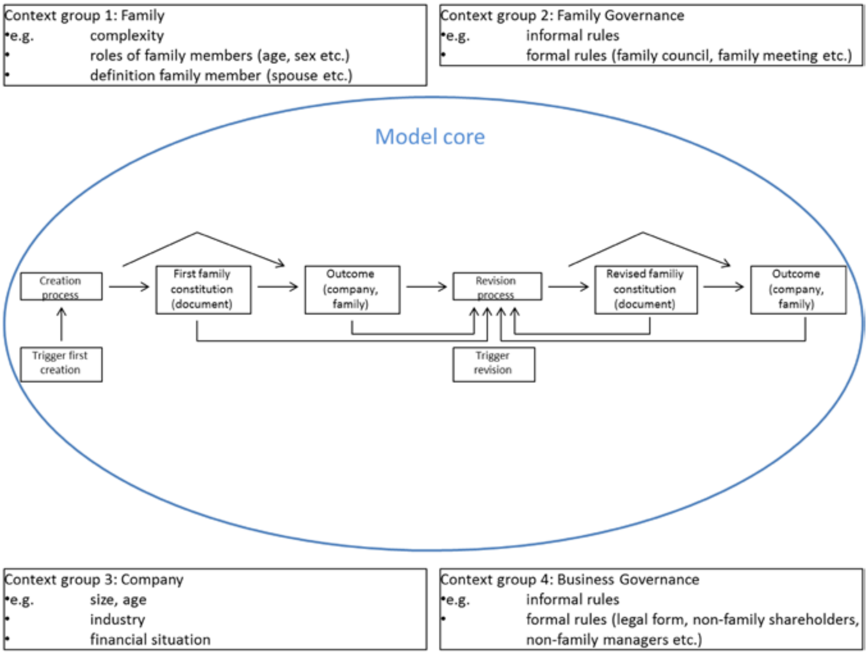

Fig. 2.1. Conceptual Model Sketch Family Constitution. *Source*: Mengers and Prigge (2017, p. 95) [own translation].

The family could be the first context group. To this group belongs, for example, the family's complexity, the different roles which can be taken by family members (parents/children, age, gender, and so forth) or even the definition of family membership (spouses, etc.). Papesch (2010) supports in his dissertation the observations made by the consultancy literature, that family constitutions will rather be found with more complex family structures. Scientific articles also show that regular family meetings suffice for family firms in their first stages, however, as soon as succession becomes a topic or several family branches are involved, more formal family governance structures, for example, a family constitution, can be found (Süss-Reyes, 2014, p. 150). There is backlog demand, especially for the indexing of single roles which a family member can take, as well as for the analysis of conflicts potentially resulting out of it. For a long time, intra-familiar (agency) conflicts have been disregarded in family firm research, because the alleged agency advantages of family firms have been put forward and the family has rather been considered as a homogenous (meaning free of conflict) group.[18]

[18]This statement is intended to describe the tendency followed for example by Fama and Jensen (1983). It should, however, not claim that this direction has not been given any attention at all; for example refer to the agency analysis of family firms by Schulze et al. (2003).

In recent years, more research has been undertaken with regard to intra-family conflicts,[19] which could certainly be used for this area of the family constitution analysis, since the family constitution after all is an instrument to reduce exactly these conflicts.

A second and third context groups could be the formal and informal instruments and characteristics of family governance and business governance, respectively. Examples of family governance being the family council or the family assembly, examples of the area of business governance being the company's legal form, its committees, and their composition, especially the significance of non-family members or the shareholders' structure (refer for example to Nordqvist et al., 2015). The family constitution is a (family) governance instrument. The concept of substitutes or complementary relations between governance instruments in general has been established (see above references), and even in terms of the family firm's context there are references to correlations between the family governance instruments.[20] This is the reason why future research should analyze the correlations between the family constitution and other family governance and business governance instruments and characteristics.

Company characteristics like size, age, internationality, or the financial situation could finally make up the fourth context group. In empirical corporate governance studies, it has been custom for a long time to include variables of this sort as control variables in the study. Also, for family firms, there is evidence that their governance structure is dependent on the company's characteristics (for example, Hauser, 2002, p. 14).

Furthermore, the theoretical equipment within the framework of the above-drafted holistic conceptual model has to be extended. In the literature overview, some of the theories have been listed, which have so far been used to analyze family constitutions. A systematic testing of those theories typically used in the context of family firms (and beyond that) so far has not taken place, but seems promising. Finally, it should be noted that the assessment of crises analyses and conflicts in family firms (for example Großmann, 2014) could foster further components for the conceptual model.

2.7. Conclusion

From a business management perspective, the conclusion about the family constitution can be kept short: So far, management research cannot contribute a lot to the question, if, for whom and under which circumstances a family constitution

[19]For example, Michiels et al. (2015) [dividend policy], Songini and Gnan (2015, esp. pp. 750–752), Villalonga et al. (2015), Zellweger and Kammerlander (2015) [intra-blockholder-conflicts], Basco and Calabrò (2017) [differentiation between active and passive family members], Prigge and Thiele (2019) [consideration of intra-family conflicts in governance codices for family firms].

[20]This article refers to the related works of Parada (2015), Songini and Gnan (2015), and Laveren and Molly (2017).

is of advantage. Theory and empiricism are still in the fledging stages. This opens many opportunities to research, but is at the same time of disadvantage to the limited consulting contributions management research can make at the moment. This disillusioning finding can be explained by the fact that the attention for research in this area has only recently been drawn to this topic. Moreover, the empirical branch additionally fights with the typical problem of empirical family firm research: bad availability of data. It is normal for listed companies, for example in the empirical corporate governance research area, that the number of new studies p.a. has been two- or three-digits for years. Such dimensions are completely unrealistic in this area. On the contrary, it can be positively mentioned that with Arteaga and Menéndez-Requejo (2017), Arteaga and Escribá-Esteve (2021), and Graves et al. (2023) the first big-sample empirical studies are available, which analyze the family constitution as a separate variable. The output of new research on the topic of family constitutions should speed up in the coming years, but it will stay moderate. As is known the marginal gain of knowledge is especially big in the beginnings of a research area. Therefore, the hope should be justified that despite its moderate number of studies, management research should soon be able to better support family firms and owner families as well as their consultants seeking advice.

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