

WIFE AND MOTHER

THE LEGAL STATUS OF MARRIED WOMEN IN 16TH- 17TH LIÈGE, BETWEEN CUSTOMARY LAW AND *IUS* *COMMUNE*

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1. FRAMEWORK AND SOURCES



OBSERVATIONES
ET
RES JUDICATÆ
AD
JUS CIVILE
LEODIENSIMUM,
ROMANORUM ALIARUMQUE GENTIUM
CANONICUM ET FEUDALE.

L'ART
DE
CONTRACTER
ET TESTER
Conforme au Droit & Coutumes,
AVEC MODELES
DES CONTRACTS
ET ACTS
DE VOLONTÉ DERNIÈRE.

*par Monsieur Vincent de la Martinière
Avocat au Siège*



A LIEGE,
De l'Imprimerie PIERRE DANTHEZ
à l'Enseigne S. Augustin. 1683.

Avec Permission des Supérieurs,



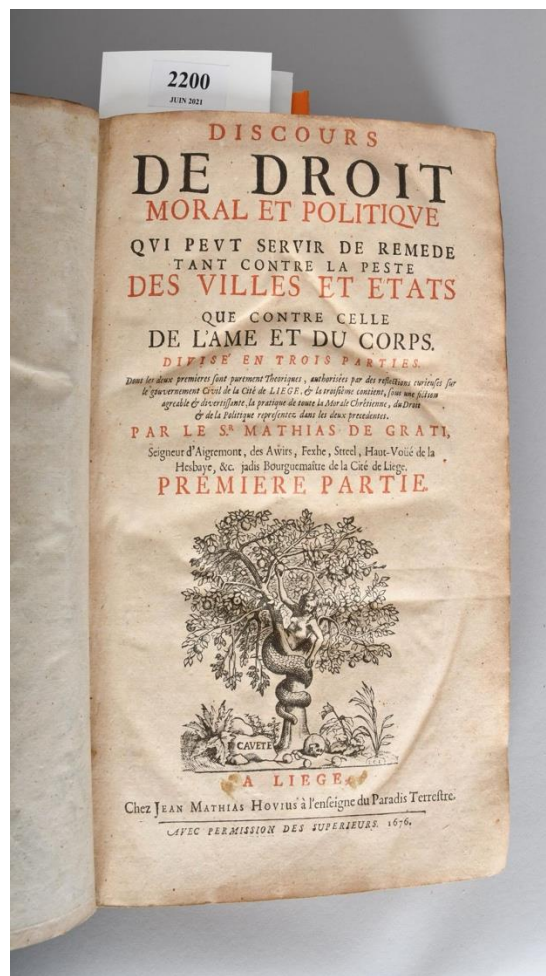
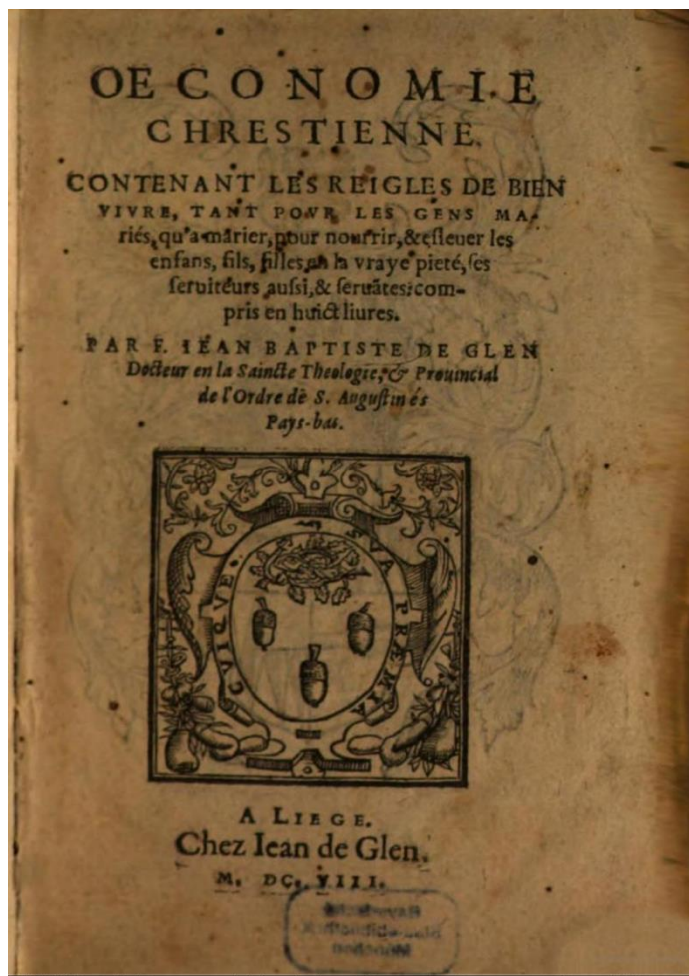
RECUEIL
DES
POINCTS

INSTITUTS
DE
DROIT,
OU
SOMMAIRE
DE
JURISPRUDENCE
CANONIQUE, CIVILE, FEODALE
ET CRIMINELLE,
Pour les pays de Liege, de Luxembourg, Namur
& autres.
Par Mr. SOHET, Licencié en Loix, Mayeur de Chœur,
PARTIES PREMIERE ET DEUXIEME.



A BOUILLON,
Chez A. FOISSY, Imprimeur de S.A.S. MGR. LE DUC,
se vend à LIEGE, LUXEMBOURG, NAMUR, BRUXELLES,
MALINES, LOUVAIN, DOUAY, &c.

M. D. CC. LXXII.
AVEC APPROBATION DES SUPERIEURS.

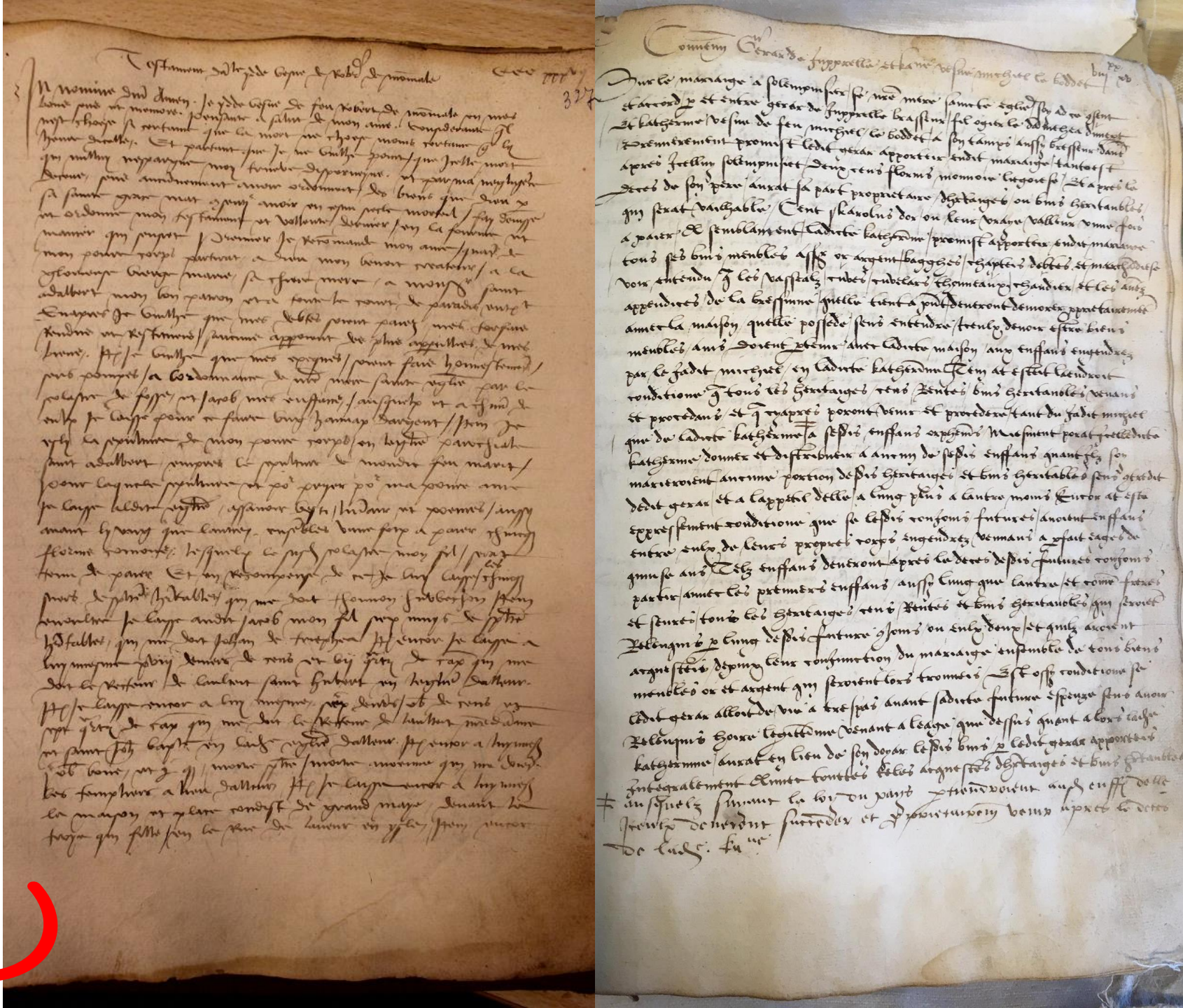


Original marriage
contract from 16th
century Liège
(AÉL)



Sample of
1159 deeds :
- 690 last wills
- 469 marriage contracts

First page of a last
will (left) and of a
marriage contract
(right) (AÉL)



A detailed historical map of Liège, Belgium, showing the city's layout, including the Meuse river, various churches, and streets. The map is in a dark, sepia tone. The title is overlaid in white serif font.

2. LEGAL STATUS OF MARRIED WOMEN UNDER LIÈGE LAW



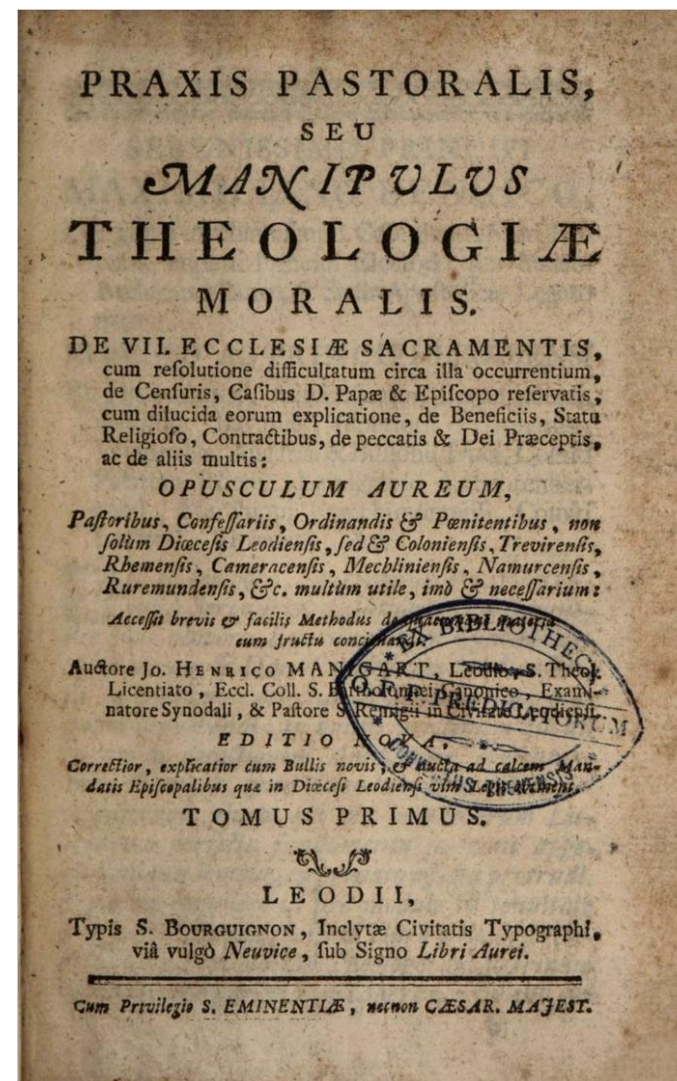
ANTONII ANSELMII
IOHANNIS HUBERTII
FIDELIS PICTORIS
MARTINO DE VOS PICTORI
NATVS ANNO MDCLXXIIII
VIXIT ANNVS XVII DECESSIT LIBERVS
ALGIVM ANNO MDCLXXVI
DIGNA ANNO MDCLXXVI ANNO ALGIVM



Marriage: a sacrament, but also a
contract between the spouses



Reciprocal duties of the spouses under Canon law ? (example)



“Mainplévie”

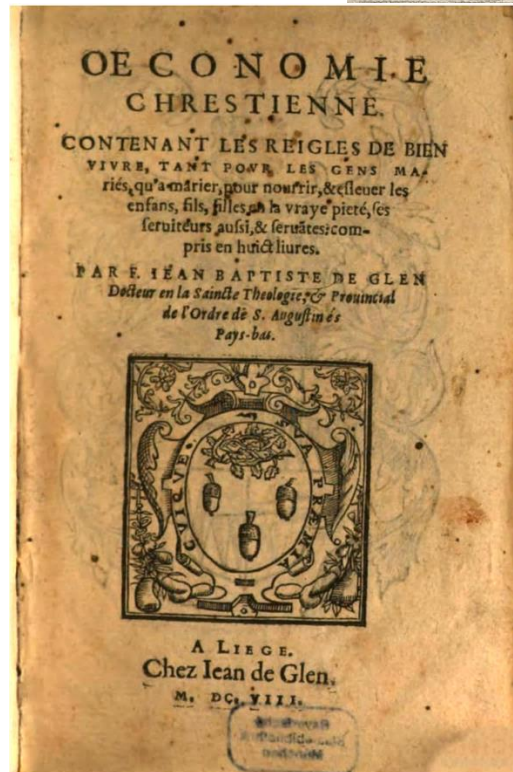


Upon marriage, the wife...

- Became part of her husband's family, without breaking legal bonds with her family of origin ;
- Was definitely emancipated from parental authority ;
- Adopted the social and legal status of her husband.



Duty of obedience of the wife and right of correction of the husband ?



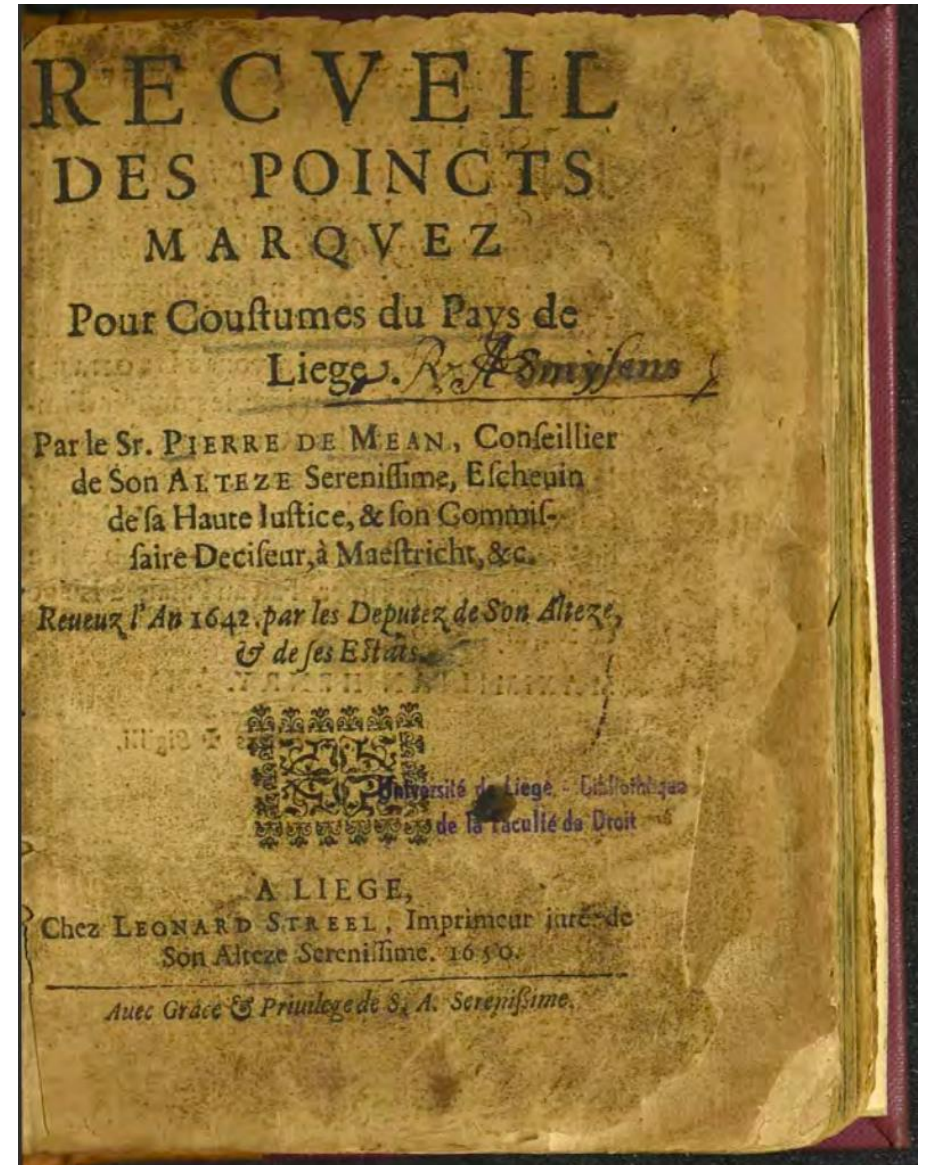
Duty of obedience of the wife and right of correction of the husband ?



Loss of legal capacity

Following marriage, a wife cannot “*dispose of her property by will, or otherwise, contract, bind herself, or stand trial, except for her own delict in criminal proceedings, without her husband’s authorization*”.

Pierre de Méan, *Recueil des points marqués...*, chapter 1,
article 4, 1650.



Incapacity to draft one's last will without
permission:
contrary to the *ius commune*?



Mitigation of the strict requirement of the husband's consent through doctrine and case-law?

(Liège, Conseil ordinaire, *Louvet vs. Vivegnis*, 13th August 1661)



Peter Peck (Peckius) (1529-1589)



André Tiraqueau (Tiraquellus) (1488-1558)



Several exceptions to wives' legal incapacity were recognized by customary law:

- Possibility to derogate from it by means of a marriage contract;
- Capacity to spend her husband's money to feed and clothe the family;
- Legal capacity of wives' traders for business transactions only, and provided their husband generally consented to their commercial activity;
- Etc.



“A man by marriage is made absolute master and lord of all movable an immovable property, credits and actions of his wife, and has the power to dispose of it inter vivos as his own, without the consent of his wife, and remains master after her death without children, unless there is a pact or provision to the contrary”.

Pierre de Méan, *Recueil des points marqués...*, chapter 1, article 1, 1650.



Further restrictions: the reform project of the customary law of
Liège in the first quarter of the 18th century

Inheritance rights of widows ?

In the absence of legitimate children, the widow is entitled to the property of all of her husband's assets (movables and immovables), except ancient family fiefs (« fiefs stipaux ») (= « droit de mainplévie »)



“Droit de mainplévie”: a rightful compensation for the wife’s loss of her assets during marriage?



While he lives, only the father enjoys guardianship rights over his children

Nuance: the mother has the right to educate and therefore, to beat her children if they misbehave

Moreover, when the father dies, guardianship **automatically** falls to the mother



Guardianship rights of the mother over
her own children?

In case of remarriage?

Relationship with appointed guardians?



Thank you!