

VI.

Heaven and a Spindle. The Legal Status of Women during and after Marriage in the Principality of Liège, between Customary Law, *Ius Commune*, and Notarial Practice (16th–17th century)

Von

Marie-Sophie Silan^{*)}

Summary: In the sixteenth and seventeenth centuries in the Principality of Liège, a medium-sized estate of the Holy Roman Empire governed by a prince-bishop, the legal position of women during marriage and after its dissolution was primarily influenced by the customary matrimonial regime, known by local jurists as the ‘*mainplévie*’. While the *mainplévie* regime did not significantly diverge from the laws of neighboring regions regarding the wife’s personal status, it exhibited distinctive features concerning the ownership and transmission of her property. Upon the consummation of marriage, all assets brought by the woman or her family, along with any gifts or inheritances she received during the union, became the full property of her husband. As a result, he could dispose of these assets without her consent, subject to only minimal constraints. This loss of property was, however, balanced by a customary right of inheritance granted to widows in the absence of legitimate offspring, referred to as the ‘*droit de mainplévie*’. In such cases, the widow not only recovered her original assets but also inherited full ownership of her husband’s property – both movable and immovable – with limited exceptions. In addition to outlining the legal framework of the *mainplévie* as defined by customary law, this study draws on notarial practice – specifically a corpus of marriage contracts and wills from residents of the City of Liège – to reveal how notaries developed contractual clauses that both limited the husband’s authority during marriage and restricted the surviving spouse’s inheritance rights. These practices significantly nuanced the legal position of women beyond the prescriptive norms of customary law. – Lastly, this contribution also investigates the position

^{*)} mssilan@uliege.be, Dept. of Law, Centre Liégeois d’Histoire du Droit, University of Liège, 4000 Liège, Belgium. – This article offers a synthesis of specific findings drawn from a broader and more comprehensive doctoral research see M.-S. Silan, *L’épouse, la veuve et le notaire, Une histoire de la condition juridique des femmes à Liège (16^e–17^e siècle)*, Ph.D. diss. University of Liège 2024. I am deeply grateful to Prof. Dr. Wim Decock for his support and to Mrs Nargisse El Houti for her attentive reading and valuable feedback on a previous version of this article. Finally, my sincere thanks to the journal’s reviewers for their helpful corrections and suggestions. Any remaining errors are my own.

of mothers within the family and their legal relationship with their children. For both subjects, I will show instances in which learned law influenced the interpretation and development of customary law throughout the time-period under study, and, in turn, impacted women's lives.

Key Words: Principality of Liège, legal status of women, matrimonial law, inheritance law, notarial practice

I. Introduction

The law of the ecclesiastical Principality of Liège (985–1795)¹⁾, a medium-sized estate of the Holy Roman Empire, has remained relatively unexplored to this day²⁾. While scholarly interest in this law has come mainly from scholars who were themselves from Liège or other parts of present-day Belgium, there is virtually nothing on the subject in German literature, despite the principality's long-lasting belonging to the Empire³⁾. This contribution aims

¹⁾ The Principality of Liège came into existence on 7 July 985, when Theophano, regent of the Holy Roman Empire, donated the County of Huy to the bishop of Liège, Notger, on behalf of her son, the young emperor Otto III. The prince-bishopric was dissolved on 1 October 1795 following its annexation by the First French Republic pursuant to a decree of the National Convention; on the history of Liège see B. Demoulin/J.-L. Kupper, *Histoire de la principauté de Liège: de l'an mille à la Révolution*, Toulouse 2002 (with further bibliography). In this article, readers should not be surprised by the use of the spellings Liege, Liège or Liège, depending on the date of the source that mentions it: the spelling of the word has evolved over the centuries, and was only officially fixed as *Liège*, its current spelling, in 1946.

²⁾ To date, research has focused mainly on the Principality's public, institutional and judicial law see primarily S. Dubois/B. Demoulin/J.-L. Kupper (eds.), *Les institutions publiques de la Principauté de Liège (980–1794)*, 2 vols. Brussels 2012. Liège private law has been the focus of renewed scholarly attention in the course of the last decade, which first started with a doctoral dissertation dedicated to Charles de Méan (1604–1674) by Benoît Lagasse, *Charles de Méan: le Papinien liégeois*, Ph.D. diss., University of Liège/University of Ghent 2017. Mention should also be made of Wim Decock's studies on canon law jurists from Liège, notably his contribution *Droit au coeur de la science politique, Le 'Trésor' de Jean de Chokier, canoniste liégeois (1571–1656)*, in: *Tijdschrift voor Rechtsgeschiedenis* 92 (2024) 440–469.

³⁾ However, mention should be made of the interest in Liège law taken by German jurist Leopold August Warnkönig (1794–1866). Warnkönig, a correspondent of Savigny and a member of the German Historical School, was the very first professor of Roman law at the University of Liège, founded by the Dutch King William of Orange (William I) in 1818. During his time in Liège (he later transferred to the University of Ghent, also founded in 1818), Warnkönig took an interest in the law of the Principality of Liège, and even dedicated a short monograph to it, which mainly reviews the history of its customary law see L. Warnkönig, *Beiträge zur Geschichte und Quellenkunde des Lütticher Gewohnheitsrechts*, Freiburg 1838; about Warnkönig in Liège see J.-F. Ger-

to shed light on a specific aspect of the private law of Early modern Liège: the legal status of women – as wives and mothers – and the legal treatment of their property during marriage and upon its dissolution, with a focus on the sixteenth and seventeenth centuries.

The legal status of women and their property during and after marriage was primarily defined by the so-called ‘mainplévie’. The mainplévie was the name given by local jurists⁴⁾ to both the customary matrimonial regime and the legal inheritance of the surviving spouse, irrespective of gender, upon the dissolution of the marriage without legitimate children. When referring more specifically to a widow’s entitlement, some local jurists also used the term ‘droit de mainplévie’⁵⁾. During the Early modern period, matrimonial law and inheritance law were closely interwoven – much more than today – since one of the main purposes of matrimony was to produce a descendance

kens, Léopold Auguste Warnkönig (1794–1866), l’École Historique Allemande débarque dans les Universités de Liège et Gand, in: D. Heirbaut/J.-F. Gerkens/G. Grandjean/P. Humblet/M. Cools (eds.), Deux-centième anniversaire des facultés de droit de Gand et Liège / Tweehonderd jaar rechtsfaculteiten Gent en Luik, Bruges 2019, 161–163. German scholarship has also taken an interest in the Liège Revolution (1789–1795), in particular see H. Wüller, Systemkrise als Handlungschance: Christian Wilhelm von Dohm und die Lütticher Revolution von 1789, Berlin 2004; and S. Reuter, Revolution und Reaktion im Reich, Die Intervention im Hochstift Lüttich 1789–1791, Aschendorff 2018. Many thanks to my colleague Antoine Leclère for these latest references.

⁴⁾ The main Liège jurists mentioned in this contribution are the following: Pierre de Méan (1576–1638); his eldest son Charles de Méan (1604–1674); Vincent de La Hamaide (ca. 1650–1703); and Dominique-François de Sohet (1728–1811). The exact origin of the ‘mainplévie’ and of its name are still unclear to this day and would deserve further research.

⁵⁾ Specifically, Pierre de Méan, Recueil des poincts marquez pour coustumes du Pays de Liege, reveux l’an 1642 par les Deputez de Son Alteze & de ses Estats, printed *apud* Léonard Streeel, Liège 1650 [1642 Liège Customs], ch. 11 (Legal succession), art. 13. The most comprehensive account of Early modern Liège law written in French to this day is Dominique-François de Sohet, Instituts de droit, ou sommaire de jurisprudence canonique, civile, féodale et criminelle, pour les pays de Liège, de Luxembourg, Namur et autres, 3 vols. Namur 1770, Bouillon 1772 and Namur 1781. Sohet’s three massive volumes about Liège law were published in a chaotic order, and it is therefore easier to find a specific provision in it by citing the livre (book), titre (title), chapitre (chapter) and/or number of such provision than giving the numbers of the relevant vol. and page – which is why, in this contribution, I will systematically refer to the specific provision; on *mainplévie* see *ibid.* livre 1 titre 69: Des Personnes du Sexe Masculin, & Féminin, Du S.C. Velleyen, & autres Droits des Filles & Femmes, ch. 2: De la Mainplevie, ou Puissance Maritale dans le Païs de Liège, n 2.

to whom one could bequeath one's family name and property⁶). Under the rules of the *mainplévie* regime, a wife's person and property came under the authority of her husband when the marriage was consummated⁷). With regard to women's personal status, this regime did not substantially differ from the laws of neighbouring countries during the same period, as it was based on a guardianship system in which the husband alone managed his wife's property, and which entailed significant restrictions on her legal capacity throughout marriage. However, it stood out as quite unique in the way it determined the fate of a wife's assets. The property – movable and immovable – brought by a woman or her family into the marriage (her dowry), as well as any property she received through gifts or bequests from family members during marriage, were regarded by jurists as her husband's exclusive property. Consequently, with only a few exceptions, the latter could dispose of his wife's assets without her consent. Therefore, the *mainplévie* proved a fairly severe matrimonial regime for women.

However, following her husband's death, and provided that the spouses did not have legitimate children or that all of their children had died before them⁸), a widow was entitled to a proportionate compensation for the loss of property endured during marriage⁹). According to the *mainplévie* regime, this time in its successoral aspect, she was to inherit all remaining marital assets¹⁰). This included her movable and immovable property – both what she or her family brought into the marriage and what she had received dur-

⁶) For an account of the main features of inheritance law in the former Southern Low Countries that goes beyond local particularities see D. Heirbaut, *A History of the Law of Succession, in particular in the Southern Netherlands/Belgium*, in: C. Castelain/R. Foqué/A. Verbeke (eds.), *Imperative Inheritance Law in a Late-Modern Society – Five Perspectives*, Antwerp 2009, 65–84; for a focus on Liège inheritance law, with a special attention to women's inheritance rights, see M.-S. Silan, 'Aussy avant les filz que les filles, et les filles que les filz': les droits successoraux des filles de famille dans la coutume de Liège et dans les actes de la pratique du 16^e siècle, in: *Tijdschrift voor Rechtsgeschiedenis* 91 (2023) 115–142.

⁷) 1642 Liège Customs (n. 5) ch. 1 art. 1–4. Under canon law, the consummation of the marriage referred to the first act of sexual intercourse between the newly-weds, following the exchange of mutual consents. The consummation rendered the marriage indissoluble, but it was not necessary for its validity; about the requirements for a marriage's formation see C. Donahue, *Law, Marriage, and Society in the Later Middle Ages, Arguments about Marriage in Five Courts*, Cambridge 2007, 16–19.

⁸) 1642 Liège Customs ch. 11 (n. 5) art. 13.

⁹) I will explain why I speak of compensation to refer to a widow's inheritance right when discussing her 'droit de *mainplévie*' under subsection 2.2.1, below.

¹⁰) 1642 Liège Customs ch. 11 (n. 5) art. 13.

ing it – as well as all her husband's property, with the exception of so-called 'pleins fiefs stipaux'¹¹⁾, over which she gained only a right of usufruct, and which reverted to the family of origin after she died¹²⁾. It is important to note that a husband placed in identical circumstances was entitled to the same inheritance rights if his wife predeceased him. However, seventeenth- and eighteenth-century jurists no more called it *droit de mainplévie*, as they regarded the husband's entitlement to the matrimonial assets as the mere continuation of a preexisting ownership right, acquired from the consummation of the union, and not as a right of inheritance *per se*, since one cannot inherit what one already owns¹³⁾.

Owing to its unique features, the *mainplévie* regime has attracted the most sustained scholarly attention concerning the private legal status of women in Liège, ever since the nineteenth century¹⁴⁾. The first scholars to take an interest in private law in Liège, and therefore also attempt to understand its matrimonial regime, were the Belgian lawyers Jean Joseph Raikem and Louis Crahay, alongside the historians Stanislas Bormans and Mathieu Lambert Polain, who dedicated three volumes to the customary law of the Principality of Liège¹⁵⁾. In 1930, Ferdinand Bomerson published the first study dedicated specifically to the *mainplévie*, which was based on the legal opinions (known as 'records')

¹¹⁾ Liège feudal law made a double distinction between types of fiefs: a first between 'fiefs stipaux' and 'fiefs d'estock' (or 'de côté') and a second between 'pleins fiefs' and 'menus fiefs'. Fiefs stipaux were fiefs that came from the direct line of the family, while fiefs d'estock had been inherited from collateral parents. As for pleins fiefs, as opposed to menus fiefs, they were estates of a value superior to thirty Brabant florins, or, in the alternative, which had their own court of law; on those distinctions see B. Lagasse, *Les différents types de fiefs dans la Principauté de Liège suivant Charles de Méan*, C@hiers du CRHiDI 41 (2018). <https://popups.uliege.be/1370-2262/index.php?id=607> (20 May 2025). To summarise, pleins fiefs stipaux were family fiefs of a particular economic and social value, which is why they reverted to their family of origin after the death of the surviving spouse.

¹²⁾ 1642 Liège Customs (n. 5) ch. 13 (Feudal succession), art. 5.

¹³⁾ This was at least the interpretation of seventeenth century jurists. The 1642 Liège Customs (n. 5) refer to the husband's inheritance rights in ch. 1 art. 1 (which establishes a husband's ownership rights over his wife's assets during and after marriage), and to the widow's *droit de mainplévie* in ch. 11 art. 13 (namely the chapter dedicated to the rules of legal succession).

¹⁴⁾ With the exception of Raoul Van der Made, *Propos sur la capacité de la femme en droit médiéval liégeois*, in: X., *Hommage à Léon Graulich (par ses anciens étudiants)*, Liège 1957, 421–433. This article about the legal capacity of women (irrespective of marital status) in medieval Liège, is, however, quite dated.

¹⁵⁾ J. J. Raikem/L. Crahay/S. Bormans/M. L. Polain, *Coutumes du pays de Liège*, 3 vols. Brussels 1870, 1873 and 1884.

issued by the most powerful secular court of law in the principality, the Court of Aldermen of Liège, during the sixteenth and seventeenth centuries¹⁶). Belgian historian Maurice Yans also devoted several pages to the *mainplévie* in his 1946 work on inheritance law in fifteenth-century Liège¹⁷). Contributions examining more broadly matrimonial property regimes and the legal status of married women in territories that now form present-day Belgium in the Early modern period usually refer to the ‘*mainplévie*’ emphasising its originality¹⁸). Lastly, and more recently, Benoît Lagasse addressed the Liège matrimonial regime in his doctoral dissertation on Liège’s most prominent jurist in the Early modern period, Charles de Méan (1604–1674)¹⁹), as well as in a separate, unpublished paper examining its non-application in the city of Maastricht, which was under joint sovereignty with the Duchy of Brabant²⁰).

Yet one specific aspect of the *mainplévie* regime – and thus of women’s legal status during and after marriage – has remained partly overlooked by existing scholarship: the influence of notarial practice, particularly marriage contracts and wills, on the customary regime. As early as 1987, legal historian Philippe Godding stated in his encyclopaedic monograph on the laws of the Southern Low Countries between the twelfth and eighteenth centuries that in the Early modern period, the status of legal subjects and that of their property were dictated not only by customary law, but also by legal practice, which was used to derogate from the former – as, it should be noted, is still the case today²¹). Godding convincingly emphasised the need for legal

¹⁶) F. Bomerson, *La mainplévie dans le droit coutumier liégeois*, in: *Revue historique de droit français et étranger* 9 (1930) 294–323. On the Court of Aldermen of Liège, see J. Maquet, *La Souveraine Justice des Échevins de Liège*, in: Dubois/Demoulin/Kupper (n. 2) I 364–393.

¹⁷) M. Yans, *L’équité et le droit liégeois du Moyen Âge: étude historique des successions*, Liège 1946, 26–34.

¹⁸) See, for instance, the brief examination of the *mainplévie* regime by John Gilissen, *Le statut de la femme dans l’ancien droit belge*, in: *Recueils de la Société Jean Bodin pour l’histoire comparative des institutions* 12/2 (1962) 255–321, 312–314 in his overview of the legal position of women in the laws of the regions that now form present-day Belgium. More strikingly, Philippe Godding, *Le droit privé dans les Pays-Bas méridionaux du 12^e au 18^e siècle*, Brussels 1987, 313–314, in his authoritative monograph on the laws of the former Southern Low Countries (in which he also discusses the Principality of Liège), dedicated a separate section of his chapter on matrimonial regimes to the *mainplévie*.

¹⁹) Lagasse, Charles de Méan (n. 2) 330–336.

²⁰) B. Lagasse, *De niet-toepassing van de mainplévie in Maastricht*, *Nederlands-Belgisch Rechtshistorisch colloquium*, 16–17 December 2016, Maastricht 2016.

²¹) Godding (n. 18) 283; on legal pluralism and notarial practice in the Middle

historians to take private deeds into account in their research²²). With regard to Liège law, such an inquiry has been undertaken by Maurice Yans and Philippe Demonty, albeit limited to the fifteenth century²³). Building on their research, my doctoral research extended the analysis to marriage contracts and wills from the early sixteenth to the late seventeenth century, with particular attention to the impact of specific legal clauses on women's legal status and property rights, as well as to the evolution of such clauses over time²⁴). The present contribution draws on that research, summarising its most significant findings regarding the legal status of women and that of their assets during and after marriage. As mentioned above, it examines women in two key roles: as wives (section II), but also as mothers – another aspect of women's condition that has thus far received comparatively little attention in legal historiography (section III).

This study draws on two primary categories of legal sources: customary law and notarial practice. With regard to the former, it is important to know that in Early modern Liège, customary law was primarily created by the jurisprudence and legal opinions of the Court of Aldermen of Liège, previously mentioned²⁵). In 1620, the Prince-Bishop of Liège, Ferdinand of Bavaria (1577–1650), commissioned one of his aldermen, Pierre de Méan (1576–1638), to compile all the rules that had acquired customary status, with the aim of transforming them into formal legislative norms²⁶). Méan

Ages and in the Early modern period see also J. Hilaire/F. Terré, *La vie du droit, Coutumes et droit écrit*, Paris 1994.

²²) Godding (n. 18) 283.

²³) Yans, *L'équité* (n. 17) (based on the analysis of wills); P. Demonty, *Documents concernant le mariage et la famille à Liège (XV^e siècle)*, in: *Bulletin de la Commission Royale d'Histoire* 152/1 (1986) 115–145 (based on a sample of marriage contracts). To date, my study is the only one to combine the analysis of marriage contracts and wills – a choice that proved particularly fruitful given the intrinsic connection between matrimonial law and inheritance law.

²⁴) Silan, *L'épouse* (n. *).

²⁵) Although the aldermen were aware of the 'enquête par turbe' (namely a method of proving custom, consisting of asking a group of local dignitaries to unanimously declare the existence and substance of an alleged rule), which was widely used in neighbouring regions, they made very limited use of it, preferring instead to dictate customary rules through judicial rulings and legal opinions known as records; for an account of the sources of Liège law, including customary law see P. Bruyère, *Aux sources du droit public liégeois (XII^e–XVIII^e siècle)*, in: Dubois/Demoulin/Kupper (n. 2) I 41–71.

²⁶) About this historical episode see M. Yans, *La rédaction de la coutume de Liège*, in: *Bulletin de l'Institut Archéologique Liégeois* 67 (1949/1950) 379–384.

based his compilation primarily – though not exclusively – on earlier decisions handed down by the Court of Aldermen of Liège²⁷). In 1642, a revised version of his text, amended by a commission of deputies representing the principality's three estates (among whom was his eldest son, Charles de Méan), was submitted for approval by the estates²⁸). However, for reasons that remain unclear to this day, the proposal failed to secure the estates' endorsement²⁹). Pierre de Méan's text, in the 1642 revised version of the commission, was eventually published in 1650 at the initiative of Charles de Méan under the title "Recueil des poincts marquez pour coutumes du Pays de Liège" (hereafter, the 1642 Liège Customs). Although it remained a private compilation, devoid of any legal effects, the text served as a point of reference for Liège jurists up until the principality's dissolution³⁰). It continues to hold substantial value for modern scholars studying the customary law of Liège in the seventeenth and eighteenth centuries – which is why the present contribution frequently refers to it. Our analysis also draws on the writings of some of Liège's most prominent jurists, such as Charles de Méan, previously mentioned, Vincent de La Hamaide (ca. 1650–1703), and Dominique-François de Sohet (1728–1811). Taking their commentaries into account is crucial for two reasons: firstly, they supplement the numerous omissions of the 1642 Liège Customs; and secondly, these jurists tended to interpret customary law in line with the *ius commune*, which they had

²⁷) G. Hansotte, *Les institutions politiques et judiciaires de la Principauté de Liège aux Temps modernes*, Brussels 1987, 42.

²⁸) Any formal amendment to the customary law of Liège had to receive the endorsement of the 'Sens du Pays', which was composed of the Prince-Bishop and the representatives of the principality's three estates (the clergy, the aristocracy and the third estate). This rule dates back to the Paix de Fexhe of 18 June 1316, on which see in particular C. Masson, *La Paix de Fexhe et les textes dits 'constitutionnels' dans la Principauté de Liège (1316–1794)*, in: G. Grandjean/M. Lempereur/J. Maquet (dirs.), *Histoire des institutions diachroniques: le pouvoir politique en Wallonie*, Liège 2022, 39–55.

²⁹) Yans, *La rédaction* (n. 26) 384.

³⁰) Hansotte (n. 27) 42. The success of Pierre de Méan's compilation (n. 5) is primarily due to Charles de Méan's *Observationes et res judicatae ad jus civile romanorum, leodiensium, aliarumque gentium canonicum et feudale*, 6 vols. Liège 1652, 1654, 1658, 1663, 1669 and 1678, which sought to clarify the legal foundations of each customary rule established by Pierre de Méan. These commentaries not only facilitated a better understanding of the text among practitioners, but also helped them bring evidence as to the existence and substance of a specific customary rule in legal proceedings. In this study, I shall use the augmented version of Charles de Méan's *Observationes*, published in 1740 (see n. 45, below).

studied – Charles de Méan, for instance, had attended the University of Leuven³¹). Reading their work therefore helps demonstrate the influence of learned law on the interpretation and development of customary law throughout that period, sometimes with concrete consequences for women's lives.

As far as notarial practice is concerned, this study was based on a representative sample of 1159 private deeds covering the whole period under study, including 469 marriage contracts and 690 wills of residents of the City of Liège, the capital of both the Diocese and the Principality of Liège³²). All analysed documents can be found in the archive records of the Court of Aldermen of Liège, which, among its many attributions, had jurisdiction for the insinuation of such private deeds³³).

II. The legal status of women and of their property during and after marriage

This first section examines the *mainplévie* regime and its implications for women during marriage – namely as matrimonial regime – (2.1) and after the dissolution of the marriage – namely as right of inheritance, or '*droit de mainplévie*' (2.2).

2.1. The *mainplévie* as matrimonial regime:

This subsection addresses the legal status of women (2.1.1) and that of their property (2.1.2) during marriage, based primarily on customary law and legal doctrine. It subsequently analyses the most common derogations from the matrimonial regime found in notarial practice (2.1.3).

³¹) B. Lagasse, Charles de Méan, de luikse Papinianus, Biografie van een luikse jurist uit de zeventiende eeuw, in: *Pro Memorie, Bijdragen tot de rechtsgeschiedenis der Nederlanden* 17/2 (2015) 251–263, 253.

³²) Around 12,500 marriage contracts and wills were preserved by the Court of Aldermen of Liège from the sixteenth and seventeenth centuries alone. To ensure the feasibility of our study, our sample was limited to thirteen records (seven from the sixteenth century and six from the seventeenth century), focusing on documents from residents of the City of Liège and its immediate suburbs. This approach enabled us to gather data on the entire period under study.

³³) The analysed documents are therefore only copies of the original minutes, which were preserved either by the notary and/or by the families of the parties (for marriage contracts) or that of the testator/testatrix (for wills). In Liège, marriage contracts and wills could be insinuated in two ways: either by the competent court of justice approving the deed and registering it in the court's records, or by a simple registration known as '*réalisation*'; see de Sohet (n. 5) livre 3 titre 31 n 4–6.

2.1.1. *The legal status of married women:*

The legal status of women underwent major changes due to the marriage and the resulting marital authority, which was exclusively held by the husband. Family in the Early modern era was a hierarchy, with the father and husband at the top, and Liège was no exception to that³⁴). As stated by the 1642 Liège Customs,

Ch. 1 art. 4. La Femme passe par mariage en la puissance de son Mary, & ne peut sans l'auctorité & consentement d'iceluy disposer de son bien par testament, ny autrement, ny contracter, ny s'obliger, ny être en jugement, si ce n'est pour son propre delict en action criminellement intentée.

A woman, upon marrying, falls under the power of her husband, and cannot without his authority and consent dispose of her property by will, nor otherwise, enter into a contract, oblige herself, nor appear before a court, except where she is accused of a delict in criminal proceedings³⁵).

The provision thus mentions both the 'puissance' (power, authority) and, later as well, the 'auctorité' of the husband. Both terms come from learned law: 'puissance' refers to the *potestas* of the *pater familias*, whereas 'auctorité' refers to the 'auctoritas', namely, in this context, a guardian's faculty to render fully effective the legal act performed by an otherwise incapacitated person³⁶). As will be further discussed below, Early modern jurists drew a comparison between the position of married women³⁷) and that of pupils subjected to the *tutela impuberum* in Roman times. In this article, I will use the word 'authority', more common in Anglo-Saxon literature, to refer to the husband's prerogatives over his wife and her property.

³⁴) In the Early modern period, the notion of family included all people who shared a common roof, namely the spouses/parents, the children, and the servants. They were all placed under the authority of the head of the household, namely the husband and father; see S. Minvielle, *La famille en France à l'époque moderne*, Paris 2010, 5–6.

³⁵) The translation is my own.

³⁶) B. Albanese, *Le persone nel diritto privato romano*, Palermo 1979 uses 'auctoritas' to describe the legal result obtained thanks to the tutor's consent. Puissance and autorité cannot be used interchangeably.

³⁷) The position of the married woman in Liège was more or less the same also elsewhere in Western Europe, as further discussed below; for a comparison see C. Beattie/M.F. Stevens, Introduction, *Uncovering Married Women*, in: *Iidem* (eds.), *Married Women and the Law in Premodern Northwest Europe*, Woodbridge 2013, 1–10; and K. Cappelle, 'In de macht, plicht en momboorije van heuren man', *De rechtspositie van de getrouwde vrouw in Antwerpen en Leuven (16^{de} eeuw)*, in: *Pro Memorie, Bijdragen tot de rechtsgeschiedenis der Nederlanden* 18 (2016) 48–68.

First of all, on marrying, women adopted the social and legal status of their husband. Dominique-François de Sohet states that a woman of modest origin but born of honest parents who married an aristocrat was entitled to her husband's title and all the privileges attached to it³⁸). He adds that if however once widowed, she married a commoner, she adopted the status of her new spouse and therefore lost the title, rank, and privileges of her first husband³⁹). Marriage could also mean a change in economic circumstances for women, as well as a change of residence: wives were required to follow their husbands wherever they went, and husbands were bound to provide them with a home⁴⁰). Lastly, although they entered their husband's family, women did not leave their family of birth behind. Legally, they kept their maiden name (i.e. their father's)⁴¹), and they were still entitled to inherit from their parents⁴²).

Furthermore, a woman who was still under parental authority⁴³) was irrevocably released from it when she married⁴⁴). According to Charles de Méan,

³⁸) de Sohet (n. 5) livre 1 titre 77 n 23.

³⁹) *Ibid.*

⁴⁰) This obligation stemmed from the duty of cohabitation between spouses imposed by canon law. Women were expected to accompany their husbands wherever they went, including to prison or to war. Only two exceptions were recognised: when the husband embarked on a long pilgrimage, and when he led a vagrant life – though, according to some canon law jurists, the latter exemption applied only if the wife had been unaware of her husband's lifestyle at the time of marriage; see A. Esmein, *Le mariage en droit canonique*, vol. 2 Paris 1891, 6.

⁴¹) Anne Lefèbvre-Teillard, *Le nom, Droit et histoire*, Paris 1990, 71 points out that married women were allowed to use their husband's surname in public. However, in private deeds married women are typically identified by their maiden name. In addition, they are often addressed as the wife or widow of a particular man.

⁴²) It is worth noting that, under Liège customary law, a daughter who received a dowry upon marriage was not automatically excluded from her parents' succession. This was because the parents retained the discretion to decide whether or not the dowry would have to be returned to the estate following the death of the surviving parent. As a result, a daughter could benefit twice – once through the dowry and again through an inheritance. Moreover, if the dowry granted was of lesser value than the daughter's 'légitime coutumière' – that is, the minimum share of her parents' immovable property she was legally entitled to – she could claim the difference; see Silan, *Aussy avant les filz* (n. 6) 138.

⁴³) In Liège customary law sources, as will be further discussed in section III, below, parental authority was referred to as 'puissance', 'mambournie' or 'tutelle légitime'; here again, I will use the broader term 'authority' to refer to the responsible parent's prerogatives over their child's person and property. It was held primarily by the father. Upon his death, it fell automatically on the mother.

⁴⁴) 1642 Liège Customs (n. 5) ch. 1 art. 9.

it was inevitable for paternal authority to cease upon the daughter's entry into marriage, as a woman could not simultaneously be under the authority of two men, her father and her husband⁴⁵). For Méan, there should be no risk of interference from the father that might disturb the marriage and authority of the husband⁴⁶). As emphasised by Sohet, "le pauvre homme est Roi dans sa Maison"⁴⁷). Similarly, the son who married was freed from parental authority, albeit for a different reason⁴⁸): as Charles de Méan further explains, a husband could not remain under the authority of his father while having his own wife and children in his power⁴⁹).

Moreover, a woman who was still a minor was considered as having come of age⁵⁰) in all judicial and extrajudicial matters when she got married, irrespective of her actual age⁵¹). In fact, however, this changed very little for her, as she was transferred from the paternal puissance to the husband's authority upon the consummation of the marriage and consequently saw her legal capacity greatly restricted, as will be discussed below. However, a widow who was underage was still regarded as having come of age by virtue of marriage. As noted above, she also did not fall back under parental authority⁵²).

One stringent expression of the husband's authority over his wife was the wife's duty of obedience and, as its corollary, the husband's right of correc-

⁴⁵) C. de Méan, *Observationes et res judicatae ad jus civile romanorum, leodiensium, aliarumque gentium canonicum et feudale*, augmented version by M.G. de Louvrex/S. Bastin/M. Gordinne, Liège 1740, 6 vols., here *Observatio* 63 n 1, I 130. In volume 6, Méan's commentaries are called *Definitiones*, however without any noticeable difference in terms of content with the *Observationes* found in the five previous volumes.

⁴⁶) *Ibid.*

⁴⁷) de Sohet (n. 5) livre 1 titre 99 n 7.

⁴⁸) 1642 Liège Customs (n. 5) ch. 1 art. 9.

⁴⁹) *Observatio* 63 n 1 (n. 45) I 130.

⁵⁰) *Observatio* 58 n 4 (n. 45) I 119. In Liège, a princely edict adopted on 3 July 1572 set the civil majority at the age of 25 for both men and women. The age of majority before 1572 was set at 17 or 18 years old, according to a legal opinion of the Court of Aldermen of Liège from 17 October 1594, in: *Coutumes du pays de Liège* (n. 15) III, ed. Bormans/Crahay, 209.

⁵¹) *Observatio* 688 n 1 (n. 45) V 350. The same applied to married men who were still underage when they got married. However, they could not be appointed as a guardian – either by a will or by a court of law – to anyone except their wife until they had come of age. Charles de Méan argues that, in matters of guardianship, the authority conferred by the marital status is insufficient to compensate for the prudence that only age can bring, see *Observationes* 58 n 4 and 607 n 3 (n. 45) I 119 and V 18.

⁵²) *Observatio* 688 n 2 (n. 45) vol. 5, 350; and de Sohet (n. 5) livre 1 titre 72 n 39.

tion in cases of misconduct. It is striking that neither the 1642 Liège Customs, nor the works of seventeenth- and eighteenth-century jurists from Liège – such as Charles de Méan, Vincent de La Hamaide or Dominique-François de Sohet – make any formal reference to such a right of the husband. According to legal historian John Gilissen, however, the omission of any mention of the husband's right to correct his wife in the written texts of sixteenth- and seventeenth-century customary law is fairly common – at least within the customary laws of the regions that now form present-day Belgium⁵³).

In the absence of explicit legal references, one must turn to contemporary domestic conduct manuals to find mentions of this marital prerogative. One such treatise was the “Oeconomie chrestienne” by Augustinian clergyman Jean-Baptiste de Glen (1552–1613)⁵⁴. De Glen, who reflects on the proper resolution of what he terms “domestic quarrels”⁵⁵, argues that a man may only beat his wife if the three following conditions are fulfilled. First, the wife must have been at fault; second, punishment was to be used only as a last resort, once instructing her, making her see the error of her ways and threatening her had all proven ineffective; and third, any correction had to remain moderate⁵⁶. De Glen admonishes husbands who display cruelty by using the rod, or who undermine the respect due to the mistress of the household by punishing her in the presence of the family's children, servants, or neighbours⁵⁷. He also makes a point of clarifying that while husbands are permitted to beat their wives, the reverse does not hold: the right of correction, he writes, is a prerogative inherent to marital authority – something the wife, by definition, does not possess⁵⁸).

⁵³) Gilissen, Le statut (n. 18) 292.

⁵⁴) Jean-Baptiste de Glen, *Oeconomie chrestienne, contenant les regles de bien vivre, tant pour les gens mariés qu'a marier pour nourrir & eslever les enfans, fils, filles en la vraye piété, ses serviteurs aussi, & servantes, compris en huict livres*, printed *apud* Jean de Glen, Liège 1608. Before writing his *opus magnum*, de Glen had already published a – much – smaller book in 1597, dedicated to young girls who wished to marry, and to their parents – more will be said about it under section III below. More on the life and work of Jean-Baptiste de Glen can be found in M.-É. Henneau/O. Donneau/Y. Charlier, *Livres religieux*, in: A. Marchandise/P. Bruyère (dirs.), *Florilège du livre en Principauté de Liège, du IX^e au XVIII^e siècle*, Liège 2009, 257–303, 275.

⁵⁵) de Glen, *Oeconomie chrestienne* (n. 54) 342.

⁵⁶) *Ibid.*

⁵⁷) *Ibid.* 344–345.

⁵⁸) *Ibid.* 345.

As previously noted, the final consequence of marriage for women's status was the restriction of their legal capacity, resulting from their subjection to their husband's authority⁵⁹). As stated in Article 4 of Chapter 1 of the 1642 Liège Customs, a married woman could not enter into a contract, draft her own will or appear in court without her husband's permission⁶⁰). However, an exception was made for married women who were being prosecuted by a criminal court, as requiring the husband's consent in that case could obstruct the prosecution⁶¹).

The reason for the restrictions on legal capacity was that the management of household property – including that belonging to his wife and children – was the sole prerogative of the husband and father. Since the husband alone held the strings of the family's purse, it was only logical that his wife could not dispose of her property without his prior agreement. This situation was not unique to Liège law: the German legal historian Helmut Coing speaks of “*tutela mariti*” over women during marriage, which he says was common to most, if not all, customary laws in Europe at the time⁶²). Early modern jurists based it on the model of the *tutela impuberum* found in Roman law⁶³), though there was one significant difference between these two forms of guardianship. The *tutela impuberum* was instituted to protect the interests of *impubes*, due to their young age and lack of maturity⁶⁴). In contrast, the *tutela mariti* was set in place to protect the husband – the guardian – from any detrimental

⁵⁹) In historical sources, the guardian – either of a child or of his wife – is often referred to as the ‘mambour’. This term seemingly derives from the Frankish terms *mundium* and *munderbundium*. Under Frankish law, *Mundium* referred to the father's authority over his children, the husband's authority over his wife, and the king's authority over his subjects, see P. Ourliac/J. de Malafosse, *Histoire du droit privé, Le droit familial*, Paris 1968, 69.

⁶⁰) 1642 Liège Customs (n. 5) ch. 1 art. 4.

⁶¹) *Ibid.* In addition, according to Charles de Méan, in such circumstances, she was required to appear in person, which meant that she could not send her husband or another procurator to represent her; see *Observatio* 58 n 25 (n. 45) I 122.

⁶²) H. Coing, *Europäisches Privatrecht 1500 bis 1800, Älteres Gemeines Rechts*, vol. 1 Munich 1985, 236.

⁶³) *Ibid.* The comparison between the wife and the pupil can be found in the writings of several Liège jurists, for instance Vincent de La Hamaide, *L'art de contracter et tester, conforme au droit et coutumes, avec modèles des contracts et acts de volonté dernière*, printed *apud* Pierre Danthez, Liège 1683, 13, treatise aimed at (future) notaries; and de Sohet (n. 5) livre 1 titre 69 ch. 2 n 15–16.

⁶⁴) On the *tutela impuberum* see Albanese (n. 36) 431–513, and F. Lamberti, *La famiglia romana e i suoi volti. Pagine scelte su diritto e persone in Roma antica*, Turin 2014, 51–89.

action by his wife (who, should it be emphasised, had the cognitive capacity required to manage her own affairs, unlike the impubescent child). Husbands were not bound to any of the obligations usually expected from the guardian of a child: they did not, for instance, have to draw an inventory of the assets or to render accounts of their management upon the termination of marital authority⁶⁵).

The exact scope of a wife's legal incapacity as a result of marital authority varied somewhat from one locality to another⁶⁶). In Liège, the inability to draft a will was particularly severe, given that such a legal act only took effect upon the death of the wife, namely at a time when marital authority was terminated. Many foreign customs allowed married women to freely make their last will: this was, for instance, the case in the South of France, where the *ius commune* applied, and in most customs in Flanders (Bruges, Ghent, Ypres), Brabant (Brussels, Antwerp, Lierre), Limburg and Luxembourg⁶⁷). Several French regions, however, applied a similar rule as Liège, for instance in Burgundy, Normandy and in the Nivernais⁶⁸).

Several exceptions and temperaments softened the rigidity of customary law and granted married women a broader autonomy in specific circumstances. Some were explicitly embedded within customary law, while others emerged through doctrinal developments and judicial interpretation.

Thus, the 1642 Liège Customs made an exception to legal incapacity for a wife entering into a contract for the needs of her family⁶⁹). According to Charles de Méan, these needs included food, clothing, and shoes⁷⁰). Méan further writes that this exception was justified by what he refers to as the main function of women, which was to look after the home and children⁷¹). Perhaps as a personal note, the jurist also urges women to manage their households sensibly and avoid filling them with unnecessary things⁷²). Husband and wife were bound *in solidum* by debts incurred by the wife under this exception, so even when the husband had not agreed to the transaction⁷³).

⁶⁵) Coing (n. 62) 236.

⁶⁶) *Ibid.*

⁶⁷) Gilissen, Le statut (n. 18) 299.

⁶⁸) P. Petot, Cours d'histoire du droit privé 1950–1951, La femme mariée, Paris 1950, 84.

⁶⁹) 1642 Liège Customs (n. 5) ch. 1 art. 6.

⁷⁰) Observatio 60 n 1–2 (n. 45) I 123.

⁷¹) Observatio 60 n 3 *ibid.* 124.

⁷²) *Ibid.*

⁷³) Observatio 60 n 4 *ibid.* 124.

Furthermore, since the fourteenth century, customary law in Liège recognised an exceptional regime for married women engaged in trade⁷⁴). Under certain conditions, they were free to carry out all the transactions necessary for their business without their husband's permission for each individual transaction, which would inevitably have hindered their business. This exception, it should be noted, was not intended to encourage women's autonomy within marriage, but rather to facilitate and foster commerce. The conditions to benefit from the exceptional regime were the following: Firstly, the wife had to qualify as a merchant, which seemingly required some form of autonomy and leadership in the performance of her trade – it was not enough to work as someone else's employee⁷⁵). Secondly, she had to have a trade or craft distinct from that of her spouse: The exception did not concern women who worked in association with their husbands⁷⁶). Thirdly and most importantly, she had to trade publicly. This was to protect the merchant's creditors, since, as Charles de Méan points out, acting in plain sight ensured her husband knew, or at least should know, about her activities, and had therefore permitted them⁷⁷). However, the presumption of the husband's consent thus induced by the publicity of the trade could be reversed by a husband who did not want to be sued by his wife's commercial creditors. To achieve this, he had to prove that he and his wife did not live together, meaning he could not have known about, or authorised her trade⁷⁸). If the husband could not reverse

⁷⁴) The earliest traces of the existence of this regime in Liège can be found in the *Loi nouvelle* of 1355 and in the 'Mutation de la Loi nouvelle' of 1386. It was later included in the 1642 Liège Customs (n. 5) ch. 1 art. 5. Similar exceptions in favour of commerce existed abroad, see, e.g., A. Slimani, *La femme marchande publique: coutume, jurisprudence, doctrine (XVI^e–XVIII^e siècles)*, in: P. Charlot/E. Gasparini (dirs.), *La femme dans l'histoire du droit et des idées politiques*, Dijon 2008, 93–121; and Gilissen, *Le statut* (n. 18) 295–298. A vast body of literature has been dedicated to women and work in Early modern Europe, which generally includes legal considerations, see for an overview A. Bellavitis/B.Z. Micheletto (eds.), *Gender, Law, and Economic Well-Being in Europe from the Fifteenth to the Nineteenth Century, North versus South?*, London 2019; for a more recent study, focused on Early modern Brabant and Biscay, see N. Vandeweerd, *Women and Work through a Comparative Lens, Gender and the Urban Labor Markets of Premodern Brabant and Biscay*, Leuven 2025.

⁷⁵) Slimani (n. 74) 95.

⁷⁶) *Observatio* 59 n 4–5 (n. 45) I 122–123.

⁷⁷) *Ibid.*

⁷⁸) *Loi nouvelle* of 12 December 1355, art. 18, in: *Coutumes du pays de Liège* (n. 15) II, ed. Raikem/Polain/Bormans, 4. My interpretation of this provision suggests that the spouses were either legally separated from bed and board, or had

the presumption, the wife's creditors could sue each spouse individually to recover the debt⁷⁹).

Changes brought about by doctrine and case law related to the forms required for the husband's consent. Sohet writes that the husband's mere presence, even if he remained silent, when his wife was carrying out a legal transaction, was sufficient for his consent to be considered valid⁸⁰). On 13 August 1661, the Ordinary Council of the Prince-Bishop of Liège ruled that a husband's consent did not have to be given when his wife wrote her will, but could be provided at a later date by ratification⁸¹). Charles de Méan, who reports this ruling, justifies the Council's decision in light of developments which had taken place in learned law. He sets out the divergent opinions of Pierre Peck, said Peckius (1529–1589), law professor at the University of Leuven and member of the Great Council of Mechelen⁸²), on the one hand, and André Tiraqueau, or Tiraquellus (1488–1558), jurist and member of the Parliament of Paris⁸³), on the other. According to Peckius, Charles de Méan writes, the husband's consent had to be obtained at the time of the wife's transaction because only the *auctoritas* of the husband could confer legal validity on the wife's act – the same principle applied between the guardian and the child in the context of the *tutela impuberum*⁸⁴). Tiraqueau did not see the need for the husband to intervene on the spot. In his view, as the husband's guardianship over his wife was created to protect the husband from his wife's

separated privately – the latter practice, it should be noted, was considered sinful and contrary to canon law; about this see de Sohet (n. 5) livre 2 titre 11 n 12–13.

⁷⁹) Edict of 3 July 1572, ch. 4 art. 16, in: Raikem/Polain/Bormans II (n. 78) 431.

⁸⁰) de Sohet (n. 5) livre 1 titre 69 ch. 2 n 17–19.

⁸¹) I was not able to find this ruling (*Louvet vs. Vivegnis*), which is reported by Charles de Méan in *Observatio* 29 n 3 (n. 45) I 59–60.

⁸²) J. Britz, *Code de l'ancien droit Belgique, ou Histoire de la jurisprudence et de la législation, suivie de l'exposé du droit civil des provinces belges*, Brussels 1847, 95–98. About Petrus Peckius see also the recent monograph by A.L. Ferreira Gomes Silva, *Shaping Canon Law in an Age of Reform, Petrus Peckius on Church Reparation and Clerical Discipline*, Leiden 2026, in particular 3–15.

⁸³) P. Arabeyre/J.-L. Halperin/J. Krynen, *Dictionnaire historique des juristes français, XII^e–XX^e siècle*, Paris 2007, 322–323.

⁸⁴) *Observatio* 29 n 3 and *Definitio* 59 n 6 (both in n. 45) I 59–60 and VI 124. Albanese (n. 36) 494 argues that in classical Roman law, the *auctoritas tutoris* should necessarily *follow*, and not precede the pupil's transaction. He further writes that from the classical period onwards, an oral declaration given by the tutor, who had to be present when his pupil was carrying out the transaction, was sufficient to give legal effect to the latter.

actions, rather than vice versa, the husband was free to give his consent by ratification later on. In closing his report on the 1661 case, Méan notes that the Council opted to adhere to Tiraqueau's view on the matter⁸⁵) – a clear influence of learned law on the interpretation of customary law by practitioners, in this case to the benefit of women's autonomy.

2.1.2 *The legal treatment of a wife's property:*

As previously noted, the distinctive features of the mainplévie regime were most evident in its patrimonial aspect, both during marriage and after⁸⁶). Unless otherwise stipulated⁸⁷), the husband became *Maistre & Seigneur absolu* (absolute master and lord) of his wife's assets.

1642 Liège Customs ch. 1 art. 1. L'Homme par mariage est fait Maistre & Seigneur absolu de tous biens meubles et immeubles, credits & actions de sa Femme, & encor de tous biens obvenus & acquis durant le mariage, & a puissance d'en disposer entre les vifs comme du sien propre, sans adveu ny consentement de sa Femme, & en demeure maistre apres la mort d'icelle sans enfans le tout, ne fust qu'il y eut paction ou provision au contraire.

Through marriage a man becomes the absolute master and lord of all movable and immovable assets, credits and actions of his wife, but also of all assets received or acquired during the marriage, et has the authority to dispose of them *inter vivos* as if they were his own, without his wife's authorisation or consent, and remains the master of these assets after her death without children, unless otherwise specified in a contract or in other provision (the translation is my own).

⁸⁵) Observatio 29 n 3 (n. 45) I 59–60. However, it is worth noting that de Sohet (n. 5) livre 1 titre 69 ch. 2 n 17–19, building on this debate, later argued that the ratification by the husband could not take place after the wife's death as he might curtail the rights then already acquired by the children upon their mother's death – by which Sohet refers to the automatic devolution of the bare ownership of matrimonial immovables to the children after their parents' death (the so-called *droit de dévolution*), as will be further discussed in subsection 2.2.1.

⁸⁶) The mainplévie regime was applied only when both spouses were nationals of the Principality of Liège, and only in relation to immovable property located within its territory; see Observatio 55 n 13–14 (n. 45) I 108. According to Charles de Méan, if only one of the spouses was a foreigner – which included residents of the County of Looz, a part of the Principality of Liège with a distinct legal status –, the surviving spouse would not be protected by this matrimonial regime. The jurist Mathias Guillaume de Louvrex (1665–1734), commenting on Méan's Observatio 55 n 17(f), reports that, in 1720, the Court of Aldermen of Liège decided an exception to this principle for foreign spouses from places where a regime with similar effects to the mainplévie ruled. However, at that time, the only county with comparable customary law was Chimay.

⁸⁷) Such stipulation was mostly found in marriage contracts but also, although rarely, in wills, as will be shown under subsection 2.1.3.

The husband's role included all assets, movables and immovables brought into the household by his wife or her family, i.e. her dowry⁸⁸), as well as all property received through gifts or bequests from family members during the union. The husband was also entitled to sue his wife's debtors and to pursue any pending proceedings on her behalf.

However, despite the broad wording of the provision, some of the wife's assets did not, in fact, fall under the *mainplévie*. (a) Real property included the wife's feudal⁸⁹) and censal estates⁹⁰), but not so-called '*alleux*', i.e. estates which were free of any real or personal obligations. *Alleux* were fairly rare within the Principality⁹¹). (b) Liège law concerned only the wife's immovable property located within its borders⁹²). Regarding movable assets, all fell under the husband's authority regardless of their location, with only two exceptions: (c) clothing and ornaments⁹³). Also (d) any damages awarded by a court for personal insults, suffered by the wife⁹⁴), would remain her exclusive property.

According to Article 1 of Chapter 1 of the 1642 Liège Customs, a husband's prerogatives over his wife's assets included the capacity to dispose of them *inter vivos*. Alienation included selling, mortgaging and pledging the assets⁹⁵). Notarial practice also shows that husbands allocated part of their

⁸⁸) In Liège, both the future husband and the future wife, or their families on their behalf, made a financial contribution to the union. These contributions were traditionally formalised in a marriage contract negotiated between the parties, usually (although not always) under the supervision of a notary. The dowry of the bride-to-be constituted her contribution to the future union as well as an advance on her share of the parental inheritance; for more on the dowry see Silan, *Aussy avant les filz* (n. 6) 129, 134.

⁸⁹) Feudal property remained with the bride, but her husband was required to pay homage to the lord which was known as rendering a relief "*de main à bouche*" (no transfer fee). Furthermore, the obligation of *auxilium* (military aid) fell on the vassal's husband while, in theory, his wife could still perform her obligation of *consilium* (advising); see de Sohet (n. 5) livre 2 titre 59 n 131–132.

⁹⁰) Censal property included all estates held in cens tenure, as well as any estate mortgaged in exchange for annuity payments, see Silan, *Aussy avant les filz* (n. 6) 125–130.

⁹¹) Raikem/Polain/Bormans, *Coutumes du pays de Liège II* (n. 78) 122; and Bomerson (n. 16) 301.

⁹²) The wife's estates situated abroad were subject to the laws of the respective countries.

⁹³) de Sohet (n. 5) livre 1 titre 69 ch. 2 n 2–3.

⁹⁴) *Ibid.* This rule can be found already in the Paix de Saint-Jacques of 28 April 1487, § 26 art. 11.

⁹⁵) Legal opinion of the Court of Aldermen of Liège of 14 July 1600, see *Coutumes*

wife's property as a dowry for their children. Bequests and *mortis causa* donations without the wife's consent occurred, but were largely restricted over time⁹⁶). These restrictions aside, virtually speaking, a married woman could be entirely dispossessed by her spouse during marriage, without having the option to object to it. As Sohet laconically puts it, once married, "a woman owned little more than Heaven and a spindle" / "la Femme n'a rien à elle que le ciel et son fuseau"⁹⁷).

The foregoing applied to assets owned by a woman or her family prior to the marriage. Different rules governed property brought into the marriage over which the wife held only a right of usufruct, or conversely, of which she was merely the bare owner.

The former scenario concerned women who remarried and had children from a previous marriage. In such a case, the immovable property that she received upon the dissolution of the union, was destined to pass to the children as their future inheritance; this is why their mother, and thus also her new husband, held only a right of usufruct over these assets. This usufruct was known as the *humiers* of the surviving spouse. These assets had to be safeguarded, eventually, from the second husband. For this reason, his rights over them were strictly limited: While he should use and manage the property on behalf of his wife, collect its civil fruits, and initiate any necessary legal proceedings for its preservation, he was only allowed to dispose of the usufruct, not the bare ownership of the estate⁹⁸). However, the effects of such alienation ceased upon the death of the seller – that is, the (second) husband –, at which point the assets reverted to the usufructuary, namely his wife. For

du pays de Liège III (n. 50) 223, which was later included in 1642 Liège Customs (n. 5) ch. 1 art. 1.

⁹⁶) If the family had children, the husband could not dispose of his wife's property *mortis causa* when she was on her deathbed, as this would be considered as robbing the children of their future inheritance, see 1642 Liège Customs (n. 5) ch. 10 (Testamentary succession) art. 6. Conversely, if the wife was in good health, the husband could do as he pleased. If the spouses had no children, the husband could originally dispose of his wife's property without any restriction, including donating her property *mortis causa* or bequeathing it. Following a legal opinion of the Court of Aldermen of Liège handed down on 27 February 1631, see Coutumes du pays de Liège III (n. 50) CVIII, husbands were no longer permitted to do so, as the aldermen realised that they deprive their future widow of her legal inheritance, or *droit de mainplévie*. For the same reasons, they could no longer dispose of their own assets without their wife's consent. This legal opinion of 1631 was taken over by the 1642 Liège Customs ch. 11 (n. 5) art. 14.

⁹⁷) de Sohet (n. 5) livre 1 titre 69 chap. 2 n 3–4.

⁹⁸) 1642 Liège Customs (n. 5) ch. 1 art. 2.

the alienation to last beyond the husband's death and terminate only upon the wife's death, the sale of the usufruct had to be carried out in court with the wife's participation, during which she explicitly renounced her humiers⁹⁹). Upon her death, the inheritance reverted to the bare owners, i.e., her children.

The latter scenario concerned immovable property over which a wife's surviving parent had a right of usufruct (for his or her humiers), and herself, as child and future heir, only the bare ownership, known in this context as 'propriété coutumière'. The husband did not have any right of disposition over such assets. This was only logical since, as Sohet points out, he could only expect to receive them one day, if his father- or mother-in-law predeceased him¹⁰⁰).

From 1574 onwards, it appears well-established that the mainplévie regime started upon the consummation of the marriage, and not its celebration¹⁰¹). This means that the exchange of *verba de praesenti* between the future spouses, which established marriage under canon law¹⁰²), was not accepted to establish the mainplévie under customary law. This may be surprising, given that proving the celebration is by far easier than providing evidence of its consummation. However, it seems that the issue of evidence did not bother the Liège jurists. In his *Observationes*, Charles de Méan argues that, if the marriage remained fruitless, only the consummation can justify the widow's claim to all remaining marital assets, including those of the deceased – name-

⁹⁹) 1642 Liège Customs (n. 5) ch. 6 art. 24. It is interesting to note that in this provision, Pierre de Méan uses the word '*déguerpissement*' to refer to the wife's waiving of her right of usufruct.

¹⁰⁰) de Sohet (n. 5) livre 1 titre 69 ch. 2 n 6.

¹⁰¹) Legal opinion of the Court of Aldermen of Liège of 20 January 1574, see *Coutumes du pays de Liège* III (n. 50) 142. An earlier opinion of 7 October 1566, which was not reiterated, referred to the celebration of the marriage as the mainplévie's starting point, see *Coutumes ibid.* 106. In the seventeenth century, it appears well-established, also among jurists, that the mainplévie starts with consummation, see *Observatio* 55 n 8 (n. 45) I 107, as well as de La Hamaide (n. 63) 17. It is worth recalling that under canon law, the consummation of the marriage referred to the first act of sexual intercourse between the newly-weds, after the exchange of mutual consents. The consummation rendered the marriage indissoluble, but was not necessary for its validity.

¹⁰²) After Tametsi, the decree on marriage issued by the Council of Trent in 1563, marriage was valid only *in facie ecclesiae*, in the presence of the priest of the parish of the betrothed and witnesses. In the Principality of Liège, Tametsi was promulgated without any hurdles and quite rapidly, in 1567, see F. Willocx, *L'introduction des décrets du concile de Trente dans les Pays-Bas et la Principauté de Liège*, Louvain 1929, 236–237.

ly the abovementioned ‘droit de mainplévie’¹⁰³). As Méan further writes, customary law appears to have wished to provide for spouses who, at the time of the death of the predeceased spouse, were able to procreate¹⁰⁴). Therefore, for the widow to inherit what was due to her by virtue of customary law, it did not matter if the spouses had failed to have children, or if all children had died before them: what mattered is that they had tried to give birth to an offspring.

The mainplévie ended upon the dissolution of the union – which was caused by the natural death of one of the spouses¹⁰⁵) –, as well as, at least from the second half of the seventeenth century onwards, in case of a separation from bed and board decreed by the ecclesiastic court of Liège¹⁰⁶). However, in the latter scenario, reconciliation had the effect of fully reinstating the mainplévie, unless otherwise provided by the act of reconciliation of the spouses¹⁰⁷).

2.1.1. Notarial practice:

Customary law allowed individuals to partially or entirely derogate from the mainplévie regime through a contract or any other contrary provision¹⁰⁸). Such provisions could be included in the marriage contract itself, or in a subsequent agreement between spouses – provided they had expressly reserved the right to amend their marriage contract. In organising their succession, the spouses could alter the share initially reserved for the surviving spouse in the marriage contract (see below, 2.2.2). Although less frequent in practice, contrary provisions could appear in the will of a third party who sought to

¹⁰³) Observatio 55 n 8–9 (n. 45) I 107.

¹⁰⁴) Observatio 55 n 9 *ibid.*

¹⁰⁵) The marriage was not dissolved in the event of the civil death of one of the spouses, i.e. if they became a monk or nun.

¹⁰⁶) The earliest mention of this rule can be found in the Observatio 264 n 1 (n. 45) II 248 “*Jus connubii resolutum est per separationem thori*”; see also de Sohet (n. 5) livre 2 titre 11 n 14–15.

¹⁰⁷) Historian Aurore Drécourt, in her Ph.D. diss. *Réguler les conflits violents, Le rôle du notaire dans la Principauté de Liège, XVII^e–XVIII^e siècle*, University of Liège and Catholic University of Louvain 2019, 270, studied instances of interpersonal violence, including between spouses, in notarial records from the City of Liège in the seventeenth and eighteenth centuries. She analysed a few such acts of reconciliation between separated husbands and wives. One dated 1622 stipulates that the state of separation ends if the wife may manage her own assets independently, and that the husband must obtain his wife’s consent before disposing of her assets; she obviously accused her husband of prodigality.

¹⁰⁸) Also in 1642 Liège Customs (n. 5) ch. 1 art. 1.

bequeath property to a married woman, while formally preventing her husband from disposing of it¹⁰⁹).

In their writings, Liège jurists discuss the theoretical framework of these contractual deviations from the mainplévie regime. Charles de Méan insists that the autonomy of the parties must prevail upon customary law, particularly with regard to provisions found in marriage contracts¹¹⁰). Furthermore, all jurists – Méan, La Hamaide and Sohet – distinguish two types of clauses that exclude the mainplévie regime.

They note that the first relevant clause is one by which a woman makes a ‘reservation as to her person’ / *‘se réserver le droit de sa personne’* in her marriage contract, thereby preserving control over the management of her assets and, by extension, her legal capacity. According to Sohet, it is enough for a woman to have made such a reservation for the mainplévie to be excluded¹¹¹). Charles de Méan similarly argues that such a clause does not oppose morality and must therefore be observed¹¹²). Although it derogates from customary law, he writes, it aligns with learned law, by which he means the Roman *sine manu* marriage, in which the husband and wife were regarded as two distinct beings, independent of one another, including in terms of property¹¹³). It is very interesting to see Charles de Méan rely on learned law to defend the autonomy of the parties to a marriage contract, and thus adopt a stance favourable to a greater autonomy for women within marriage.

The second clause that set the mainplévie aside was the provision by which the future wife reserved the right to dispose of all or part of her assets at her own discretion. Once again, Charles de Méan reaffirms the pri-

¹⁰⁹) In our entire sample of wills, I encountered three instances of this. One was the will of a widow named Aylis Builhon, drafted in 1567, who bequeathed half of her property, movable and immovable, to her daughter Maroie, who was herself married to a man named De Houten. Maroie should dispose of her inheritance as she pleased, and her husband would not be permitted to do so without his wife’s consent, see Archives de l’État à Liège, Série des Convenances et Testaments des *Échevins* de Liège (SCTEL), vol. 48, 62.

¹¹⁰) Observatio 55 n 28 (n. 45) I 112.

¹¹¹) de Sohet (n. 5) livre 3 titre 3 n 103–104; see also de La Hamaide (n. 63) 13–14.

¹¹²) Observatio 55 n 29 (n. 45) I 112.

¹¹³) *Ibid.* “*Si igitur jus personae suae sibi reservaverit uxor pacto dotali, ut nempe in mariti manum non transeat, nec capitis minutionem, quam jus connubii Leodiensium, semota pactione dotali, inducit, patiat: certi juris est, hanc pactionem servandam; cum non sit contra bonos mores, nequidem civiles; imo connubium ad juris civilis communis dispositionem reducat*” [emphasis added].

macy of contractual provisions over customary law, asserting that the autonomy of the parties must necessarily prevail¹¹⁴). While a wife ought, ideally, to entrust her entire property to her husband, it is only fair for the husband to refrain from interfering with her affairs¹¹⁵) if his marriage contract stipulates otherwise.

According to Sohet, the main distinction between these two clauses lies in their scope: the first entirely excludes the *mainplévie*, thereby preserving a wife's right both to manage and freely dispose of her property, while the second only protects certain specified assets from her husband's right of disposal¹¹⁶). As will be further discussed under subsection 2.2.2 below, it is already worth emphasising that both clauses had the common effect of excluding the widow's '*droit de mainplévie*' – since, as Sohet stresses, the *mainplévie* and the '*droit de mainplévie*' are as different from one another as 'the cause is from its effect' ('*comme la cause diffère de son effet*')¹¹⁷).

Despite the jurists' relatively clear explanations regarding derogatory clauses to the *mainplévie* regime, notarial practice presents a somewhat different picture. In the sample of 469 marriage contracts analysed for this study, four distinct types of clauses were identified that either partially or entirely curbed a husband's prerogatives over his wife's assets and/or granted women greater autonomy in managing their property. Each of these will now be examined in turn.

The first clause aimed to limit the husband's ability to dispose of his wife's property to cases of necessity. It could also force the husband to dispose of both his and his wife's assets equally, thereby preventing him from disposing of his wife's property while preserving his own¹¹⁸). However, this clause was extremely rare in practice. I encountered only four examples in the entire sample, and all of them were drafted in the first half of the sixteenth century – this may, however, be merely coincidental. Two of the contracts detail what the parties (or the notary acting on their behalf) considered to be a case of

¹¹⁴) *Observatio* 55 n 30 (n. 45) I 112.

¹¹⁵) *Ibid.*

¹¹⁶) de Sohet (n. 5) livre 1 titre 69 ch. 2 n 29–31.

¹¹⁷) *Ibid.* ch. 2 n 2.

¹¹⁸) For instance see the marriage contract of Libert le Berlier and Marie delle Sarte, the daughter of a Liège alderman, concluded in 1525, Archives de l'État à Liège, SCTEL (n. 109) vol. 29, 75. In this contract, the representatives of the future spouses – their fathers – agreed that, if necessary, le Berlier could sell or mortgage the immovable property brought into the marriage on two conditions. First, he must ask for their permission; second, he must dispose of assets belonging to both his family and his wife's.

necessity: war, disease, the incarceration of one of the spouses¹¹⁹), or ‘any other cause of misfortune’¹²⁰).

The second clause was far more common than the first. It excluded the *mainplévie* in relation to all or – and this was more frequent – part of the wife’s property – perhaps the clause Liège jurists had in mind when discussing derogations from the matrimonial regime. A frequent example, found exclusively in marriage contracts from the sixteenth century, preserved the wife’s ability to freely dispose of her clothing and personal ornaments¹²¹). This clause could be contingent upon the absence of legitimate children, although this was not systematically the case. Clothing was commonly given to women by their parents as part of their dowry. In wealthy families, precious ornaments were, also traditionally, given by the future husband or his family to the bride-to-be. These items had significant social, economic, and sentimental value and could be the subject of careful negotiations between the parties before the marriage contract was finalised¹²²). As previously mentioned, a woman’s clothing and jewellery were later considered to remain her property during marriage¹²³), regardless of any provision to that effect in the marriage contract¹²⁴).

¹¹⁹) The incarceration of one of the spouses could result from a criminal conviction or from insolvency. De Sohet (n. 5) livre 1 titre 69 ch. 1 n 3 states that in the eighteenth century, contrary to what was established by learned law, women in Liège could be imprisoned for debt just like men.

¹²⁰) See the marriage contract of Raes le Chockier and Margaritte Dori, concluded in 1508, Archives de l’État à Liège, SCTEL (n. 109) vol. 25, 216, and that of Libert le Berlier and Marie delle Sarte (n. 118).

¹²¹) The French word ‘*joyaux*’ is the term used in Liège marriage contracts and wills. At the time, the term then referred to ornaments made out of precious metal (gold or silver) set with stones or pearls, see L. Brennet-Deckers, *Le bijou à Liège aux XVII^e et XVIII^e siècles*, in: Bulletin de l’Institut Archéologique Liégeois XCIII (1981) 5–150, 13.

¹²²) See two examples of this in the marriage contract of Raes le Berlier and Catherine de Hey concluded in 1506 (Archives de l’État à Liège, SCTEL (n. 109) vol. 25, 68); and that of Denis Marteau and Anne Entman, dated 1542 (Archives de l’État à Liège, SCTEL (n. 109) vol. 34, 361).

¹²³) Indeed, the clause completely disappears in contracts from the seventeenth century. However, de Sohet (n. 5) livre 1 titre 69 ch. 2 n 3–4 still mentions the rule in the eighteenth century, which shows that it was considered as customary. It is likely that the contractual provision eventually passed into customary law, and that, as a consequence, no one longer deemed it necessary to include it in marriage contracts.

¹²⁴) In turn, it is interesting to analyse what women did with the clothes and jewellery they could freely dispose of. In their individual wills, they regularly bequeathed their clothes and ornaments, usually (though not always) to other women: the recipi-

Another common example of the second clause was requested by widowed mothers who remarried and wanted to set money or specific assets aside for their children's dowry, independent settlement, or inheritance in case they predeceased their new spouse¹²⁵). In many cases, the exact amount to be set aside was determined in advance by the will of the first husband, or by a joint will drafted by the parents. The widow was then legally bound by this will. Sometimes, the gift or bequest reserved for the children of the widow's first marriage was conditional upon their obedience to their mother (and sometimes also their new stepfather), which notably included asking for her consent to their future marriage¹²⁶) under threat of being deprived of the promised sum of money¹²⁷).

ent could be a daughter, a sister, a goddaughter, a niece, a cousin. For a faithful maid, such a generous bequest could help constitute a dowry and consequently escape a life of domestic labour. In joint wills, the mother's clothes and ornaments were more often than not reserved for the daughter. They could then be preserved for her to wear, or to sell, so that the money of the purchase could be invested for her sole profit; for a compelling example see the will of Piron Malcoir and Anne de Montfort, written in 1617, Archives de l'État à Liège, SCTEL (n. 109) vol. 53, 286. Women donors were well aware that through gifts and bequests, they contributed to increasing another woman's wealth and influence – for instance by giving more economic power, and therefore a greater weight in domestic negotiations, to a married woman, or by increasing a young girl's dowry to help her make the most advantageous marriage possible. About some specific features of women's wills see also L. Garlati, *Women's Succession from the Middle Ages to the Modern Era*, in: M.G. Di Renzo Villata (dir.), *Succession Law, Practice and Society in Europe Across the Centuries*, New York 2018, 207–230, 219–220.

¹²⁵) For instance, see the marriage contract of Philippe de Saint-Georges and Noyette Saverot, a widow, in which Saverot excludes 200 golden *carolus* from her new spouse's mainplévie to keep and use for her daughter's dowry, Archives de l'État à Liège, SCTEL (n. 109) vol. 40, 335.

¹²⁶) E.g. to future marriage or, similarly, her entry into a religious order.

¹²⁷) Under canon law, parental consent to the child's marriage was no requirement for the marriage to be valid. However, social practices entirely expected that children obtain their parents' approval to their settlement – whether they intended to get married or enter religious life. In Liège, parents could penalise a child, in order to protect the family's assets as well as reputation from scandal, by depriving them of a dowry or inheritance. Such sanctions were typically laid out in wills and, on occasion, in marriage contracts, see *Observatio* 691 n 23 (n. 45) vol. 5, 358 and de Sohet (n. 5) livre 2 titre 9 n 39–40. This discussion in Liège was related to a wider debate that began among *ius commune* authors in the Middle Ages, see G. Chiodi/W. De-cock, *Disinheritance of Children for Lack of Parental Consent to the Marriage in the Ius Commune and Early Modern Scholastic Traditions*, in: Di Renzo Villata (n. 124) 271–335.

The third clause established joint use and management of the spouses' assets by the husband and wife¹²⁸).

The fourth and final clause prohibited the husband from disposing of his wife's immovable property without her consent, whether it was part of the dowry or had been received during the marriage. This contractual derogation may have been inspired by the learned Roman law. In 18 BC, Augustus had prohibited husbands from disposing of their wives' immovable property located within the Italian peninsula without their wives' permission¹²⁹). An imperial constitution of 156 AD provided that the dowry be inalienable regardless of the geographical situation, and that any alienations during marriage were prohibited even with the wife's consent. Justinian initially adopted the latter rule in his Codex (C. 5,13,1), however, it was relaxed in 537 through the *Novella* 61. This legislation foresaw that a husband was given his wife's dowry, while she retained her paraphernalia – that is, assets that belonged to her before the marriage and were not part of her dowry. It allowed the alienation of dowry assets with the wife's participation, provided she renewed her consent two years after the transfer¹³⁰).

According to legal historian Dave De ruysscher, these Roman rules were received in Flanders in the fifteenth century and in Brabant in the sixteenth century¹³¹). In Liège, historian Philippe Demonty identified clauses with similar effects in marriage contracts drafted by residents of the City of Liège as early as the beginning of the fifteenth century – the earliest dated 1422¹³²). Within the following two centuries, it was found in just six of the 249 contracts studied from the sixteenth century (2 % of the deeds), and in nineteen of the 220 contracts studied from the seventeenth century (9 % of the docu-

¹²⁸) See, for instance, the marriage contract of Georges Joirion and Marie Gyrar, approved and registered by the Court of Aldermen of Liège in 1543, Archives de l'État à Liège, SCTEL (n. 109) vol. 34, 384, in which both future spouses bring everything they own into the marriage, to 'use it together in all friendship'. The future wife also preserves the right of disposal of her property during the marriage.

¹²⁹) This provision is known as 'Lex Iulia de fundo dotali' found in Augustus' 'Lex Iulia de adulteriis coercendis' (18 BC).

¹³⁰) J. Gaudemet, Le statut de la femme dans l'Empire romain, in: Recueils de la Société Jean Bodin pour l'histoire comparative des institutions 12/2 (1962) 191–222, 218.

¹³¹) D. De ruysscher, The Capacity of Married Women to Engage in Contracts, Emancipation through Ius Commune in the Southern Law Countries, in: G. Jacobsen/H. Wunder (eds.), East Meets West: A Gendered View of Legal Traditions, Kiel 2014, 185–195, 194.

¹³²) Demonty (n. 23) 124.

ments). However, none of these contracts required the wife to renew her consent to the alienation after two years. Consequently, if these are indeed rules of Roman origin, their reception was incomplete.

In total, 132 of the 469 marriage contracts analysed (for both centuries) contain clauses derogating from the customary matrimonial regime during marriage, amounting to 28 % of such deeds – less than a third. Notably, 73 of these 132 contracts concern a woman's first marriage, while 56 were related to a remarriage. The remaining three contracts do not provide sufficient information to whether they were related to a first or second marriage. These figures challenge the commonly held assumption that only widows asserted their financial independence and autonomy. In fact, also the families of women marrying for the first time negotiated limitations, as well as independent women who had either been emancipated in court or lost their parents, in which case they usually brought their inheritance as a dowry with them. The typical contract limited the husband's prerogatives or the future wife's lack of legal capacity within marriage.

To conclude this first subsection, it can be observed that the effects of the *mainplévie* regime during marriage were particularly restrictive for women. The management of their property was entrusted to their husbands, who, with only limited exceptions, could freely dispose of it – including immovable assets. In theory, this means that a husband could, at least potentially, deprive his wife of all her property. However, customary law did permit derogations from the *mainplévie*. They were most commonly fixed through marriage contracts. These exceptions were theorised by prominent Liège jurists such as Charles de Méan and Dominique-François de Sohet. Yet their doctrinal accounts do not fully align with notarial practice, which reveals a broader and more diverse array of clauses than anticipated. Such extraordinary clauses are present in 28 % of the sample analysed in this study – less than one-third of all the documents examined.

2.2 The *mainplévie* as right of inheritance:

This subsection examines the effects of the *mainplévie* regime after the marriage ended, as set out by the rules of legal succession (2.2.1), and the derogations to such rules found in legal practice (2.2.2).

2.2.1. *The widow's inheritance rights under customary law: droit de mainplévie and droit de devolution:*

In customary law, the surviving spouse's inheritance rights, following the death of one spouse, primarily depended on whether the couple had legitimate children or not¹³³).

¹³³) Illegitimate children only had the right to receive *alimenta* from their parent,

In the absence of bodily heirs, the surviving spouse – regardless of their sex – could claim all remaining marital assets, including all assets one of them had brought into the marriage or received during it, and even the immovable assets¹³⁴). The only exception concerns so-called ‘pleins fiefs stipaux’¹³⁵), over which the surviving spouse only had a right of usufruct, as these assets would revert to the deceased’s family after the death of the usufructuary¹³⁶). If all children predeceased their surviving parent, the latter could inherit immediately after their last child’s death as if there had never been any children¹³⁷). As noted above, when referring in particular to a widow’s share of her husband’s inheritance, several Liège jurists also used the term ‘droit de mainplévie’¹³⁸). In this subsection, I will specifically examine the situation of the widow.

At first glance, the ‘droit de mainplévie’ of the surviving wife may appear particularly generous – if not excessive – especially when contrasted with the laws of neighbouring regions. In Northern France¹³⁹) and in the Southern

provided that filiation had been established, either by a voluntary recognition or by a court ruling. This held true even if they were born from incest or adultery, see *Observatio* 89 n 12–15 (n. 45) I 211; de Sohet (n. 5) livre 1 titre 68 n 5–7. Early in *Observatio* 89 n 4 (*loc. cit.*) I 210, Charles de Méan presents an opinion which stands quite isolated. He suggests that illegitimate children claim a sixth of their father’s inheritance as long as they were not born from incest or adultery and if there were no surviving spouse or legitimate children. From legal practice it becomes clear that parents could leave a bequest to their illegitimate children, irrespective of the presence of legitimate children. In the will of Bertheineit de Huffalie, written in 1509, Archives de l’État à Liège, SCTEL (n. 109) vol. 25, 285, the testator leaves a generous bequest to his illegitimate daughter, and even appoints a guardian to look after her and manage the bequest until she is old enough to marry. However, illegitimate children could not be instituted as heirs in their parent’s will, see Charles de Méan’s *Observatio* 89 n 3 (*loc. cit.*) I 210.

¹³⁴) 1642 Liège Customs (n. 5) ch. 1 art. 1 and ch. 11 art. 13 also included all acquets made by the spouses during marriage. However, in the absence of children, the inheritance of acquets was usually divided by half, and one half restricted to usufruct, as this part was automatically bequeathed to the predeceased spouse’s family after their death.

¹³⁵) As mentioned above (n. 11), ‘pleins fiefs stipaux’ were fiefs inherited in direct line of a value of more than thirty Brabant florins and/or which had their own court of law.

¹³⁶) 1642 Liège Customs ch. 12 (n. 12) art. 5.

¹³⁷) 1642 Liège Customs ch. 11 (n. 5) art. 13.

¹³⁸) Specifically, Pierre de Méan *ibid.* and de Sohet (n. 5) livre 1 titre 69 ch. 2 n 2.

¹³⁹) For an overview of matrimonial regimes and the widow’s inheritance rights

Low Countries¹⁴⁰), a community property regime applied. This community property encompassed either all of the two spouses' movable and immovable property, including acquests, or each spouse retained separate ownership of his or her immovables. In either case, upon dissolution of the marriage, the community property was divided between the surviving spouse and the heirs of the deceased, with the exact proportions determined by local custom.

However, as Charles de Méan argues, the widow's 'droit de mainplévie' was far from excessive, although she inherited everything from the deceased husband; rather, it constituted a fair compensation for the dispossession during marriage¹⁴¹). If, throughout the union, the wife had no ownership over the assets she or her family had contributed, and if her husband had almost unfettered control over her property, it was only logical that, in the absence of children, she should ultimately benefit from the marriage. As we can see, while the mainplévie regime was undoubtedly harsh on women during marriage, under the right circumstances, it could prove highly advantageous for them in terms of inheritance. Yet, to benefit from the right of survivorship, women had to endure all the constraints of the matrimonial regime, and this warranted some consideration. As Charles de Méan points out, a woman who had contractually excluded the effects of the mainplévie during marriage could not later claim her lawful inheritance¹⁴²). Furthermore, notarial practice developed clauses specifically designed to limit the share of the surviving spouse, thereby protecting the interests of the deceased's family – as will be discussed in subsection 2.2.2 below.

A widow was always presumed to accept her husband's succession, insofar as she retained possession of the marital assets – Charles de Méan specifies that this also held true for goods of only little value¹⁴³). However, in some cases, the widow produced evidence that she was not, in fact, heir to the assets left in her possession by the deceased¹⁴⁴). As to her right to renounce her

in Northern France see S. Beauvalet-Boutouyrie, *Être veuve sous l'Ancien régime*, Paris 2001, and J.-M. Augustin, *La protection juridique de la veuve sous l'Ancien régime*, in: N. Pellegrin/C.-H. Winn (eds.), *Veufs, veuves et veuvage dans la France d'Ancien régime*, Actes du colloque de Poitiers (11–12 juin 1998), Paris 2003, 25–45.

¹⁴⁰) For an overview of matrimonial regimes in the Southern Low Countries see Godding (n. 18) 261–314; also L. Van Aert, *The Legal Position of Antwerp Widows in the Late Sixteenth Century*, in: *The History of the Family 12/4* (2007) 282–295.

¹⁴¹) *Observatio* 55 n 34 (n. 45) I 113.

¹⁴²) *Observatio* 55 n 16 *ibid.* 109.

¹⁴³) *Observatio* 57 n 6 *ibid.* 116.

¹⁴⁴) *Ibid.*

husband's succession entirely were it in deficit, Liège jurists barely make any reference to it in their writings. For instance, the 1642 Liège Customs do not make any mention of this possibility in any of its three chapters devoted to inheritance law¹⁴⁵). In the neighbouring County of Namur, waiving the succession of one's husband's was well-regulated and even ritualised: On the day of the funerals, at the latest, the denying widow appeared before the secular court of the spouses' domicile. There, she removed her gown or veil, and surrendered her purse and the key to the family home to the judges to show that she was not fencing any stolen good from her husband's inheritance¹⁴⁶). No traces of such ritual were found in Liège, and the only jurists who mention the renunciation are Charles de Méan and Sohet. Both concur in stating that the widow who renounced her inheritance could not even retrieve the property she had herself brought into the marriage or received during it¹⁴⁷). Unsurprisingly, the only assets she was allowed to recover were her clothes and ornaments¹⁴⁸).

It is important to note that the 'droit de mainplévie' no longer applied in the presence of children. In such cases, the surviving spouse was granted full ownership of all movable property – primarily to secure the household furnishings –, but only usufruct over immovable property, regardless of its nature, location, or origin¹⁴⁹). Immovables should thus be safeguarded for future inheritance by the children. In the seventeenth century, jurists began to refer to the transfer of bare ownership of immovable property to the children upon the dissolution of their parents' marriage as 'droit de dévolution'¹⁵⁰). Let us recall that in Liège, the heirs' bare ownership was known as *propriété coutumière*, while the usufruct of the surviving spouse was referred to as their *humiers*. This system was designed to balance the subsistence of the

¹⁴⁵) Namely 1642 Liège Customs chapters 10, 11, and 13 on testamentary succession, legal succession and feudal succession.

¹⁴⁶) On this curious ritual, known as 'throwing the key on the deceased's grave' / '*jeter la clé sur la fosse du défunt*', see M. Ronvaux, *La femme à Namur sous l'Ancien régime*, in: *Cahiers de Sambre et Meuse* 1 (2008) 2–32, 11.

¹⁴⁷) *Observatio* 55 n 4 (n. 44) I 106; and de Sohet (n. 5) livre 3 titre 3 n 88–89.

¹⁴⁸) de Sohet, *ibid.*

¹⁴⁹) 1642 Liège Customs ch. 11 (n. 5) art. 15.

¹⁵⁰) The expression 'droit de dévolution' (in German: *Verfangenschaft*) comes from the famous treatise by Dutch jurist Pierre Stockmans (1608–1671), *Tractatus de jure devolutionis*, printed *apud* Peter le Grand, Amsterdam 1667; see D. De ruysscher, *Balancing interests in stepfamilies: droit de dévolution and bijleving* (Southern Low Countries, 16th–18th centuries), in: Idem/E. A lofs (eds.), *Het nieuw samengesteld gezin: recht en geschiedenis*, Antwerp 2014, 49–62, 51.

surviving spouse during their lifetime and the preservation of the children's future inheritance. As such, the surviving parent could not dispose of the usufruct without the children's consent. However, customary law did permit the surviving spouse to alienate the bare ownership of their humiers without such consent in cases of necessity – such as war, famine, or disease¹⁵¹).

Notarial practice reveals that, in order to safeguard the children's interests, it was not uncommon for parents to appoint one or more guardians for them in their last will¹⁵²). This measure, it should be noted, applied specifically in cases where the surviving spouse was the widow, upon whom fell the responsibility of managing the estate, maintaining and settling the children, and ensuring the financial security of the family after her husband's death. These testamentary appointments served a dual purpose: first, to protect the children's inheritance from potentially imprudent actions by the widow; and, second, to assist the widow in the management of the estate and, more generally, family matters. The degree of oversight experienced by a widow likely depended on whether she had a say in the appointment of her children's guardian. If the latter was appointed unilaterally by the husband in his individual will, without her involvement, it is more likely that his intent was for the actions of his wife to be closely supervised by a trusted friend or family member. The situation was quite different if the guardian was appointed by the spouses in a joint will¹⁵³).

2.2.2. *Notarial practice:*

As previously discussed, a widow without children was entitled to full ownership of all remaining marital assets, to the detriment of her husband's family. This situation could give rise to legal disputes. Such concerns appear to have been particularly pressing in Liège, as evidently nearly all the marriage contracts examined for this study explicitly excluded the surviving spouse's customary inheritance right, thereby ensuring that the assets would

¹⁵¹) 1642 Liège Customs ch. 11 (n. 5) art. 15. This rule is fairly ancient, as it can already be found in art. 38 of the so-called *Paweilhar Giffou*, a compilation of rulings handed down by the Court of Aldermen of Liège between 1280 and 1357.

¹⁵²) On the relationship between a widow and the children's guardian(s) see also section III below.

¹⁵³) A good example of the dual role played by the testamentary guardian with the widowed mother can be found in the will of Melchior de Beine, written in 1580, Archives de l'État à Liège, SCTEL (n. 109) vol. 50, 259. In it, de Beine appoints his friend Vincent de Fléron to be "mambour [guardian]" to his wife and children, to assist them and help them preserve his orphans' inheritance, including all existing and future assets, which they will receive from their parents.

eventually revert to their respective family of origin. When the surviving spouse was a widow, familial apprehension must be further exacerbated by the possibility of her remarriage: any asset inherited from the first husband would fall under the *mainplévie* of the second, effectively becoming his property. Bearing that in mind, it is unsurprising that some widows, heiresses to considerable fortunes, were highly sought after on the marriage market and, as such, afforded a specific legal protection¹⁵⁴).

In stark contrast with Charles de Méan, who saw the widow's 'droit de *mainplévie*' as a form of compensation, Sohet does not hesitate to call the surviving spouse's entitlement 'contrary to natural equity', as it privileges the spouse at the expense of the deceased's family¹⁵⁵). Accordingly, Sohet advises future spouses and their families to derogate from the rules of legal succession in the marriage contract, for example by stipulating the return of the deceased's assets to their family of origin upon the death of the surviving spouse¹⁵⁶). In this regard, we can observe that, when faced with customary rules favouring the surviving spouse, notarial practice developed contractual clauses designed to reassert what Sohet appeared to view as the natural order of things: a legitimate preference for one's family over one's spouse.

In the sample of 469 marriage contracts examined, three clauses excluding the *droit de mainplévie* in the absence of children were identified.

The first contractual clause, already discussed in detail above, allowed a woman to retain control over the management and disposition of her property, usually with respect to specific assets, thereby limiting her husband's prerogatives. A woman who had contractually excluded the effects of the *mainplévie* during marriage could not subsequently claim her *droit de mainplévie*.

¹⁵⁴) Since 1386, rich women (including widows) were protected from dowry speculators – men who feigned wealth in order to convince wealthy women to marry them and to induce the women's families to provide generous dowries. Some of them would, e.g., formally promise, in the marriage contract, a substantial family donation to the union. After the marriage, however, it was revealed that the husband had planned to return the donation to his family once the marriage had been concluded. In response to such practices, Liège law provided that a husband could not return the family donation without the express consent of his wife, as well as that of her representatives involved in the negotiation and conclusion of the marriage contract. About this scheme see also R. Van der Made, *Le droit des gens mariés dans les textes législatifs liégeois*, in: *Bulletin de l'Institut Archéologique Liégeois* 68 (1951) 99–116, 116.

¹⁵⁵) de Sohet (n. 5) livre 3 titre 3 n 101.

¹⁵⁶) *Ibid.*

The second clause required that all assets revert to the family of origin after the death of the surviving spouse, except if at that point he or she had bodily children who had reached the age of fifteen, seemingly the age of majority for inheritance purposes¹⁵⁷). This “clause de retour à faute d’hoires”¹⁵⁸) was apparently distinct from the dower, analysed below, in that it excluded all assets from the mainplévie.

The third and final clause installed a dower for the surviving spouse. The 1642 Liège Customs explicitly state that the institution of a dower excludes the droit de mainplévie¹⁵⁹). Under Liège law, the dower consisted of a defined share of the deceased’s immovables, over which the surviving spouse had a right of usufruct (if the assets had to be returned to their family of origin after the death of the surviving spouse)¹⁶⁰) or full ownership and, therefore, could

¹⁵⁷) See, for instance, the marriage contract of Lambert de Vivengnis and Maroie le Charlier, concluded on 20 October 1524, Archives de l’État à Liège, SCTEL (n. 109) vol. 29, 17: “a condition que sil advenoit que ja namengne que lesdis deux futures conjoins alassent de vie a trespas sans relinguir hoires de leurs deux propres corps engendrez parvenant a parfait eaige de quinze ans. Quant adoncq tous les biens et heritaiges apportez par ledit Lambert en son mariaige deveront retourner a ses plus proismes, adont trouveys en vie. Et semblamment deveront les biens et heritaiges depart ladiste Maroie retourner avec sa plus belle focque et plus beau cottreul a ses plus proismes”. Focque and cottreul were traditional pieces of clothing for women.

¹⁵⁸) 1642 Liège Customs ch. 12 (n. 12) art. 10, *hoires* meaning legitimate heirs, namely children.

¹⁵⁹) 1642 Liège Customs ch. 12 (n. 12) art. 11.

¹⁶⁰) See, for instance, the marriage contract of Antoine van Etten and Helwy Wolff, concluded on 14 June 1504, Archives de l’État à Liège, SCTEL (n. 109) vol. 25, 17: Upon the death of the first spouse and he or she leaves no teenage children, the other one will recover his or her own property, as well as a dower of 30 ‘muids of spelt’ (the muids was a unit of measurement, particularly for grain) from the predeceased’s assets. Upon the surviving spouse’s passing, the dower will revert to the predeceased’s legal or testamentary heir: “S’il advenoit que Dieu ne vailhe que ledit Anthoine allast de vie a trespas avant et anchors ladiste Helwy sa future espeuze sens hoirs legitimes par ly en elle engendreis parvenus a eaige de XV ans. Quant adoncques ladiste Helwy remportera avec elle tous les biens par elle endit mariaige apportez et promis et teinrat pour son doiare toute sa vie durante trengte muids de spelte de rente a prendre, avoir et levoir sur tous sles biens par lesusdit Anthoine son futur marit endit mariaige apportez lesquelz trente muids de spelte heritaubles retourneroient apres le trespas de ladiste Helwy la ledit Anthoienne par son testament ou aultrement ordonneit les aroit. Et se testateit ou ordonneit nen avoit retourner devoient a ses plus proismes adont trouveys en vie” – the same clause follows regarding Antoine’s dower.

dispose of that share as they liked¹⁶¹). While the French dower only benefited women, the Liège dower could serve both the husband and wife, and it was fairly common for marriage contracts to provide a dower for each spouse. On that point, Sohet emphasises that the inclusion of a dower in favour of one spouse cannot be presumed to benefit the other: the dowers of each spouse – which could differ in nature and/or value – had to be explicitly stipulated in the contract¹⁶²). It is also worth noting that a widow (though not a widower) could be deprived of her dower if she remarried or engaged in sexual relations within a year of her husband's death¹⁶³).

Lastly, it is important to note that a widow's definitive share in her husband's succession could be modified by her husband's last will or by a joint will in which the spouses organised their succession together. In the absence of children or if all were dead, the spouses could decide to exclude the dower stipulated in the marriage contract, thereby reverting to the customary regime and granting the surviving spouse their legal inheritance¹⁶⁴). In the presence of children, the spouses could appoint each other as heirs or make generous bequests (including to each other) within the limits of their children's legal inheritance share, known as 'légitime coutumière'¹⁶⁵). Sohet asserts that

¹⁶¹) For instance see the marriage contract of Dennis Notter and Marie Noetelers, drafted in 1621, Archives de l'État à Liège, *SCTEL* (n. 109) vol. 84, 243. If Notter dies first without children, Noetelers will have for her dower the sum of 1000 Brabant florins, which she can use as she wishes – the dower will not have to be returned to her husband's family after her death. Moreover, Notter formally retains the right to increase his wife's dower as he wishes.

¹⁶²) de Sohet (n. 5) livre 3 titre 3 n 163.

¹⁶³) *Definitio* 73 n 4 (n. 45) VI 156; see also de Sohet (n. 5) livre 2 titre 10 n 4 § 1.

¹⁶⁴) For instance see the joint will drafted in 1631 by Mathieu Counar and Anne le Pontenir, Archives de l'État à Liège, *SCTEL* (n. 109) vol. 84, 171–172: The spouses did not have children, which is why they decide to abolish their marriage contract, concluded in 1615, by means of a will. The marriage contract had provided for the return of all assets of the deceased, in the absence of children, to their family of origin after the death of the surviving spouse. In their joint will, Counar and Pontenir give everything to the surviving spouse, on grounds of 'the love, respect, faithfulness and affection the testator and testatrix have always felt for each other, and feel still'.

¹⁶⁵) 1642 Liège Customs (n. 5) ch. 10 art. 7. As mentioned above, the *légitime coutumière* was the definitive share of the immovable property from the parental succession each child was allowed to claim after his or her parents' death. It was calculated based on the assets present in the succession after the death of the surviving spouse and the number of children who were still alive when the succession opened, see Silan, *Aussy avant les filz* (n. 6) 138. For an overview on customary protection mechanisms of children's inheritance faced with testamentary freedom in the Middle Ages and the Early modern era see T. Rüfner, *Customary Mechanisms of Family*

a husband who had already granted a dowry to his wife could also present her with an additional bequest, so long as the two were not incompatible¹⁶⁶).

To conclude, a widow's inheritance following her husband's death ultimately depended on the provisions made in the marriage contract and/or in the will – whether drawn up by the husband alone or jointly by both spouses. In the absence of such arrangements, the rules of legal succession set out by customary law applied, which were distinct depending on the presence or absence of legitimate children. In the absence of children, Liège law adopted a regime strongly favourable to the surviving spouse, either man or woman, to the detriment of the deceased's family. For women in particular, a widow's inheritance – or *droit de mainplévie* – was viewed by jurists either as a fair compensation (Charles de Méan) or, conversely, an illegitimate advantage which opposed natural equity (Sohet). Notarial practice shows that due to fears of losing significant family assets, families who drafted marriage contracts commonly excluded the surviving spouse's legal inheritance by providing for the return of all immovable assets upon the death of the surviving spouse, or by stipulating a dowry.

The third and final section of this contribution focuses on another legal aspect related to women within marriage, namely their position as mothers and, therefore, their legal relationship to their children.

III. The legal relationship between mothers and their children and the question of the mother's tutela in Early modern Liège

In Liège, the father was the sole guardian of his children during marriage¹⁶⁷). Therefore, while he was alive, guardianship of the children was not shared between the parents, as was the case, for instance, in several customs of the Southern Low countries, including in Brussels, Ghent, and Bruges¹⁶⁸). However, this does not mean that children were not expected to show respect and obedience to their mother. In his “*Instituts de droit*”, Sohét clearly states

Protection: Late Medieval and Early Modern Law, in: K.G.C. Reid, M.J. de Waal and R. Zimmermann (eds.), *Comparative Succession Law*, vol. 3, *Mandatory Family Protections*, Oxford 2020, 39–77.

¹⁶⁶) de Sohét (n. 5) livre 3 titre 3 n 166. This also held true when the dowry was stipulated in the husband's favour.

¹⁶⁷) 1642 Liège Customs (n. 5) ch. 1 art. 7.

¹⁶⁸) For a comparative overview see J. Gilissen, *Puissance paternelle et majorité émancipatrice dans l'ancien droit de la Belgique et du Nord de la France*, in: *Revue historique de droit français et étranger* 37 (1960) 5–57.

that ‘parents’ – i.e. both the father and mother – have a right to moderate correction of their children in cases of disobedience¹⁶⁹). In the legal opinions issued by the Court of Aldermen of Liège in the sixteenth century, the guardianship of the father is referred to either as the ‘puissance paternelle’, a reference to the *potestas* of the Roman *paterfamilias*¹⁷⁰), or as the ‘mambournie’, from the Frankish word *mundium*, already mentioned above¹⁷¹).

Following the father’s death, guardianship of the children automatically fell to the widowed mother¹⁷²). Interestingly, the Liège aldermen use the same vocabulary to refer to maternal guardianship as they do to paternal guardianship; their decisions speak indiscriminately of maternal ‘puissance’, ‘mambournie’ or ‘tutelle’¹⁷³).

In his “Observationes”, Charles de Méan draws a comparison between the position of the mother in Roman times and in Early modern Liège¹⁷⁴). He begins by stating that, originally in Rome, women were not permitted to act as guardians, even for their own children. The reason for this prohibition was that guardianship, even of one’s children, was considered a public office; and women were excluded from all public offices, which were considered as *officia virilia*, on the basis of their sex¹⁷⁵). Consequently, for a long time, when

¹⁶⁹) de Sohet (n. 5) livre 1 titre 71 n 25.

¹⁷⁰) As Charles de Méan points out in his *Observatio* 61 n 1 (n. 45) I 125, the father’s authority over his children derives not only from Liège law but also from *ius commune*: “*In patria potestate sunt liberi, quos ex justis nuptiis procreavimus, non jure Leodiensi solum, sed communi.*”

¹⁷¹) See n. 43, above. The word ‘puissance’ appears for the first time in a legal opinion of the Court of Aldermen of Liège dated 12 July 1563, *Coutumes du pays de Liège* III (n. 50) 94–95.

¹⁷²) 1642 Liège Customs (n. 5) ch. 1 art. 7.

¹⁷³) See, for instance, the legal opinion as in n. 171, above: “[...] la mère, après le décès de son mari, [a] en sa puissance maternelle les enfans tous pareil et comme avoit sondit marit à son vivant [...]”, and also *Coutumes du pays de Liège* III (n. 50) 300 of 12 September 1647: “[...] *testamur et fidem facimus de eodem lege, usus et consuetudine civitatis et patriae leodiensis, dissoluto, ut supra, matrimonio, liberos ex dicto matrimonio natos recidere in potestatem matris superstitis, esseque eorum legitimam tutricem, seu curatricem* [...]”. Pierre de Méan in his 1642 Liège Customs (n. 5) ch. 1 art. 7 states that “Les enfans de mariage legitime sont en la puissance de leur Pere et, & advenant la mort d’icelui, tombent en la puissance & mambournie de leur Mere [...]” (emphasis added).

¹⁷⁴) *Observatio* 61 n 1–5 (n. 45) I 125.

¹⁷⁵) About such prohibitions in Roman law see B. Forgó-Feldner, *Wie Frauen römische Geschichte schreiben Respektive: Wie Frauen in die römische Geschichte geschrieben werden*, in: *Revue Internationale des Droits de l’Antiquité* 71 (2024) 115–147, 138–141.

the father passed away, his children were placed under the guardianship of a close male relative and not of their mother. As Charles de Méan further describes, this situation evolved afterwards: the Romans recognised the guardianship of the mother and of the maternal or paternal grandmother following the death of the father¹⁷⁶). Scientific literature has established that this legal change took place around the second century AD¹⁷⁷). Initially, mothers could only become their children's guardian with imperial permission. In 390 AD, this consent was no longer mandatory, but a mother could only become a guardian in the absence of a legitimate or testamentary guardian¹⁷⁸). Furthermore, if the mother remarried, she was excluded from the *tutela*: Charles de Méan explains that the Romans feared that her loyalty would be divided between her children's interests and those of her new husband¹⁷⁹) (as will be further discussed below, this rule was not received in Liège¹⁸⁰). Interestingly, the jurist brings his historical account to a close with the statement that the guardianship of the mother had never been indefinite or universal, but rather always depended on specific cases and rules: "*tutela igitur matri liberos [...] non omni casu, nec indefinite olim, sed certis casibus et regulis praemissa*"¹⁸¹). The jurist then observes that, under Liège law, children automatically came under their mother's authority upon their father's death¹⁸²). He concludes that the mother's authority is equal to the father's by referring to maternal guardianship as a 'substitute' for paternal power¹⁸³). A century later, Dominique-François de Sohet came to a similar conclusion, because upon the father's death, the mother was recognised as having an authority over her children that was 'similar to that of the father before'¹⁸⁴).

¹⁷⁶) Observatio 61 n 1–5 (n. 45) I 125.

¹⁷⁷) E. Höbenreich, Die Rechtsstellung der Frauen, in: U. Babusiaux/Ch. Baldus/W. Ernst/F.-S. Meissel/J. Platschek/Th. Rübner (eds.), Handbuch des Römischen Privatrechts, vol. 1 Tübingen 2023, 741–767, 751–752.

¹⁷⁸) *Ibid.*

¹⁷⁹) Observatio 61 n 2 (n. 45) I 125.

¹⁸⁰) However, it was received in other regions, already during the Middle Ages. For instance, it can already be found in Las Siete Partidas promulgated by King Alfonso X (1221–1284) in the thirteenth century, see G. Bartolotti, La nomination de la tutrice dans Las Siete Partidas: contribution à l'étude de l'influence du droit romain sur la place de la femme dans le droit médiéval hispanique, *e-Spania* 36 (2020).

¹⁸¹) Observatio 61 n 5 (n. 45) I 125.

¹⁸²) *Ibid.*

¹⁸³) *Ibid.*: "*Jure vero civili Leodiensium mortuo patre, recidunt liberi in potestatem matris, sicque materna potestas succedanea est patriae potestati*" (emphasis added).

¹⁸⁴) de Sohet (n. 5) livre 1 titre 71 n 2.

Of course, this claim should be qualified in light of the earlier discussion on the position of widowed mothers. As noted, it was fairly common in practice for parents – or the father alone, through his individual will – to appoint one or more guardians to assist the widow in managing the couple's property and in safeguarding the children's inheritance from potentially harmful actions by their mother. Depending on the circumstances of their appointment, these guardians could exercise varying degrees of control, meaning that a widowed mother was not, in the exercise of her guardianship functions, as autonomous as the father might have been during his lifetime. Nonetheless, it is important to emphasise that, unlike in Roman law, the mother's *tutela* was not excluded by the presence of testamentary guardians.

Parental authority started at birth and did not end when the children came of age¹⁸⁵). According to Sohet, as the primary legitimate guardian, the father was the sole administrator of his children's "biens adventices" (adventitious property)¹⁸⁶). This included all assets acquired by the child through their work or through a gift, bequest or inheritance of a third person – for instance, a grandparent¹⁸⁷). In Liège, like in Justinian's C. 6,61,6 and Inst. 2,9,1, such acquisitions remained the child's property, the father having only a usufruct on it¹⁸⁸), which he had to use for the child's subsistence¹⁸⁹). Being the legitimate guardian, the father was not required to provide an inventory of his children's property or to give security for it¹⁹⁰).

The relationship between the parents and their children was heavily influenced by Christian precepts, and mutual rights and duties were recognised to both parents and children. As indicated by a 'placard' (i.e. a printed

¹⁸⁵) 1642 Liège Customs (n. 5) ch. 1 art. 7. As mentioned above, only marriage, the death of both parents (alongside civil majority, otherwise a guardian was appointed for the minor) and a judicial emancipation before a high court of justice could free a child from parental authority, see 1642 Liège Customs (n. 5) ch. 1 art. 9–10.

¹⁸⁶) de Sohet (n. 5) livre 1 titre 71 n 8–9.

¹⁸⁷) Sohet refers here to the *peculium adventicium* of the Roman *filius familiae*. A. Berger, *Encyclopedic Dictionary of Roman Law*, Philadelphia 1953, 624.

¹⁸⁸) There were a few exceptions in which the father did not even have the usufruct of an asset belonging to his child. This was the case, for instance, when the child received a bequest from a relative and that in his will, the testator or testatrix had excluded the right of usufruct of the father over the bequest, which consequently belonged in full ownership to the child. Furthermore, damages awarded by a court of law for personal insults also belonged in full ownership to the child, as in the case of married women, see de Sohet (n. 5) livre 1 titre 71 n 4–5.

¹⁸⁹) de Sohet (n. 5) livre 1 titre 71 n 8–9.

¹⁹⁰) However, according to Charles de Méan, the father might be required to provide a description of his children's assets, see *Observatio* 113 n 2–3 (n. 45) vol. 1, 251.

board) displayed in Liège in 1637, parents had to take care of both the body and the soul of their children, namely ensuring their physical and spiritual integrity¹⁹¹).

The duty to maintain the children's body first meant providing them with all necessary *alimenta*. According to Vincent de La Hamaide, this included 'anything necessary to human life', namely at least food, clothes and shelter¹⁹²). A century later, Sohet added study or formation fees to this list, provided they were in line with the parents' wishes and the children's abilities¹⁹³). Sohet further stresses that in Liège law, like in the *ius commune*, the obligation to maintain one's children rested primarily on the father, and only subsidiarily on the mother – by which it must be understood after the father's death¹⁹⁴). Upon the dissolution of the marriage and when there were children, the surviving spouse received the property of the movable assets and a right of usufruct over the immovable property, which constituted the children's inheritance (see also above, subsection 2.2.2). This usufruct came hand in hand with the obligation to provide for their subsistence¹⁹⁵). When children were old enough to look after themselves, the surviving spouse could grant them an advance on their share of the inheritance for their independent settlement, called 'tierce-part coutumière' (third customary share)¹⁹⁶). As coming of age did not automatically exclude parental authority, it is sound to assume that, in such a case, the surviving parent also emancipated the child before a court of law¹⁹⁷).

Second, the father was expected to take care of his children's financial settlement, and therefore to constitute a dowry for his daughter's mar-

¹⁹¹) 'Obligations reciproques du pere et de la mere de famille, de leurs domestiques, et des pauvres', printed *apud* Jean Ouwerx, Liège 1637, Collections of the University of Liège Library (<https://hdl.handle.net/2268.1/5083>) (2 February 2026).

¹⁹²) de La Hamaide (n. 63) 293.

¹⁹³) de Sohet (n. 5) livre 3 titre 3 n 173–174.

¹⁹⁴) *Ibid.*

¹⁹⁵) *Ibid.* and 1642 Liège Customs ch. 11 (n. 5) art. 17.

¹⁹⁶) The 'tierce-part coutumière', coming from the widow(er)'s *humiers*, was composed of immovable property. It amounted to the third of the share the child could expect to receive from his or her parents' succession, provided they survived both of them, and without taking the number of children into consideration, see 1642 Liège Customs ch. 11 (n. 5) art. 17. It has to be distinguished from the *légitime coutumière* (n. 165 above).

¹⁹⁷) Judicial emancipation had to take place before a high court of justice, such as the Court of Aldermen of Liège, see 1642 Liège Customs (n. 5) ch. 1 art. 10; on judicial emancipation at the time in a city where the customary law of Liège also applied see R. Van der Made, L'émancipation des enfants mineurs à Huy au XVI^e siècle, in: *Chronique Archéologique du Pays de Liège* 45/4 (1954) 67–86.

riage¹⁹⁸), entry into a convent¹⁹⁹), or independent settlement. After his death, this responsibility also fell upon the guardian mother. Charles de Méan and Dominique-François de Sohet both state that in Liège, a dowry could be validly constituted by both the father and the mother²⁰⁰). Sohet further highlights a crucial difference between the Roman dowry and the Liège dowry, in that in Roman law, the father was legally required to endow his daughter (C.5,11,7,2, D.23,2,19 and Nov.97,5), whereas under Liège law, the decision to give a dowry was left to the appreciation of the parents, who could decide not to endow their daughter if she already had financial means from other sources that she could use to constitute her own dowry²⁰¹) – for instance from her salary, if she worked, or thanks to gifts or bequests received from other family members.

As previously noted, parents were also required to educate their progeny in line with Christian tenets in order to preserve their souls. This duty became paramount in the context of the Protestant Reformation and of the Catholic Counter Reformation that followed, as – now – Catholic parents were more strongly than ever required to bring up their children in the respect of the ‘right’ – namely Catholic – Christian faith²⁰²). The 1637 placard mentioned above thus urges parents to be very attentive when they hire a wet nurse and later a preceptor or governess to take care of their children. In the Early modern period, it was common for families of all backgrounds to resort to a wet-nurse to breastfeed infants; following the Reformation, it was recommended to parents to choose wet-nurses very carefully, as it was commonly

¹⁹⁸) He also paid for his son’s financial contribution to his marriage.

¹⁹⁹) Parents were expected to give their daughter a dowry on the day of her profession. They (and their heirs after them) also usually paid an annuity to the monastery to provide for the subsistence of the nun. For instance see the joint will of Alexandre Borlé and Barbe de Fexhe, written in 1598, Archives de l’État à Liège, SCTEL (n. 109) vol. 53, 15. In it, the spouses require the surviving spouse to use the share of the inheritance of the child who will enter a monastery to pay for all the necessities demanded by the chosen institution.

²⁰⁰) Definitio 11 n 5–6 (n. 45) VI 26; and de Sohet (n. 5) livre 3 titre 3 n 22–23.

²⁰¹) *Ibid.* n 17–18. Initially, in Roman law, the father only had a moral and social obligation to constitute a dowry for his daughter. In Justinian’s law – the one Sohet knows – this moral duty became a legal obligation, as Justinian wanted to reinforce the financial protection of women during the marriage, but mostly after its dissolution. On this evolution see J. F. Stagl, Ehegüterrecht, in: Handbuch des Römischen Privatsrechts I (n. 177) 882–883.

²⁰²) On Catholic children’s education, especially that of daughters, after the Reformation see M. Sonnet, L’éducation des filles à l’époque moderne, in: *Historiens et géographes* 393 (2006) 255–268.

held that the breastmilk of a Protestant nurse could corrupt Catholic newborns²⁰³). Furthermore, the placard incites parents to closely supervise their children's activities and acquaintances, but also to search their chests and bags to make sure they did not read any books 'filled with heresy and forbidden love' that could induce dangerous daydreams or lead them astray from the path of good Christianity.

Mothers were called upon to play a crucial role in their children's upbringing, and especially when it came to daughters, whom they had to prepare for matrimony and motherhood. In 1597, clergyman Jean-Baptiste de Glen – whose later work 'Oeconomie chrestienne' was already discussed above –, describes the mother's responsibility to teach her daughter(s) the proper Christian morals and values necessary within matrimony in his little handbook aimed at parents 'Du devoir des filles', on the education of young girls²⁰⁴). De Glen urges parents to keep their daughters in domestic seclusion to protect their virginity and prepare them for domestic life²⁰⁵). Seclusion, he writes, is the only way to shield young women from unwanted seducers, but also from women of 'bad reputation', with whom the young girl might 'kindle a private friendship', the danger then lying in 'the thoughts, advice, secrets [...] passions they could share and to which they could find ways to satisfy'²⁰⁶). The clergyman considers female friendships more dangerous for young girls than interactions with the opposite sex. As he explains, girls experience when facing men at least the restraint imposed by the awkwardness and modesty of dealing with the other sex – a filter that is entirely absent in the company of other women²⁰⁷). To alleviate the boredom that a secluded life will be most likely to induce in a young girl, de Glen ultimately recommends putting her to work, to avoid idleness and as further preparation for domestic life²⁰⁸).

²⁰³) M. E. Wiesner-Hanks, *Women and Gender in the Early Modern period*, 4th edition, Cambridge 2019, 100.

²⁰⁴) See above n. 54 and Jean-Baptiste de Glen, *Du devoir des filles, traicté brief et fort utile*, 1: de la dignité de la femme, de ses bons deportements, et devoirs, des bonnes parties et qualités requises aux filles, qui tendent au mariage. 2: de la Virginité, de son excellence, des perfections necessaires à celles, qui en font possession, des moyens de la conserver, & de plusieurs autres choses, qui se verront plus à plein au sommaire des chapitres, printed *apud* Jean de Glen, Liège 1597, 43. The book can be found at the Bibliothèque Ulysse Capitaine in Liège cap. 4666.

²⁰⁵) *Ibid.*, part 1, 39.

²⁰⁶) *Ibid.* 42.

²⁰⁷) *Ibid.*

²⁰⁸) *Ibid.* 56.

To summarise: While the father lived, the role of the mother was limited to the education of children, with a special focus on daughters. In line with that, she could correct her children when they misbehaved. As sole guardian of the children, the father administered their property – as well as, it should be recalled, his wife’s property (above subsection 2.1) –, and the father had the duty to provide for their maintenance and financial settlement. After the father’s death, as pointed out by Liège jurists, the mother was recognised the same prerogatives as the father had before, as the maternal *tutela* was a substitute for paternal guardianship. The presence of testamentary guardians, appointed by the father alone or by the parents together, did not exclude the mother’s *tutela*, but they certainly impacted its daily implementation in practice.

While the mother did not – at least legally speaking – have a say during marriage, not being her children’s guardian also presented some advantages, as she could not be held responsible for their actions. If the child committed a delict – either a penal offence or a damage caused to a third person – the father alone could be sued by the authorities or the aggrieved party and held to pay the requested penalty²⁰⁹). Such responsibility also fell to the mother after the death of her husband, but even then, she could elude her responsibility by emancipating the child and giving them their tierce-part coutumière to pay for the requested penalty²¹⁰).

A final aspect to consider is the impact of the mother’s remarriage on the exercise of her *tutela*. As pointed out by Charles de Méan, cited above, the Romans excluded the mother’s *tutela* when she remarried, as they considered that her loyalty would be necessarily divided between her children and her new husband²¹¹). This solution from learned law was never received in Liège. When she remarried, the widowed mother fell under the mainplévie of her new husband – unless otherwise stipulated in her marriage contract, as previously discussed. Therefore, it could become the responsibility of the new husband to manage the property of his wife’s children. However, customary law limited his prerogatives to the assets of his spouse’s children who were still under-age²¹²).

Furthermore, Liège jurists clearly state that remarriage did not mean that mothers lost all guardianship rights over their offspring. Thus, Charles de

²⁰⁹) 1642 Liège Customs (n. 5) ch. 1 art. 8. Of course, the father could pay this penalty using his wife’s assets, as discussed under the previous section.

²¹⁰) So could the father if his wife predeceased him.

²¹¹) Observatio 61 n 2 (n. 45) I 125.

²¹²) 1642 Liège Customs (n. 5) ch. 1 art. 7. As mentioned above, majority was of 17 or 18 years old before 1572, and 25 after that.

Méan writes that the stepfather's authority over his spouse's children could never be absolute, a claim he bases on two grounds²¹³). The first is that it cannot be excluded that the stepfather will eventually neglect his wife's children, simply because they are not his own²¹⁴). The second is that a mother cannot be expected to renounce her maternal feelings so easily²¹⁵). More significantly, a century later, Sohet states that a woman who remarries is not, on that ground, deprived of the right to educate her own children – the jurist emphasises that, in this regard, Liège law differed from Roman law²¹⁶). Elsewhere in his “Instituts de droit”, he also writes that despite the remarriage, a mother remains the legitimate guardian of her children and that, as a consequence, only she has the capacity to appoint a guardian for them in her last will – who may or may not be their stepfather²¹⁷).

From the foregoing, it appears that the authority of the stepfather over his wife's children was primarily of a patrimonial nature: as he came into the possession of his wife's assets, which he had to manage, it was logical that he would also manage her children's property, at least while these children were still underage. However, as Charles de Méan emphasises, since this constellation derived from the matrimonial regime, the stepfather's authority over his wife's children ceased upon her death, at which point marital authority was terminated²¹⁸). In that scenario, if the children had come of age, they were automatically emancipated; if not, they were placed under the care of the guardian appointed in their mother's will or, failing that, by the competent court of law²¹⁹).

IV. Conclusion

This article has examined the legal status of women and their property rights within and after marriage in Early modern Liège, drawing on custom-

²¹³) Observatio 61 n 8 (n. 45) I 125.

²¹⁴) *Ibid.*

²¹⁵) *Ibid.*

²¹⁶) de Sohet (n. 5) livre 2 titre 10 n 2 and livre 3 titre 3 n 172.

²¹⁷) de Sohet (n. 5) livre 1 titre 72 n 7.

²¹⁸) 1642 Liège Customs (n. 5) ch. 1 art. 7 and Observatio 61 n 8 (as in n. 213).

²¹⁹) The courts having jurisdiction to appoint an orphan's guardian in the absence of legitimate and testamentary guardian were local or high secular courts (such as the Court of Aldermen of Liège), as well the ecclesiastic court of Liège, the protector of *personae miserales*; on this topic see in particular E. Héliu, À la recherche d'une mesure de léthauté des épidémies: les désignations de tuteurs pour les orphelins servent-elles d'indicateurs?, in: Annales de démographie historique, La démographie avant les démographies (1500–1670) (1980) 67–78.

ary sources, legal doctrine and notarial practice. It has also shed light on the legal aspects of the mother-child relationship.

Firstly, regarding the position of women within marriage, Liège corresponds to the '*tutela mariti*' model, which Helmut Coing identified as a general trait for married women in Early modern Europe. Following in the footsteps of their Roman forebears, Liège jurists compared the position of wives to that of the pupil subject to the *tutela impuberum*, meaning that no significant legal transaction could be completed without the husband's consent. However, exceptions to legal incapacity existed, and these also reflect neighbouring customs from the same period.

Liège's originality lies in the effects of the matrimonial regime (known as *mainplévie*), on a woman's property both during and after marriage. During marriage, and with limited exceptions, a husband disposed of his wife's assets as he wished, as they were considered his own upon consummation of the union. This custom distinguishes the Liège *mainplévie* from community property regimes in other regions, such as those in Northern France and the Southern Low Countries. However, individuals could derogate from these effects entirely or partially in a private deed, primarily through a marriage contract: notarial records attest a range of such clauses, although they only appear in 28 % of the sample of 469 marriage contracts examined, all drafted between the early sixteenth and late seventeenth centuries.

The originality of the *mainplévie* regime continued when the marriage ended, since, in the absence of children, widows were entitled to receive all matrimonial assets in full ownership. The only exception concerned certain valuable fiefs, over which they only enjoyed a right of usufruct. While jurists such as Dominique-François de Sohet viewed this rule as unfair to the deceased husband's lineage, Charles de Méan considered the widow's right of inheritance to compensate adequately her virtual dispossession during marriage. Once again, studying notarial practice provides useful additional information about how the matrimonial regime was applied. Indeed, the vast majority of preserved deeds excluded the customary survivor's share in favour of the dower or the return of property to its family of origin after the death of the surviving spouse.

In the future, it will certainly be interesting to explore how these private acts were handled by regional and local courts in the event of disputes, for example between a widow and her husband's heirs.