'Out of extraordinary love and affection'- Gender, spousal wills and the conjugal strategy of commercial households in sixteenth-century Antwerp

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This article sets out familial structures and strategies in sixteenth-century Antwerp, the leading commercial metropolis of its time. Using notarial spousal wills and urban law, it reflects on the balance of power between the conjugal pair and the extended family. In doing so, it explores the larger question of women's access to property. The starting point is the fact that traditional (legal) historiography assumes a shift towards increasing patriarchal and lineage tendencies during the fifteenth and sixteenth centuries. As a result, the scope of women's legal and economic action would have narrowed. However, this article presents significant evidence for a re-evaluation. A detailed analysis of notarial wills of married men and women in sixteenth-century Antwerp has shown that many spouses used a will to favour the interests of the conjugal pair over those of the extended family. In other words, the conjugal strategy increased and prevailed. This preference of married couples for a will was gradually formalised by urban law. This seems to indicate that the couple, viewed as a legal-economic partnership played a central role in the rise of the early modern market economy and capitalism.

I. Introduction

On 18 May 1519, Cornelie Scesters and her husband armor maker Wijnant Bosch made their way to notary Jacob de Platea in Antwerp, as these spouses decided to make a spousal will.[1] This will, preserved in the State Archive in Antwerp, states that the couple entrusted each other their entire estate in full ownership. In other words, this couple gave the surviving spouse, whether Wijnant or Cornelie, more than urban law would do. Only two relatives were granted a bequest. Cornelie provided her cousin a cloth, Wijnant gave

[1] This article is mainly based on chapter 3 of my unpublished doctoral thesis: Cappelle, De strijd (Vrije Universiteit Brussel). This study was funded by a Research Foundation Flanders (FWO) project entitled: 'Marriage as Partnership: The Legal Position of Married Women in the Sixteenth-Century Southern Low Countries'. I would like to thank my supervisor Dave De ruysscher (Tilburg University, Vrije Universiteit Brussel), Catherine Dal, the members of the jury, my colleagues and the two anonymous referees for their constructive suggestions and comments. The notarial will of Cornelie and Wijnant used in the introduction can be found in: SAA, N, no. 522, 18 May 1519, fol. 40r-41v. The title of this article is based on a citation of this will ('deur sunderlinge liefde ende affectie'). Unless otherwise noted, all translations are the author's.

his mother a sum of money. However, such a will could create tensions between the married couple and their heirs, as it would clearly disadvantage the latter. Their family members could contest the will, even more so because this spousal will was not valid from a strictly legal point of view. Therefore, it is hardly surprising that Cornelie and Wijnant wanted to clarify their 'right' to make these arrangements. They emphasized their 'extraordinary love and affection that one has for the other'.[2] In addition, the spouses also stressed that they had acquired 'their goods together with their hard work and labour', 'for the reason that they did not have many resources when they got married'.[3] The spouses wanted to reward each other because they had provided for their own living during their marriage, without the help of family members. For this reason, this couple clearly preferred a will over urban law in order to create a solid material basis for the care of the surviving spouse.

II. The patrilineal strategy: safeguarding property along the kinship

Even though Cornelie and Wijnant formed a conjugal pair, we may not forget that they originally came from two different families. This fact brings us to the central theme of this article: the tensions between the conjugal pair (or broader: the nuclear family) on the one hand, and the extended family on the other. In other words, this article takes a closer look at the balance of power between two spouses (or broader: the conjugal pair and their (minor) children), and their respective natal families (extended family, lineage or kinship).

Based on the spousal will of Cornelie and Wijnant, we can assume the working mechanism of their marriage was a kind of partnership. This conjugal pair did not consider their marital estate as a temporary constellation of property coming from different extended families, but as a unit of own production, consumption and reproduction. However, (legal) historians generally approach marriages during the fifteenth and sixteenth centuries as a matter of family strategies. According to them, a shift towards patrilineal interests occurred during this period, focussing on the extended family to the detriment of the surviving spouse. Patrilineal strategies prevailed over conjugal interests. For the natal kin, preserving and transmitting family wealth became their main concern. The relatives protected their interests as much as possible, in order to keep property within the family. To this end, inheritance law was on their side. Patrimonial family law was thus characterized by the preservation of lineal assets within the male line.[4]

2 'Sunderlinge liefde ende affectie diese d'eene totten ande(ren) draghen'.

3 "t Samen met hue(re)n zwairen arbeijd ende industrien gecregen ende verovert', 'want al zoe zij vercleerden luttel oft nijet veele aen malcande(re)n te huwelijcke en brachten'.

4 Several authors referred to this transition, see for example: Dumolyn, 'Patriarchaal patrimonialisme', 14-15; Godding, Le droit privé, 7; Howell, The marriage exchange, 13.

The most detailed research on family strategies in the Southern Netherlands examined the situation in late medieval Douai.[5] Jacob and Howell stated that this Flemish town experienced an important legal change to the advantage of the extended family during the fourteenth and fifteenth centuries. Patrilineal interests gained the upper hand over those of the longest-living spouse. While urban law gave the widow initially full control over the estate after the death of her husband, marriage contracts, wills and mutual donations gradually restricted her share to the life use of specified assets. This commonly used practice was eventually countered by a new marital property regime. According to Howell, this legal reform had important gender-related consequences, as women lost their autonomy. Instead of 'creators of wealth' or capable co-managers of the household, daughters, wives and widows' status got reduced to what Howell called 'carriers of property'. While women were originally actively involved in the household and managed property, they were eventually denied control of these goods and thus lost their economical significance. At best, women could passively enjoy these assets. This way, the extended family ensured that important family goods remained in the hands of the next (male) generations.[6]

The overall picture of a gradual repositioning of (married) women as a result of a transition from conjugal to patrilineal strategies does not fit our leading lady Cornelie Scesters. Instead of limited rights over certain goods, she had full ownership of the marital estate, just like her husband had. Given the little comparative research that has been conducted so far, this article wants to further examine the changing balance of power between the conjugal pair and the extended family in the fifteenth and sixteenth centuries. To what extent did the married couple have bargaining power within the extended family?

Although the patrilineal strategy and the repositioning of women to passive guardians of property is widely accepted, my thesis is that the specific economic and legal situation of cities in the Low Countries have frequently been overlooked. To support my thesis, I chose a city with a totally different economic situation than late medieval Douai, more specifically sixteenth-century Antwerp. This city headed in opposite economic direction. While Douai was affected by a shrinking textile market in the late Middle Ages, sixteenth-century Antwerp became the most important trading hub of Western Europe.

In essence, this article will document how this growing commercial metropolis made a reverse movement, as it demonstrates the primacy of the couple over the kinship. These results for sixteenth-century Antwerp, which do not correspond to the prevailing theory of Jacob and Howell, invite a reconsideration of this paradigm. By sharing my findings, I hope to provide a useful jumping-off point for further research on the role of women in economic development. To set the context for this article, section 3 provides the sources and methodology, and is followed by an overview of the family patrimonial law in Antwerp. Section 5 is to shed light on who made a notarial will. Using spousal wills, the following section will examine the patrimonial arrangements, which will confirm the equal

5 Jacob, Les époux; Howell, The marriage exchange.

6 Howell, The marriage exchange, 233-234.

treatment of husband and wife and the marital economy. We will then focus on the bigger picture of this case study: the conjugal strategy of commercial households. Finally, specific attention will be given to the conflicting interests of the kin and the children.

III. Sources and methodology

To collect data on family structures and strategies in sixteenth-century Antwerp, primary sources included urban law on the one hand, and notarial wills on the other. First, the legislative framework is considered, more specifically: 'Keurboeck' (early fourteenth century-early fifteenth century), 'Gulden Boeck' (circa 1510-circa 1537), 'Antwerps Rechtsboek' (circa 1541-1545) and the compilations of urban law of 1548, 1570, 1582 and 1608.[7] I also analysed fifteenth- and sixteenth-century 'turben', which were a selection of binding advices given by legal experts to concrete legal questions.[8] Those different normative sources offer insight into legal modifications, demonstrating how Antwerp urban law developed and changed over time.

In addition to this legislation, the main information source of this article are wills. In sixteenth-century Antwerp, a will could be registered by a notary and two witnesses, a pastor and two witnesses or the aldermen and a secretary. For this article, I limited myself to the wills that were recorded in notarial acts. While the Antwerp City archive and State archives have a comprehensive collection of notarial registers, it was impossible to examine all notarial wills within the time frame. These notarial registers are extremely labour-intensive to access for systematic research, because an index is usually missing. The (legal) historian therefore has to analyse every page in order to find specific transactions. I decided to select two sample periods reflecting the socio-economic history of Antwerp. Even then, the scope of the notaries was enormous, so a total of six notaries will play the leading role.

The first research period is set between 1525 and 1545. At that time, Antwerp experienced a booming international trade as the centre of a commercial revolution, which was reflected in a growing supply and demand of credit and cash. This so-called golden age was characterised by a spectacular population growth, which was the result of massive immigration due to the strong economic boom. By the 1560s, Antwerp even had about 100.000 inhabitants.[9] Approximately 40 notaries were active between 1521 and 1530, a decade later (1531-1540) 24 notaries.[10] For the period 1525-1545, I scrutinized the notar-

7 'Keurboeck' in: De Longé (ed.), Coutumes, I, 2-89; 'Gulden Boeck' in: De ruysscher, 'De ontwikkeling', 112-183; 'Antwerps rechtsboek' in: De ruysscher, 'De ontwikkeling', 241-301; 'Costuymen 1548' in: De Longé (ed.), Coutumes, I, 91-378; 'Costuymen 1570' in: De Longé (ed.), Coutumes, I, 429-705; 'Costuymen 1582' in De Longé (ed.), Coutumes, II, 1-688; 'Costuymen 1608' in: G. De Longé (ed.), Coutumes, III and IV.

8 See De ruysscher, 'De ontwikkeling', 71-73.

9 Marnef, Antwerpen, 25; Puttevils, Merchants, 15-17; Soly, Urbanisme, 103, 451; van der Wee, The growth, II, 213-220.

10 Oosterbosch, Het openbare notariaat, I, 485; Oosterbosch, "Van groote abuysen", 94.

ial acts of three notaries in search of wills: Jacobus de Platea,[11] Willem Stryt[12] and Zeger Adriaan Sr. 's Hertoghen.[13]

These results were compared to those obtained for the period between 1575 and 1590. During this sample period, the city lost its dominant position. Religious strife and following war ravaged the city. As a consequence, Antwerp experienced an economic recession and rising taxation, which severely affected business and put an end to the city's commercial hegemony. This new situation had significant demographic consequences: within a few decades, half of Antwerp's population emigrated. Most people fled to Amsterdam, which displaced Antwerp as metropolis.[14] There were 105 notaries for about 55.000 inhabitants in July 1582.[15] For my research for this period 1575-1590, I opted for three notaries: Nicolaes Claeys,[16] Jan Nicolai[17] and Dierick van den Bossche.[18] In total, the two sample periods resulted in 521 notarial wills (252 wills between 1525-1545; 269 wills between 1575-1590). In order to examine these wills, I constructed a hugely extensive Access database.

IV. The rules of the game: family patrimonial law in sixteenth-century Antwerp

Before we can take a closer look at the use of wills of married men and women, we must first examine the rules of the game: namely those of Antwerp family patrimonial law in the course of the sixteenth century.[19] Like other regions, the metropolis had general existing rules worked out by urban law for the property relations of spouses during marriage and after the dissolution of marriage (marital property law) and the transfer of property of a deceased to one or more living persons (inheritance law). In Antwerp, this legal framework developed strongly in the course of time, but the situation differed greatly from one city or region to another.

By getting married in Antwerp, a marital estate was recorded, based on three parts: the common property, the husband's personal property and the wife's personal property (the restricted community of property). The common property included the movable goods as well as the acquisitions. Moreover, the spouses each had their personal proper-

11 SAA, N, no. 522, 523 (1525-1526, 1531-1532).

12 CAA, N, no. 3132, 3133 (1535, 1540).

13 CAA, N, no. 2070, 2071, 2072 (1534-1539, 1540-1543, 1544-1545).

14 On this issue, see Gelderblom, 'From Antwerp'.

15 Oosterbosch, "Van groote abuysen", 98; Nève, Schets, 80.

16 CAA, N, no. 524, 525, 526, 527, 528, 529, 530 (1575, 1576-1578, 1581-1582, 1583-1585, 1586-1587, 1588-1589 and 1590).

17 CAA, N, no. 2702, 2703 (1579-1583, 1585-1590).

18 CAA, N, no. 3637, 3638, 3639, 3640, 3641, 3642, 3643 (1575, 1576-1577, 1578-1579, 1580-1581, 1582-1583, 1584-1585 and 1586).

19 See chapter 1 of Cappelle, De strijd for a more detailed discussion of family patrimonial law of sixteenth-century Antwerp.

ty, which was not considered to be common property. These goods did not merge with each other in marriage and were reserved for the individual spouse and their kinship.

The death of one of the spouses led to the dissolution of the marital estate. On the one hand, the community was equally divided in two parts. One half was given to the longest-living spouse, whether widow or widower. In other words, spouses took equal shares of common property. The other half went to the children from the marriage, with daughters and sons having equal rights to the property. In the absence of children, these goods went to close kin of the deceased spouse. The personal property, on the other hand, was not divided. The personal property of the deceased spouse returned to the heirs, while that of the widowed spouse remained in his or her hands. Furthermore, before this split, the remaining spouse was entitled to a so-called 'urban advantage' ('stadt voordeel'). This meant that the surviving spouse was allowed to take certain valuable personal belongings from the community in advance. Because the widowed spouse was given these preproclaimed goods before the division in two parts, the urban advantage thus provided an important benefit to the longest-living spouse.

In contrary to the patrilineal strategy aimed at preserving important family patrimony, Antwerp distinguished itself from other cities by a reverse movement. This commercial city was characterised by a conjugal strategy that specifically aimed to maintain the economically viable family unit. Over time, Antwerp urban law did not reduce but significantly enlarged the common property and the urban advantage. By gradually increasing the common property and the urban advantage at the expense of the spouses' personal property, urban law therefore accorded more weight to the interests of the surviving spouse than to those of the extended family of the first-dying spouse. More property was marked as common, which meant that it would not automatically pass to the kinship of the deceased spouse but had to be split in half. In other words, important family goods ended up in the community instead of being transferred from one (male) generation to another. This was an asset for the widowed spouse who had contributed least to the common property. As a result of this expansion during the sixteenth century, the restricted community of property in Antwerp evolved into a near-universal community of property whereby most goods brought to a marriage or acquired during marriage were shared between the spouses.

Although most people's estate passed by these rules, some married men and women wanted to decide for themselves what would happen to their property. In addition to making a marriage contract and a gift, the couple could deviate from this set of rules by making a will. However, as in other regions, (married) men and women were not allowed to freely dispose their goods. This ban needs to be seen in the light of conservation of family property, because this rule prevented the alienation of family property to outsiders, in particular the longest-living spouse.

As a consequence of this ban, a couple living in Antwerp during the first half of the sixteenth century, had only limited possibilities to pursue family estate planning in order to favour the surviving spouse. Initially, couples could not make a will in order to advantage

the surviving spouse more than he or she would have been benefited by urban law. There was only one exception to this ban: during the course of the marriage, spouses were allowed to gift each other 245 grams (one 'mark') of silver in movable goods and the lifelong use ('tocht') of the common house in which they lived.[20] However, from 1545 onwards, Antwerp urban law changed: spouses were officially allowed to favour each other by will without taking in account the mentioned restriction. Couples with no communal legal children or children from a previous marriage were allowed to bequeath each other 'as much of their goods as they pleased'.[21] It may be clear that the absolute prohibition of making a mutual will had gradually shifted towards more options. Antwerp urban law was therefore advantageous for the couple.

Despite married men and women enjoyed flexibility to make a will from the second half of the examined century onwards, Antwerp urban law did not give spouses a total freedom in disposing of their goods. Married men and women still had to take into account certain restrictions. First of all, it was forbidden to harm the rights of the children. The so-called 'legitimate portion' was one third of the goods if there were up to four children. If there were more than four, the legitimate portion was half. Parents were thus entitled to bequeath up to two-thirds of the property if there were four or fewer children, or half if there were more than four children.[22] Secondly, the will should not prejudice the rights of the creditors.[23] Thirdly, the testator could only bequeath fiefs with the consent of the lord.[24] Finally, couples were not allowed to disadvantage each other. It was forbidden to entrust each other less than was stipulated in urban law.[25]

V. Who made a notarial will in Antwerp?

This section looks at the notarial wills themselves: could every man and woman in theory make one, and who actually made a will? The first question can be answered positive for sixteenth-century Antwerp. From a certain age, everyone could make a will,

20 'Turbe' from 24 February 1494 (Meijers, Het West-Brabantsche erfrecht, annex, 203); Gulden Boeck, s. 20 (p. 119). Antwerp sources use the term 'tocht'. In this article, this term will be used to refer to 'use', and not to 'usufruct'. 'Usufruct' is a concept derived from Roman law ('ususfructus'), which did not entirely correspond to the Brabant terminology. See De ruysscher, 'Balancing interests', 53-54.

21 'Soo vele van henne goeden laeten, geven ende gunnen als het hun gelieft'. Costuymen 1548, ch. 11, s. 28 (p. 314), ch. 13, s. 4 (p. 334); Costuymen 1582, ch. 41, s. 57 (p. 254); Costuymen 1608, II, ch. 1, s. 97 (p. 116-117). Also see Meijers, Het West-Brabantsche erfrecht, 85.

22 Costuymen 1548, ch. 12, s. 3 (p. 324); Costuymen 1570, ch. 33 (p. 660); Costuymen 1582, ch. 41, s. 57-59 (p. 254-256); Costuymen 1608, II, ch. 1, s. 97-105 (p. 88); III, ch. 12, s. 26 (p. 520-522). Also see Stevens, Revolutie, 232 (footnote 36)

23 Gulden Boeck, s. [105] (p. 150); Costuymen 1548, ch. 12, s. 21 (p. 330); Costuymen 1608, II, ch. 1, s. 5 (p. 84-86), s. 97 (p. 116-118).

24 Costuymen 1548, ch. 12, s. 5 (p. 326); Costuymen 1570, ch. 34 (p. 674); Costuymen 1582, ch. 46, s. 9 (p. 342); Costuymen 1608, III, ch. 13, s. 21, (p. 518). Also see Godding, Le droit privé, 393 (no. 703); Godding, 'Dans quelle mesure', 284 (footnote 24).

25 Gulden Boeck, s. [109] and s. [114] (p. 151-152); Costuymen 1548, ch. 12, s. 2 (p. 324); Costuymen 1570, ch. 33 (p. 656); Costuymen 1582, ch. 41, s. 7 (p. 236); Costuymen 1608, II, ch. 1, s. 96 (p. 116).

regardless of their gender or marital status.[26] Once they reached that age, will-makers, whether male or female, did not need the assistance or permission of a (male) guardian. That women did not need permission, was common practice in most regions of the Low Countries.[27] To put it another way, a married woman could make a will without the consent of her husband or a male relative, such as a father, uncle, or brother. Antwerp urban law therefore did not limit the ability of married woman to make a will, despite the unequal position of men and women. The testamentary practice in Antwerp confirmed this: women made use of the opportunity to make a will, without the involvement of a male guardian.

Let us now look at the second question: who actually made a will in the thriving metropolis? During the investigated periods, 784 will-makers (379 men; 405 women) set up a will (table 1). In addition, 29 men and 38 women made a codicil on their will.[28] In other words, more women than men made a will. Of these will-makers, the vast majority was married. A total of 310 husbands (82%) and 301 wives (74%) made a will.[29] In this sample, 40 husbands and 31 wives preferred to make their own personal will. Couples also had the possibility to make a will together. Most married men and women chose the latter option: a total of 270 couples made a joint will, of which 156 between 1525 and 1545 and 114 between 1575 and 1590 (table 2).[30]

	1525-1545		1575-1590		Total	
	Men	Women	Men	Women	Men	Women
n						
Unmarried	4	1	3	4	7	5
Married	175	170	135	131	310	301
Widowed	0	21	0	44	0	65
Unknown	34	11	28	23	62	34
Total	213	203	166	202	379	405
%						
Unmarried	2	0	2	2	2	1
Married	82	84	81	65	82	74
Widowed	0	10	0	22	0	16
Unknown	16	5	17	11	16	8

Table 1. Number of will-makers by marital status in sixteenth-century Antwerp
Source: database Wills Kaat Cappelle

26 Costuymen 1548, ch. 11, s. 29 (p. 314), ch. 12, s. 1 (p. 324); Costuymen 1570, ch. 34 (p. 650, 674-676); Costuymen 1582, ch. 41, s. 25 (p. 242), ch. 46, s. 6 (p. 342); Costuymen 1608, III, ch. 13, s. 16-21 (p. 518).

27 Gilissen, 'Le statut', 299-300; Godding, Le droit privé, 80-81 (no. 65). Outside the Low Countries, married women more often needed the consent of their husbands. For example: Staples, Daughters, 33-69.

28 For example: CAA, N, no. 2071, 15 May 1540, fol. 95v-96v; CAA, N, no. 3642, without date 1585, fol. 16v.

29 In total five wills between 1525-1545 (four spousal wills and one will of a married woman) were incomplete.

30 A joint will could also be made by unmarried people. In the investigated notarial wills, two widows made a will together twice (CAA, N, no. 3642, 16 November 1584, fol. 65r-65v; CAA, N, no. 3642, 15 February 1585, fol. 16r-16v).

	1525-1545	1575-1590	Total
Separate will	33	38	71
Married men	19	21	40
Married women	14	17	31
Joint will	156	114	270
Total	189	152	341

Table 2. Number of separate and joint wills of married men and women in sixteenth-century Antwerp
Source: database Wills Kaat Cappelle

Because notarial wills themselves provide little insight into how financially wealthy the will-makers were, it was not possible to define a general social stratification.[31] However, the examined sources usually contained the profession of the man who made a will.[32] A look at table 3 makes it clear that a large part of the married will-makers were active in trade.[33] According to Van Roey, these men were among the richest inhabitants of Antwerp, and were mainly merchants without specialization and textile traders.[34] Next to this select group of wealthy merchants who accounted for most of the urban wealth, there was a large group of well-to-do middle class of merchants and entrepreneurs.[35] The registration of women's profession was, however, far less common, as has been shown in other studies.[36] The Antwerp notary rarely mentioned the occupation of the female testator. In the few exceptions found, all women were active in trade or textile companies.[37] Van Aert stressed that most women were employed in the trade and at the same time were the ones who earned the most.[38] While these findings do not give a systematic overview of the social groups that represent these wills, the range of occupations demonstrates that will-makers belonged to the wealthier group, but were not limited to the

31 Other authors also pointed out this problem, see for example: Ågren, 'Caring', 61-62; Overlaet, Familiaal kapitaal, 76-77. Better sources to verify this are probate inventories. For example: Deneweth, 'A fine balance'.

32 Although these professions give an idea of the social stratification, it should be viewed with a certain amount of vigilance. The notary was not the only one who could make wills. Therefore, he was able to attract certain occupational categories more than others. These professions may be determined by this and related to the notarial activities.

33 The professions are classified according to occupational categories and the two research periods. The used classification method is Historical International Standard Classifications of Occupations (HISCO). See van Leeuwen, Maas and Miles, Hisco. The division is based on the dataset collected as part of the EURYI-VIDI research project 'The Evolution of Financial Markets in Pre-Industrial Europe (1500-1800): a comparative analysis', managed by Gelderblom and Jonker (https://doi.org/10.24416/UU01-7UC5BL). I classified the occupation myself, if it could not be subdivided according to this approach. The professions of all married men who made an (incomplete) will or codicil have been taken into account. In addition, this table contains the occupations of the husbands of the married women who made a will or a codicil alone.

34 Van Roey, De sociale structuur, 173.

35 Marnef, Antwerpen, 33-34.

36 For example: Schmidt, Overleven, 121-122; Staples, Daughters, 42-43.

37 For example: CAA, N, no. 2071, 21 Mars 1542, fol. 69r-71r.

38 Van Aert, 'Van appelen', 90.

high elite.[39] The middling sort also proceeded to draw up a will, which is in line with the findings of other studies.[40]

	1525-1545	1575-1590	Total (n)	Total (%)
Artisans and masters	59	63	122	51%
Merchants and bourgeois	38	31	69	29%
Military personnel	1	3	4	2%
Professions and services	27	16	43	18%
Total	125	113	238	100%

Table 3. Occupational categories of married men in the testamentary practice of sixteenth-century Antwerp Source: database Wills Kaat Cappelle

VI. Patrimonial arrangements in Antwerp spousal wills: who gets what?

This article introduced us to Cornelie and Wijnant, a married couple in Antwerp, who were very generous to each other. With their spousal will, they bequeathed all their goods to the surviving spouse. The question can be asked if their choices were representative for that of other couples in Antwerp. The records show that most Antwerp joint wills were mutual or reciprocal, whereby the spouses entrusted each other all or parts of their estate. Furthermore, most mutual wills designated the surviving spouse as the sole heir to the general bequest. Although Antwerp urban law gradually adapted more to the aspirations of married couples, it was still considered inadequate. Spouses primarily cared for the well-being of the remaining spouse rather than that of the generations that followed. In other words, the main motive was the protection and amelioration of the surviving spouse's interests, an objective that is reflected in various ways in Antwerp wills.

Firstly, what exactly was given to the surviving spouse played a major role in whether or not tensions arise between the couple on the one hand, and the extended family on the other. The fact that one spouse bequeathed valuable inherited goods to the other, disadvantaged the (direct) relatives. If one of the spouses entrusted the other real estate or financial assets, there is no doubt that the absence of relatives in these wills indicates the predominance of the conjugal pair, and not the family. Most Antwerp spouses named each other heir to all their goods, but usually limited themselves to short and incomplete descriptions of their estate in their wills. The conjugal pair usually did not list the individual pieces of property, nor the economic value of the property. The bequest was usually described as 'all our (movable and immovable) goods left in the estate, after paying all

39 Making a notarial will entailed a considerable cost. Hence, it partly explained the social profile of willmakers. Oosterbosch stated that an Antwerp notarial act was moderately expensive. See Oosterbosch, 'Het notariaat', 70-71.

40 See for example: Ågren, 'Caring', 62; Howell, The marriage exchange, 75-85; Schmidt, Overleven, 84; Staples, Daughters, 40.

bequests, costs of the funeral and debts'.[41] More detailed descriptions were therefore less common, but could occur. Some will-makers specifically referred for example to 'life annuities' and 'houses'.[42] Antwerp wills thus provide us an incomplete picture of the couple's finances. However, in order to estimate the significance of a spousal will in relation to the extended family, it is not necessary to know how rich the couple was. There is a strong suspicion that (at least in certain cases) important family assets that they had brought into the marriage or inherited, were included under 'all their goods'. To take a concrete example, the will of silk maker Carel Menneys and his wife convincingly demonstrates that all goods, even explicitly his and her own movable and immovable goods, belonged to a general bequest.[43] Compare this to the will of Thielman Simonszone and Marie de Beau, who explicitly referred to the goods they brought in their marriage, inherited and acquired during marriage.[44] Melchior Christoffels and Marie Claessen even made it clear that important fiefs would pass on in full ownership to the surviving spouse.[45] What these examples clearly illustrate is that some married will-makers attached little importance to the origin of their goods.

Secondly, the extent to which property rights were given to the surviving spouse may be evidence of family politics. From the point of view of the family, entrusting the lifelong right of the goods to the surviving spouse was more interesting than full ownership, as it kept family goods together as long as possible. After the death of the longest-living spouse, the property could return 'undamaged' to the kinship, which assured the subsistence for the next generation. Nonetheless, most Antwerp couples entrusted each other full ownership of the estate. The surviving spouse, whether widow or widower, got equal disposal rights over the goods. For example, goldsmith and exchanger Peter Schatz and his wife Anna Deens entrusted each other their estate. They made sure that the surviving spouse remained the owner of these goods. Their will also emphasized that no distinction should be made as to whether the marriage would remain childless or not. The interests of the surviving spouse took precedence over those of the blood relatives. This example illustrates that most couples did not want family members to interfere in their affairs.[46]

41 For example: 'alle heurer beijder goederen, ruerende ende onruerende, haeffelijcke ende erfflicke, gereede ende ongereede, dier boven alle testamenten, costen van der vuijtvaert, wettige schulden ende andere vuijtleden den sterfhuijse van den eersten afflivigen aengaende bevonden zelen worden overschieten(de)' (CAA, N, no. 3133, 9 Mars 1540, fol. 66v-69v).

42 For example: 'allet huerer beijder goeden, rueren(de) ende onrueren(de), haeflijcke ende erflijck, lijftochtrenten ende andere egheene vutgescheijden' (SAA, N, no. 523, 2 February 1532, fol. 154r-155v); 'mitsgaders oock chijnsen, renten, pachten ende huijsen, egheene vutgescheijden' (CAA, N, no. 2070, 20 May 1539, fol. 446r-448r).

43 'Alle ende ijgelijcke des ierste aflijvige goeden, ruerende ende onruerende, haeflijcke ende erffelijcke rechten, actie ende crediten' (CAA, N, no. 2702, 17 September 1582, no. 177 and 181).

44 SAA, N, no. 523, 13 Mars 1532, fol. 173r-175r.

45 'Alle ende jegel(ijcke) de goeden ruerende ende onrueren(de), haeflicke ende erflicke, leengoeden, Uckelsche goeden, chijnsgoeden, eijgen goeden, coopmanschapen, actien, crediten, vutstaen(de) schulden ende alle andere gerechticheden, gout, silver, gemunt ende ongemunt' (CAA, N, no. 526, 13 May 1581, fol. 16r-19r).

46 CAA, N, no. 2070, 19 September 1535, fol. 86v-88r.

Thirdly, remarriage of the longest-living spouse could increase conflicts with the relatives of the first-dying spouse. Obviously, a new wedding of the widowed spouse could further complicate the patrimonial logic of the family. The widowed spouse could put the best interests of his or her new family before those of the children from the first marriage. In other words, the longest-living spouse could enrich himself or herself with the property of the deceased partner at the expense of the heirs of the first-dying spouse. In order to avoid such situations, a will may provide, for example, that the surviving spouse loses his or her share upon marriage. However, only seventeen percent of all Antwerp wills included this stipulation.[47] In addition, there were major differences between the two research periods I examined. Especially between 1525-1545, married testators anticipated a remarriage (26%). For the following research period (1575-1590) this percentage dropped to seven. In most cases, a remarriage had consequences for the surviving spouse, although some will-makers differentiated due to gender.

VII. The equal treatment of husband and wife

Contrary to what was established for late medieval Douai, gender hardly played a role in Antwerp testamentary practice. Here, the rights of married women were not restricted or postponed. Thus, testamentary practice confirmed the equal treatment of men and women as imposed by family patrimonial law. Indeed, in most wills of married couples, no different treatment can be distinguished, but the spouses sometimes emphasized this themselves in their wills. The bequest, for instance, went to the 'longest-living spouse of them both, whoever it will be man or woman'.[48] Hardly no distinction was made in remarriage either. Most widows were no less discouraged than widowers from remarrying and wives could forbid their husbands from remarrying.[49] Only in a few cases could a difference in treatment between the widow and the widower be established. This particular type of will had two objectives. On the one hand, to secure the material basis of the surviving spouse and the heirs or children, and, on the other, to preserve the family goods.[50] The source material shows that men and women could have a different relationship to patrimonial goods. The couple had thus the option to stipulate restrictions that highlighted the gender difference, but the majority did not.

Although on the legal testamentary level the difference in treatment between husband and wife was small, the possibility that some husbands did not offer their wives the best future prospects did exist. Strong-willed men could persuade their spouse to make a spousal will, even if this will was not in the wife's favour. One subject of discussion among historians concerns the number of female will-makers and their position. They

47 For example: CAA, N, no. 2071, 30 Mars 1540, fol. 67r-68v; CAA, N, no. 2703, 14 February 1587, fol. 224v-226r.

48 'Langstleven(de) van hen beijden, wie dat het zij van manne oft wive' (SAA, N no. 523, 13 Mars 1532, fol. 173r-175r).

49 For example: CAA, N, no. 2071, 26 January 1540, fol. 22r-23v.

50 For example: CAA, N, no. 2071, 5 February 1542, fol. 28v-30v; CAA, N, no. 526, 17 September 1582, fol. 80r-81v.

point out that the low number of female will-makers indicates a decline in women's opportunities and possibilities.[51] For example in Nuremberg, fewer women made their own wills during the sixteenth century. While initially female testators often made bequests to women's charities, over time more and more women made a spousal will with their husbands. According to Wiesner-Hanks, this decreasing number of women's own wills demonstrates a decline in the legal position of wives.[52] Other historians, such as Guzzetti, confirmed this and even referred to the pressure that husbands could exercise in setting up a will. In fourteenth-century Venice, for instance, she found indications of violent behaviour.[53]

The testamentary practice in Antwerp indicates that the situation for women was different here. Firstly, not only could spouses have joint bequests, each spouse could also bequeath gifts individually, which some did. This practice did not differ whether the bequests were of married women or men.[54] Secondly, married women (and men) were at all times free to derogate or nullify their (spousal) will. They could decide not to respect the joint will and amend it after the death of their spouse. Some widows, such as Anna van Liefvelt, made use of this possibility. She revoked the spousal will that she had made with her husband on 2 March 1530, declaring that she would be 'deprived' of her property if this will would remain valid.[55] Such a revocation could just as well happen when both spouses were still alive. For example, on 15 October 1517, the first wife of Aerdt van den Werve had changed her mind and, 'without his knowledge', made a codicil on their spousal will of 30 June 1514.[56] After his first wife's death, Aerdt remarried Adriana van Ymmersseele, with whom he made a spousal will on 15 December 1532. In this will with his new wife, he asked his two children of his previous marriage to repudiate their mother's codicil, in order to keep 'friendship, love and unity' with their stepbrother.[57] It can be inferred that he was unaware of her codicil and was disadvantaged by her action.[58] It is thus not unreasonable to assume that these measures gave women considerable power. For wives in Antwerp, spousal wills did not automatically lead to submission to male power and control.

51 For a discussion of this, see: Sperling, 'Marriage', 164. Also see Diefendorf, 'Women and property', 182.

52 Wiesner-Hanks, Gender, 91. Also see Van Aert, 'The legal possibilities', 288.

53 Sperling referred to Guzzetti, Venezianische Vermächtnisse, 15-16. See Sperling, 'Marriage', 164.

54 For example: CAA, N, no. 3641, 28 June 1582, fol. 35r-35v.

55 'Gespolieert' (SAA, N, no. 523, 15 June 1531, fol. 165r-165v).

56 'Sonder zijn(en) wete oft kennisse gemaict soude moighen hebben' (SAA, N, no. 523, 18 December 1532, fol. 224v-226v).

57 'Vrientscap, liefde ende eendrachticheijt' (SAA, N, no. 523, 18 December 1532, fol. 224v-226v).

58 SAA, N, no. 523, 18 December 1532, fol. 224v-226v.

VIII. The marital economy: the couple as the most fundamental unit of society

Testamentary actions of married men and women provide much insight into the marital life. Most Antwerp spousal wills are a textbook example of what Ågren and Erickson described as the 'marital economy', or 'the economic partnership of husband and wife, which was the basis of all economic activities in the medieval and early modern period'.[59] During their marriage, spouses 'engaged in negotiation over issues of production, distribution and consumption for the best support of the household'.[60] Moreover, these wills cast light upon how the couple had a common understanding, rather than conflicting interests. The conjugal pair, and not their extended family, acted as the most fundamental unit of society.[61]

Several arguments within these Antwerp sources strongly suggest that the marital economy was at the heart of marital partnership. Firstly, spousal wills normally gave the surviving spouse, whether male or female, all remaining goods. Furthermore, married men recognised that both spouses brought property to the marriage. Their joint efforts were of great importance, as 'her' contribution was as fundamental for the survival of the family as 'his' contribution. Take, for example, husbands who properly compensated their wife, in case of unfortunate circumstances, for the assets she brought into their marriage.[62] The statements and examples mentioned above concisely sum up the shared interests of the marital union, and go against the general assumption that the husband was automatically somebody who abused his position. Rather, many husbands made clear arrangements in order to protect their wife, and in the interest of the household.

The desire to retain (economical) power within the conjugal pair can also be examined on the basis of other testamentary clauses. There are numerous examples of longest-living spouses who were not obliged to hand over an inventory of all assets and debts to the kinship of the first-dying spouse. This meant that there was no need for the surviving spouse to justify himself of herself to their kinship.[63] In addition, the will-makers sometimes made (charitable) bequests, which the surviving spouse was allowed to distribute in the name of the deceased spouse. Some couples left it to the surviving partner to bequeath their children 'at their own discretion', 'because they trusted each other'.[64] This means not only that the longest-living spouse had to take into account the interests of the offspring, but also had to have the qualities to manage their bequests. Furthermore,

59 Ågren and Erickson (eds.), The marital economy, without page number.

60 Erickson, 'The marital economy', 3.

61 See for this reasoning for mutual wills in particular: Ågren, Domestic secrets, 46-54; Lamberg, 'Mutual testaments'.

62 For example: CAA, N, no. 527, 16 February 1585, fol. 10v-12r.

63 For example: SAA, N, no. 522, 18 May 1519, fol. 40r-41v.

64 'Nae de faculteijt van hueren goeden weselijck nae huere discretie' 'zoe sij dat malcanderen betrouwende sijn' (CAA, N, no. 2071, 3 February 1542, fol. 27r-28v).

the spouses' wishes could also include funeral instructions, such as leaving the choice of burial place of the first-dying to the surviving spouse.[65]

A similar and common example of the marital economy is the choice of the longest-living spouse as the guardian of the children and the executor of the will. As guardian of the children,[66] the surviving spouse had important responsibilities not only with regard to the legal and financial affairs of the children, but also for their education, career and marital choices. Some parents even explicitly excluded the interference of family members and of the Orphan Chamber, which was the urban institution that looked after the orphans' property interests. As the executor of the will,[67] the longest-living partner was authorized to perform legal acts such as collecting claims and paying the debts of the testator. The appointment of the surviving spouse as guardian and executor demonstrates the mutual trust in each other's abilities to continue the management of the marital economy. This also indicates that wives had to be aware of the family's financial affairs during marriage.[68]

Not only the testamentary clauses themselves are particularly interesting to give us an inside into the marital economy, the motives cited reveal the more intimate sentiments and strategies involved. Like Cornelie and Wijnant, many couples explicitly stated their 'extraordinary love and affection that the one had for the other' in their will.[69] Likewise, Jehanne van Roije entrusted her husband Gheerijt Sterck all her goods, 'out of extraordinary grace, favour, love and affection that she felt for him'.[70] This 'unity that they had together during marriage' fits in with the development towards a modern so-called 'companionate marriage'.[71] The justification of showing affection and gratitude towards each other was expressed in several wills, although some studies showed that this rarely or never occurred elsewhere in the Low Countries.[72]

Besides references to conjugal affection, spouses also legitimized their wills with the labour argument. The couple stressed that they had accumulated and maintained their fortune through 'their hard work'. One could say that this explicit statement is a standard formula, as examples can be found in all the Antwerp notaries I examined. Moreover, this clause was not even unique to Antwerp, as various (legal) historians found this

65 For example: CAA, N, no. 527, 26 April 1584, fol. 11v-12v.

66 For example: SAA, N, no. 2071, 3 February 1542, fol. 27r-28v.

67 For example: SAA, N, no. 2071, 18 June 1540, fol. 131v-132v.

68 This argument is also mentioned by Diefendorf, 'Widowhood', 387.

69 'Deur sunderlinge liefde ende affectie diese d'eene totten ande(ren) draghen' (SAA, N, no. 522, 18 May 1519, fol. 40r-41v).

70 'Duer zunderlinge gracie, gunste, liefde ende affectie diese totten zelven draict vuijt hue(re)n vrijen eijghenen wille ende weten(en)' (SAA, N, no. 522, 13 October 1526, fol. 231v-218v).

71 'Eendrachticheijt diese 't samen in den huwelijck gehadt hebben' (SAA, N, no. 522, 13 October 1526, fol. 231v-218v). For the 'companionate marriage', see for example: Stone, The family. Also see Howell, 'The properties', 18-21.

72 For example, for sixteenth-century Mechelen: Overlaet, Familiaal kapitaal, 147; for seventeenth-century Leiden: Schmidt, Overleven, 98. In contrary to early modern Sweden: Ågren, 'Contracts', 215.

clause in cities in the Low Countries, as well as in other regions.[73] The clause in Antwerp does not have be seen as standard, but rather as a tailor-made one. Firstly, not all Antwerp couples felt the need to explicitly include this clause in their spousal will. Secondly, the content of the clause could be very different. Some will-makers made it clear that not the conjugal pair, but only one of the spouses was responsible for amassing their fortune. Niclaes Cock, for example, declared in his spousal will that 'most of their goods were assembled by his great persistence'.[74] Despite his statement, the spousal will still contained generous provisions for the longest-living spouse, namely half of all immovable goods, personal effects and six silver cups, 'out of extraordinary services and the favours they had to each other, and other reasons'.[75] The reverse also occurred, but was rather rare. Mertijne Svos, for instance, insisted that she 'gained her goods herself' with 'her own hard work'. The remarried widow mainly tried to protect herself from the natal kin of her two deceased husbands, since it were not her husbands who had provided her with wealth.[76] In other words, mentioning 'his', 'hers' or 'their' hard labour was a clever move in order to avoid tensions with the heirs of the first-dying spouse.

In short, it seems that Antwerp couples formed an (economic) partnership, in which both spouses tried to contribute rather than respecting patriarchal ideals. For many couples, the marital bond was mutual and complementary, leading to cooperation and shared goals. However, it would be incorrect to assume that all spouses had a perfect mutually dependent relationship. Moreover, women were still confronted with limited (legal) possibilities and with constraints, due to their gender. But at the same time, we need 'to caution against assuming that marriage automatically entailed dependence for women, or for women alone', as Shepard puts it.[77]

IX. The bigger picture: the conjugal strategy of commercial households

Looking at these spousal wills, it is clear that the hypothesis of a shift to increasing patriarchal and lineage tendencies does not apply for our Antwerp case study. On the contrary, throughout the sixteenth century, the conjugal strategy increased and prevailed in

73 For example: for the Low Countries: Howell, The marriage exchange, 172; for outside the Low Countries: Austria: Hagen, Lanzinger and Maegraith, 'Competing interests', 110; France: Hardwick, The practice, 116; Desan, The family, 162-163; Norway: Sandvik, 'Decision-making', 123; Scotland: Ewan, 'To the longer liver', 199; Sweden: Ågren, Domestic secrets, 52; Ågren, 'Contracts', 212-216; Venice: Bellavitis, Famille, 112-113.

74 'Zoe hij Niclaes tesateur vercleert van sijnder zijden meest ende al vercreghen goeden sijn die hij door sijne sijne groote neersticheijt verovert ende ontspaert heeft' (CAA, N, no. 2071, 23 Mars 1540, fol. 60v-62r).

75 'Door sunderlinghe diensten ende gunsten die sij tot malcanderen draghen ende meer andere redene(n) ende saicken hen over beijden zijden (al soe sij seijden) daer toe porren(de) ende moveren(de)' (CAA, N, no. 2071, 23 Mars 1540, fol. 60v-62r).

76 'Met hueren sueren arbeijt gewonnen heeft', 'selve gewonnen ende verovert heeft' (CAA, N, no. 2071, 11 February 1543, fol. 19r-21r).

77 Citation taken from Shepard, Accounting, 229. See also Shepard, Accounting, 214-231, 274.

Antwerp, which repositioned the relationships between the spouses and their kinship. The main aim of most spousal wills was not to conserve and transfer family wealth within (male) generations, but to protect the surviving spouse against their families. Therefore, wills were the ultimate legal tool for couples to adapt urban law according to their own wishes. Not only older, but also young couples found it important to carefully specify patrimonial dispositions, in order to keep the marital estate in the hands of the surviving spouse, while the extended family was set aside. They had taken the time to plan everything well in advance in order to provide for the longest-living spouse. In case a new situation occurred, spouses could make a new will to respond to the changed circumstances. Will-making must thus be seen as a conscious long-term economic planning, revealing personal preferences and tailored strategies. Hence, crucial in this context is the question why couples in Antwerp did what they did, and if these specific patterns constituted an anomaly.

On May 18, 1519, Cornelie and Wijnant violated the principles of family patrimonial law in Antwerp by drawing up a mutual will. According to Antwerp urban law, such a thing was not allowed. But Cornelie and Wijnant were not the only ones, and despite the legal restrictions, the prevalence of conjugal pairs over the lineage regularly occurred between 1525-1545. Many spouses were eager to make a will in order to leave their estate to each other. These couples thus managed to overrule the testamentary restrictions of urban law. They used wills to their advantage, which resulted in the weakening of kinship ties. Therefore, the conjugal strategy probably goes hand in hand with the economic growth. By using notarial wills, spouses wanted to adapt urban law to the economic upsurge. Antwerp's growing commercialized urban economy encouraged couples to pursue marital strategy through a contract. At the same time, this common practice stimulated the mobility of goods and the commercialization of the city.

Ultimately, these spouses reshaped and rewrote the law. Spouses clearly preferred their will over urban law, which clearly had legal consequences because Antwerp urban law formalised the already existing legal practice. This interaction was especially noticeable between 1525 and 1545 when Antwerp was the world's economic hub. The urban middle classes considered it desirable that urban law would be adapted to the socio-economic reality. For a couple, the conjugal strategy was a means of coping with trading uncertainties. By means of the wills, they adapted family patrimonial law to the socio-economic situation. Hence, the practice changed before the law and was even ahead of it. The Antwerp city's rulers eventually gave in and adapted family patrimonial law to the changing market circumstances. Urban law met the wishes of married people as the marital property regime eventually evolved into a near-universal community, which strengthened the claims of the conjugal pair. It contained a certain socio-economic logic and was adapted to commercialized needs. However, from 1560s-1570s onwards, on the eve of religious turmoil, war and economic crisis, urban law took less account of the needs of society. Just at a time that family property was vulnerable, law was less an expression of socioeconomic factors. Despite the uncertainties arising from crisis, couples were able to continue to make spousal wills concerning family wealth. But urban law had become dysfunc-

tional and did no longer directly respond to the economic changes. An explanation for this could lie in the law becoming more academic. The authors of the compilations of law of 1582 and 1608 relied more on doctrines than on practice.[78] In that respect, it is also relevant to point out that the individual character of the will was a rule of canon law, whereas the consent of the family was rather rooted in late medieval customary law.

The story told about spouses striving for a conjugal strategy in sixteenth-century Antwerp, may strike the reader as rather unique. Although the strengthening of the position of the surviving spouse is not in line with Jacob's and Howell's theory, the assumption that 'sixteenth-century Antwerp' was an exception can in all probability be debunked. Thus, it may be necessary to revise this general theory of a late medieval transition to the prevalence of the interests of the kin. First of all, the strong focus on the timing of those changes needs re-evaluation. At least for Antwerp, there is much reason to believe that the sixteenth-century spouses in this city were not the trendsetters. Although married couples often used wills to provide for surviving spouse throughout the sixteenth century, this appears to have been a popular practice as early as the late Middle Ages. Based on the study of the Antwerp aldermen's registers, Bardyn proposed that this evolution had already begun in the early fifteenth century. While her preliminary findings were limited to a qualitative study of approximately 45 contracts, it does suggest that the emphasis on the couple's interests did not just happen, but was a long process.[79]

The use of the marital strategy thus appears not only to already have occurred in the previous century, but evolved further in Antwerp in the following centuries. Although a general study is also lacking, preliminary findings of Deneweth and Stevens suggest that couples strengthened conjugal interests with the help of a will, appointing each other as the principal heir of the estate.[80] These results confirm the link with economic growth. Although Antwerp lost its leading position and commercial hegemony to Amsterdam, the city did experience an economic recovery at the end of the sixteenth century. In addition to a re-evaluation of the timing, the 'general' shift from conjugal to patrilineal strategies in north-western Europe can also be questioned. Seventeenth-century cities in the Northern Netherlands underwent exactly the same evolution as Antwerp. In the commercial cities, the universal community arose with the surviving spouse getting half of the property, reinforced by wills that gave him or her as many claims as possible on the other half.[81]

These findings encourage thus more research into the transition from conjugal to patrilineal strategies. As Bardyn pointed out, this theory for the late medieval Netherlands in combination with the hypothesis of the declining position of women, has so far

78 De ruysscher also noted this for Antwerp commercial law. See De ruysscher, 'Naer het Romeinsch recht'.

79 Bardyn, Women's fortunes, 35-37. Bardyn studied women's market participation in fifteenth-century Antwerp and Leuven, examining aldermen's registers.

80 Deneweth, 'A fine balance' (for the period 1660-1780); Stevens, Revolutie, 234, 236 (for the period 1794-1814).

81 Nève, 'Huwelijksvermogensrechtelijke stelsels'; Schmidt, Overleven, 90-100; Roes, Het naaste bloed, 37.

been based mainly on the study of industrial cities.[82] These very cities, once prosperous cloth towns, experienced an economic depression during this period and were characterised by declining textile exports. However, late medieval and early modern Antwerp, as well as certain early modern cities in the Northern Netherlands, experienced a completely different economic evolution. These similar urban economies were characterised by a high population size and vibrant economic development. Hence, the conjugal strategy was probably the result of adapting to a commercialized society and rapid urbanisation. Commercial cities revolved around trade and the constant circulation of goods, which influenced the property relationships inscribed in marital property law. In other words, socio-economic, demographic and political conditions played an important role. Comparative research of cities with different economic backgrounds will therefore be necessary in the future.

X. Conflicting interests with the kin

In sixteenth-century Antwerp wills, marriage was not a matter of strategies to keep properties in the hands of family. The marital union had chosen the surviving spouse, who was an 'outsider' of their own family circle. Couples ensured that the widowed spouse's interests prevailed over those of (direct) relatives, which resulted in disadvantaging the heirs. With such strong emphasis on the conjugal pair, it is no surprise that the potential for conflict among their heirs was ever present. Family members could take offence by mutual wills, which could create tensions between the couple and their relatives. Remarriage could increase these tensions, as conflicts between the remarried surviving spouse and the guardians in the case of minor children illustrates.

Like Cornelie and Wijnant, other Antwerp couples tried to avoid 'dispute, strife and discontent' between the surviving spouse and the heirs of the first-dying spouse.[83] Married people therefore developed strategies to avoid problems with their kin. To compensate them, some couples directed a small bequest to the heirs. These spouses could stipulate that the surviving spouse had to distribute a sum of money to the relatives, making them better off than nothing. Will-makers also tried to maintain some control over their heirs through a penalty clause, whereby heirs who obstructed the execution of the will were subjected to a penalty. For example, they could be denied their inheritance.[84]

To explain why they chose to favour the surviving spouse, the couple referred to their 'their hard work'. They also pointed out that they did not inherit important (immovable) family goods or that their household consisted only of movable wealth.[85] These arguments were obviously directed against their heirs and their claims to the estate. The

82 Bardyn, Women's fortunes, 5, 64-65. She referred to Douai (Howell, The marriage exchange; Kittell and Queller, 'Whether man'), Leiden (Howell, Women) and Ghent (Howell, Commerce, 53-92; Hutton, Women; Danneel, Weduwen). Also see: Kittell, 'Guardianship'.

83 'Geschil, twist ende onvrede' (SAA, N, no. 522, 18 May 1519, fol. 40r-41v).

84 For example: SAA, N, no. 522, 19 July 1525, fol. 55r-56v.

85 For example: SAA, N, no. 523, 2 February 1532, fol. 154r-155v.

spouses clarified that they had no obligations to the kin because they had received little or no help from them in setting up their household. In doing so they made it clear that their wealth had been acquired, accumulated and maintained by themselves, and not by the efforts of their relatives. Since both husband and wife contributed to the community, they compensated each other. However, do not be fooled by this practice as these ambiguous testamentary provisions could be useful to soften the effect of the spousal will. Spouses could use these dubious expressions to make their will and its legal consequences look more insignificant than they really were. This is fully in line with the vague description of their goods in their will, as mentioned above.[86]

Although the couple could prepare for death, an important point to bear in mind is that we do not know what happened after the death of the will-maker. These wills reflected the wishes and intentions of the spouses at a specific time in their lives, but had legal effect only upon the death of one spouse. If heirs lost their share of the estate, they still retained all rights to challenge the spousal will in court.[87] Whether the wishes of the will-maker were often ignored or disputed in sixteenth-century Antwerp remains unclear. However, this shows the limitations of a will itself and the tensions it could cause. Although a will did not necessarily bind the heirs to the execution of the spouses' wishes, this raises the question of whether or not the consent of the heirs could make the execution of (mutual) wills more likely. During my research, it appeared that Antwerp married men and women only rarely mentioned the consent of a family member. An explicit approval by relatives was found in only two wills.[88] It is apparent from the testamentary practice in Antwerp that spousal wills were made to the benefit of the spouses, and not the family. The lack of written approval by family members could be explained by the fact that Antwerp urban law did not require this, making the will an instrument for the couple to freely make their own patrimonial arrangements.[89]

XI. Won't someone please think of the children?

Although some early modern studies for other regions claim that mainly childless couples made wills,[90] my research showed that having offspring in sixteenth century Antwerp played a very important role in the decision to make a will. About half of the studied will-makers had a marriage with (young) children (table 4). Even childless spouses

86 This is also suggested by Ågren, 'Contracts', 212-216; Ågren, 'Caring', 61-62.

87 Several scholars refer to this, for example: Bellavitis, Famille, 97; Kuehn, Family, 235; Overlaet, Familiaal kapitaal, 78-79; Staples, Daughters, 17.

88 More specifically a will of a married woman with the permission of her dad (SAA, N, no. 523, 16 June 1531, fol. 45v-46v) and a spousal will set up in the presence of two guardians of the children of the previous marriage of the man (CAA, N, no. 2071, 17 Mars 1542, fol. 61r-62v).

89 In contrary to Antwerp, it is worth noting that in other regions, such as Sweden, the consent of close blood relatives was required to bequeath inherited land. See Korpiola and Önnerfors, 'Inheritance law', 47; Ågren, Domestic secrets, 46-47.

90 For example, for eighteenth – and nineteenth-century northern Sweden: Ågren, 'Caring', 59; for sixteenth-century Mechelen: Overlaet, Familiaal kapitaal, 117-118.

anticipated the division of their estate with their children to be born of the marriage.[91] Others had children from a previous marriage or children outside of marriage.[92]

	1525-1545	1575-1590	Total
Separate will	13 (39%)	19 (50%)	32 (45%)
Married men	7 (37%)	13 (62%)	20 (50%)
Married women	6 (43%)	6 (35%)	12 (39%)
Joint will	69 (44%)	69 (61%)	138 (51%)
Total	82 (43%)	88 (58%)	170 (50%)

Table 4. Number of married men and women with communal children who made a will in sixteenth-century Antwerp
Source: database Wills Kaat Cappelle

The primary purpose of most spousal wills was the care of the surviving spouse, yet they were forbidden by Antwerp urban law to harm the interests of their offspring in doing so. Every child, either son or daughter, was to be given an equal share. This egalitarian principle did not make sense for wealthy families, as they wanted to keep property in the hands of different male generations. The extended family might try to circumvent the imposed Antwerp urban rules in order to preserve patrimonial assets. Having precedence of sons over daughters would strengthen the patrilineal strategy and thus prevent the passing of family goods from one family to another. Most Antwerp parents aspired to provide for all their children in their will. The egalitarian principle was not called into question, for the bequests received by each child were similar in content and value.[93] Parents made no distinction according to gender, as daughters were given an equal share as sons.[94] They did not use their will to give their daughters less (valuable goods) than sons, nor did they make any difference in the control of those goods. Most daughters and sons enjoyed full control of the goods of their bequest. This could thus give daughters different incentives to later establish a business and to participate in (property) investment, which would benefit the marital economy.[95]

Although there did not appear to be any negative attitude of parents toward the interests of their offspring, having sons and daughters did have a major impact on the amount of property left to widowed spouse. Consequently, spouses found a will a useful legal instrument to protect the interests of the surviving spouse against their children. For example, parents could stipulate that the common household was at common expense. Being the surviving spouse with minors also had an advantage, as he or she could get the

91 For example: CAA, N, no. 2070, 25 May 1529, fol. 449v-451r.

92 Illegitimate children did not inherit the same way as legitimate children. Consequently, arrangements in a will could mitigate this difference.

93 Antwerp had special rules regarding gifts to children and the dissolution of the estate of parents. See chapters 1 and 3 of Cappelle, De strijd.

94 For example: SAA, N, no. 523, 20 Augustus 1532, fol. 229v-231r.

95 Several authors pointed this out. See for example: Andersson, 'Forming', 58; De Moor and van Zanden, 'Girl power', 7-11; Staples, Daughters, 146-169.

use of the minor children's goods and the collection of the income from these assets.[96] In return, the surviving spouse would be responsible for their maintenance and education.[97] This technique provided the longest-living spouse with sufficient material basis to continue life as the spouses were accustomed to when they were both alive. A second strategy parents could use to safeguard the interests of the remaining spouse was to limit the children's bequest to a sum of money or an annuity. In this way, the couple could prevent the longest-living spouse from having to divide (a part of) their house or shop among the children. The assets were then not divided among the children until after the death of both parents. However, this could lead to major financial difficulties when debts exceeded assets. This is probably why many couples left the decision about the concrete amount to their children to the surviving spouse. The couple could also choose to let the children's inheritance depend on the size of the estate. This enabled them to adapt to new circumstances, if necessary. From the children's point of view, a sum of money or an annuity was not always negative. For them, such a bequest could lead to economic emancipation. The parents thus gave their children the opportunity to establish themselves economically independently.[98]

The protection of the longest-living spouse can also be inferred from the conditions imposed on the bequests of the children. For example, most parents stipulated that the surviving spouse should not give their offspring their bequest until the age of majority or at a certain age, upon marriage, entering a monastery, attaining an honorable office or upon ordination to the priesthood.[99] Parents could specify that, in case a child died before receiving its share, that bequest would remain with the surviving spouse.[100] Other parents left a bequest to their son or daughter only on condition that the child married with the consent of the surviving spouse.[101] Finally, the first-dying parent could extend his or her authority beyond the grave, by including a penalty clause, which hopefully would prevent the offspring from attempting to challenge the will.[102]

All of these provisions had the same goal: to protect the surviving spouse from the claims of the children. In doing so, the parents did not infringe the interests of the children, but only tried to keep their assets together as much as possible in order to leave the surviving partner with sufficient resources. Measures were taken to preserve the conjugal pair, as parents had an arsenal of testamentary clauses to ensure that the surviving partner was taking care of. This provided a solid material basis for the well-being of the widowed spouse. Spousal wills were thus used as long-term strategy for old age planning. The independent management of the household took precedence over the desire to preserve and maintain important family goods.

96 More about this technique: Monballyu, Geschiedenis, 99.

97 For example: FAA, N, no. 2071, 25 February 1542, fol. 44r-44v.

98 This is also suggested by De Moor and van Zanden, 'Girl power', 9-10.

99 For example: CAA, N, no. 2703, without date 1588, fol. 253r-255r.

100 For example: CAA, N, no. 2071, 1 Mars 1542, fol. 47r-48v.

101 For example: CAA, N, no. 2072, 1 August 1545, fol. 130r-131v.

102 For example: CAA, N, no. 2703, 28 Mars 1585, fol. 43v-45v.

XII. Conclusion

This article ends with what it started with, namely the notarial will of Cornelie and Wijnant. This married couple living in sixteenth-century Antwerp opted for a spousal will to pursue as many marital rights as possible. Like many other couples in Antwerp, Cornelie and Wijnant chose to put the interests of the conjugal pair over those of the extended family. Their aim was to keep the marital estate in the hands of the longest-living spouse. Spouses relied on each other for the proper management of their possessions after their death. Moreover, the couple wanted to protect the longest-living spouse from the children in case those would not give enough resources to the surviving parent. The main concern of the couples was to maintain and preserve the marital economy, to which both spouses were expected to contribute. The Antwerp couple therefore formed the most important socio-economic unit, not the (extended) family.

Antwerp notarial wills indicate that the conjugal strategy survived, and was even reinforced within the commercial environment. The growing commercialized urban economy was probably the incentive for couples to pursue the conjugal strategy through a contract. Consequently, Antwerp's urban law adapted to this evolution. During the first half of the sixteenth century, urban law reflected the needs of society, and was adjusted where necessary as circumstances and needs changed. Through legal practice, new interpretations were gradually introduced in the legal compilations, in order to adapt to socio-economic realities. However, from 1560s-1570s onwards the legal codes no longer took the needs of society into account.

The Antwerp urban law and the notarial wills together provide a comprehensive picture of the early modern balance of power between the conjugal pair and the kinship. These findings invite to a re-evaluation of the traditional (legal) historiography, as they are not consistent with the shift towards a patrilineal strategy and consequently, the general assumption of women's declining legal position during the late Middle Ages and early modern period. Choosing this case study in sixteenth-century Antwerp enabled us to better understand the divergent impact on gender, the marital union and the lineal family. However, much more research is needed, as this contribution calls for further comparative research to thoroughly study and evaluate how (legal) changes within the context of different economic structures and trajectories determined women's activities in different regions and cities.

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