



Huwelijk en vermogen. Een (rechts)historische case study naar de verzorging van de langstlevende echtgenoot in de stad Groningen onder doopsgezinden (1699-1809)

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SUMMARY

In 2006, Roes produced a legal-historical doctoral thesis entitled ‘The closest blood relation will inherit the good: the position of the surviving spouse in the Dutch intestacy laws I’ (Het naaste bloed erfde het goed. De positie van de langstlevende echtgenoot in het Nederlandse erfrecht bij versterf I, Deventer 2006). In this work the author examined the legal position of the surviving spouse. In doing so, he looked at positive law governing matrimonial property and inheritance as it applied in the territory of the present Netherlands up until 1809, studying it in terms of maintenance aspects. The author concluded that, in general, the law at the time did not appear to be designed to protect the surviving spouse.

In my opinion, a legal-historical study is not sufficient to form an adequate picture of the legal maintenance of the surviving spouse before 1809. It is necessary to build on the foundations laid by Roes by carrying out research into the legal maintenance of the surviving spouse in practice. Such follow-up research should not only be conducted from a practical legal-historical perspective, but also from a socio-economic perspective. This opinion is based on three hypotheses.

There are three reasons why the legal practice before 1809 may have been different to what the legal sources examined by Roes suggest. Firstly, legal regulations may have been devoid of any practical importance. Secondly, a legal-historical study that is based solely on written legal sources does not take into account legal maintenance measures that were not explicitly laid down. Thirdly, a theoretical legal-historical study does not take into account socio-economic factors such as choice of marriage partner, which may have played a role in the design of legal maintenance of the surviving spouse in practice. Furthermore, a socio-economic study is required, because a study of the material culture offers insight into the role that personal effects played in the legal design of maintenance of the surviving spouse.

The follow-up research that I conducted on the basis of both practical legal-historical and socio-economic foundations is new. Until now, systematic research has not been conducted into the relationship between the law that was in force before 1809, the application of that law in daily practice in support of the surviving spouse and the socio-economic background of the married couples involved.

Such research requires knowledge of the law such as it applied before 1809. Furthermore, wills and agreements drawn up by spouses are also important. Finally, prosopographic research (collective biography) is necessary for the socio-economic context, within which spouses encountered their legal maintenance measures in practice.

For practical reasons, in order to be able to conduct this follow-up study successfully, major restrictions were applied in three different ways:

1. Instead of studying the whole territory of the Netherlands, one territorial jurisdiction (the town of Groningen) was chosen.
2. Instead of all married couples, only a section of the married inhabitants of that territorial jurisdiction were studied, namely all members of a Mennonite movement known as the Groningen Old-Flemish Mennonites.
3. Within a period from the late Middle Ages up until 1809, research was restricted to the period from 1699 to 1809.

This multidisciplinary follow-up study takes the form of a case study in which prenuptial agreements have been studied on the basis of agreements that include maintenance aspects. Prenuptial agreements were chosen instead of wills due to the fact that, at the time, prenuptial agreements primarily included provisions that had what were in principle irrevocable consequences in terms of inheritance law.

The matrimonial law, matrimonial property law and inheritance law of the town of Groningen constitute the framework within which the practical details of the maintenance agreements for (future) spouses have been assessed. These details have also been placed within a socio-economic context by means of a prosopographic and demographic study. In spite of the specific study population, the religious context of the maintenance of the surviving spouse was rarely evident. There were no signs of specific Mennonite views of the legal maintenance of the surviving spouse.

In the research period from 1699-1809, the matrimonial property law of the town of Groningen appears to support legal maintenance of the surviving spouse; the inheritance law, on the other hand, does not. Groningen Old-Flemish Mennonites with assets considered this law to be the law of persons of limited means, which they preferred not to apply. The majority agreed to other arrangements in the case of prenuptial agreements. As far as these arrangements relating to matrimonial property law were concerned, they made arrangements which, compared to city law, were considerably less favourable to the surviving spouses. As far as these arrangements

relating to the inheritance law were concerned, the surviving spouses actually enjoyed extra benefits.

In the prenuptial agreements, the position of the surviving spouse was settled by means of individual arrangements. The maintenance of the surviving spouse was also determined by the careful selection of a marriage partner. Serious consideration was subsequently given in practice to the differences between the expected and/or extant financial resources of the future spouses. This is evident from the extremely large differences that can be found in the general and special maintenance arrangements.