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# Grave concerns Entailment and intergenerational agency in Amsterdam (1600–1800)

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## Abstract

The entail was one of the few instruments that allowed pre-industrial testators to organize long-term strategies with respect to asset management: it allowed them to decide which goods descendants could alienate, and also after how many generations restrictions would be lifted. This article looks into the somewhat neglected topic of entailment in merchant towns, and thus contributes to our understanding of the goals urban testators set with respect to asset management, both for themselves and their descendants. Evidence from Amsterdam suggests that many testators were inclined to create long-term strategies once improvements had been made to the institutional framework surrounding the entail. Our analysis indicates that they were particularly looking for ways to prevent descendants from squandering patrimonial goods, but without reducing liquidity. This ‘intergenerational agency problem’ was solved by allowing groups of descendants to file requests to have entails cancelled.

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## 1. Introduction

This article discusses the entail: a legal instrument that allowed a testator to pass assets on to his heirs on the condition that they would again bequeath these to their heirs. The entail thereby allowed testators control over the future asset management of their descendants. To understand why testators would aspire to this, it may be useful to look at a statement of one of them. In 1609, the Venetian nobleman Leonardo Donà explained that he wanted his inheritance:

to maintain the well-being and good-standing of our family, by providing in this way against the thoughtlessness or frivolousness of any who, caring little for the [past] good management of others, might take little care for the good of our family (Davis, 1975, 82).

Like many of his contemporaries, Leonardo decided to entail part of his possessions: his direct heirs would only be in possession of parts of the inheritance, without having the right to alienate these in any way. An entail thus allowed a testator to decide which assets would be liquid, which would become alienable over time, and which would remain in the family.

The entail was one of the instruments testators in pre-industrial Europe could use to transfer property to

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descendants.<sup>1</sup> Other instruments to ensure that patrimonial goods would not be scattered among a multitude of offspring included birth control (Degryse, 2005, 332; Davis, 1975, 64) and to prevent that dowries would end up in hands of in-laws, parents could also use marriage contracts.<sup>2</sup> And at the end of their lives, testators could try to protect patrimonial goods by singling out one heir (primogeniture) or else by means of entailment.<sup>3</sup> Through the use of these and other instruments, families had an impact on socioeconomic processes, such as population growth, marriage patterns and market dependency.<sup>4</sup>

Scholars have depicted the entail as an instrument that was mostly used by nobles to protect their lineages.<sup>5</sup> When explaining the decline of the European nobility, historians also point at entailment: lacking full property rights, nobles could not adjust their portfolios. They were tied to the patrimonial goods and could not move away or restructure their possessions, and thus they failed to keep up with changes in society (Lukowski, 2003, 103, 106; De Soto, 2000, 199; Davis, 1962, 68–71). A recent scholar has suggested that entailment thus contributed to the development of the English nobility into a rentier class (Allen, 2009). Earlier, political commentators had also criticized the nobles for creating entails. Among them we encounter for instance Frédéric Le Play (1802–1882), who favoured clear property rights within families and spoke out against large groups of descendants collectively in charge of a common patrimony (Casey, 1989, 35).

Such objections link up with the Smithian framework — Adam Smith (1723–1790) was very critical of the practise, of which he believed it may have been useful in a distant past, but also commented that ‘in the present state of Europe...nothing can be more completely absurd’ (Smith, 2003, 491). These objections also fit in the framework of the New Institutional Economics: in the absence of clear property rights, economic actors face transaction costs that may prohibit exchange.<sup>6</sup> For heirs it was either impossible to alineate parts of the

entail, or too expensive, due to the legal fees they had to make in the process of ‘freeing’ entailed goods. One of the most prominent advocates of the idea that clear property rights contribute to growth, Hernando De Soto, therefore claims that entailment reduced the mobility of capital in historical societies (De Soto, 2000, 199).

Contrary to what one might expect, there is evidence of widespread use of entails in one of the most important merchant towns of the seventeenth and eighteenth century: Amsterdam. This paper presents data of urban testators using non-alienation clauses to give descendants directions from the grave, and investigates which social groups were affected by this practise. Furthermore, the paper explains how testators dealt with the aforementioned downsides to entailment. Both urban and rural testators faced an ‘intergenerational agency problem’: how to make sure descendants would take good care of the patrimony. But whereas the majority of the rural testators did not mind tying down patrimonial property for generations, their urban counterparts demanded instruments that were better adjusted to a proto-capitalist environment. This adjustment is best visible in Amsterdam, where entailment allowed testators to solve an intergenerational agency problem without reducing much of their descendants’ room for asset management. The key adjustment was to replace inalienability with a ‘collective property right’: entails could only be cancelled when all descendants were in agreement.<sup>7</sup> This pretty much excluded irresponsible, selfish or stupid behaviour among individual heirs, such as putting the patrimony at risk or squandering it. Yet it allowed all descendants to jointly make adjustments that were in the best interest of the family.

The paper first introduces the entail (Section 1) and then discusses its widespread use in Amsterdam (Section 2). By using registers of requests to have entails cancelled, we provide data on the number and value of entails and the social groups affected by entailment (Section 3). These data are then compared to those from Antwerp, where entails were rare, and the rural province Frisia, in the North of the Dutch Republic, where entails were quite common (Section 4). We suggest that testators in Frisia did not value flexibility as highly as their urban counterparts did. In Antwerp only a few, and often very wealthy testators were willing to tie up their possessions in perpetuity in

<sup>1</sup> Cf. the range of strategies for intergenerational transfers of property: Béaur, 2004; Degryse, 2005, 333–362; Sabeau, 1990, 341–353.

<sup>2</sup> Cf. surveys Lanaro & Varini, 2009; Chojnacki, 2000, 95–96.

<sup>3</sup> Cf. surveys of the reasons families had to keep the patrimony intact: Davis, 1975, 47–50, 58–59; Cowan, 1986, 201–202; Kent, 1977, 56; Godding, 1992.

<sup>4</sup> There is an abundant literature linking household behaviour and socioeconomic processes. Cf. recent contributions: de Moor & van Zanden, 2010; De Vries, 2008; Greif, 2006.

<sup>5</sup> Cf. surveys: Lukowski, 2003; Asch, 2003; Cooper, 1978.

<sup>6</sup> Cf. the theoretical framework of the New Institutional Economics North, 1990.

<sup>7</sup> This group of descendants would have included men, women and children. Whether authorities actually consulted women is difficult to tell: it is quite well possible that their husbands or other custodians looked after their interests. With respect to orphans the directors of the orphanage (*weesmeesters*) were consulted.

the way the European nobility did. In comparison, the flexible entail we encounter in Amsterdam was much more popular; this instrument answered to typical urban demands with respect to the intergenerational agency problem (Section 5).

## 2. Creating entails

Upon recording a will, testators had to decide how their possessions would pass on to their heirs. They thus cancelled out customary law, and were free to devise their own inheritance strategies (Godding, 2001, 33). Testators could decide to include friends, servants or charities in the estate, and thus to reduce the portion of family members. Upon recording a will testators could also create conditions for heirs to uphold: whereas customary law only provided for the distribution of the inheritance, testators could ask a notary public to draft a will that prescribed in great detail what was to become of their possessions.

The entail was no more than a small part of the will: a clause that prescribed how heirs were to hand over the inheritance to future generations. It could be limited to three generations: the testator, the immediate heirs who faced restrictions to the use of the estate, and the ultimate heirs or *expectanten*, who could do with the estate whatever pleased them. However, the entail could also create conditions for an indefinite period of time, prescribing how the estate was to be passed on from one generation to another, and sometimes also how the estate was to be managed. Thus, a testator might decide that a house would forever remain in the family, and thus could not be alienated, while he might also have stipulated that descendants were not allowed to make any adjustments to the property.

The type of entail we encounter in Amsterdam was the *famiefideicommis*, a clause in a testament where a testator asked one heir, or several successive heirs, to hand over (part of) the inheritance to a *fideicommissarius*. This type of entail could involve up to four generations; a testator could thus make sure (part of) his estate would be passed on to his great-great grandchildren (De Blécourt and Fischer, 1950, 360–361). This technique bears strong resemblance to the present-day trust, with the exception that the entail could only be applied to inheritances, and could not be used to create an *inter vivos* trust (Helmholz & Zimmermann, 1998, 39; Fischer, 1953, 161). For testators looking to create long-term strategies with respect to asset management, the main alternative to entailments was to create a foundation, such as an institution that provided care for orphans or the elderly. Directors of foundations often

faced restrictions to the use of the premises and other capital assets (De Blécourt and Fischer, 1950, 60–62). However, for testators who rather gave to offspring than to charity, the entail was the instrument of choice.

The *famiefideicommis* we encounter in Amsterdam was derived from Roman law. It did not differ much from other types of entails that were available elsewhere in Europe, such as the Castilian *mayorazgo* or the Italian *fedecommissa*. Differences emerged after political commentators began to criticize entailment, pointing out that it did not allow landowners to adjust asset management. Authorities restricted the use of entails: in 1598 in Piedmonte entails were restricted to four generations, a practise followed later in Naples and Tuscany, and in France the maximum was set at two generations in 1747 (Lukowski, 2003, 104).

In England we encounter another type of entailment: the strict settlement, which involved the creation of a fictitious owner (an as yet unborn heir) while the testator and his immediate successor assumed the status of life tenants with no rights to dispose of the land, who were monitored by a board of trustees (Lukowski, 2003, 106; Bonfield, 1983, 8–9). Although this amounted to the same as we observe elsewhere in Europe – heirs facing the conditions testators had created – the strict settlement was particularly aimed at resolving issues with respect to surviving spouses and the testators' offspring. It seems that the entails we encounter among the European nobility were devised for the long run.

Before we turn to entailment in Amsterdam, it is useful to ask ourselves why testators bothered to create long-term strategies for asset management. There are a few motives that may have been important, such as worries about future generations squandering the patrimony. There is ample evidence for this idea: in 1596 one nobleman explained 'I want [my possessions] to remain perpetually in our family, because I wish that the hard work done by our ancestors, with so much sweat, should not go for naught' (Davis, 1975, 68–70). Closely related was the desire to maintain the honour of the family, particularly when nobles and patricians came to regard the lineage of ancestors and descendants, of which they were but a small part, as something they should preserve (Asch, 2003, 42–43; Cowan, 1986, 201; Kent, 1977, 73; Giesey, 1977, 285–286; Taylor, 1967, 472).

Of course, testators using entails were not solely concerned with the rather abstract concept of 'lineage': many would have cared for the well-being of their grandchildren, and entailment allowed them to make sure that these would be able to profit from the patrimonial goods (Howell, 2001, 199; Cohn, 1995, 180–181). Davis links the emergence of the entail in Venice to the

‘unpromising economic picture’, which may have induced nobles to save their wealth for future generations. Martha Howell also believes that economic adversity and wars caused testators in the late-medieval Low Countries to become more cautious (Howell, 2001, 196–199). This view thus links entailment to a demand for solid structures decedents could rely on in times of hardship.

In some cases economic incentives may have prevailed, for instance when the entail was used to shield the estate from any claims. In 1705 a testator was quite frank, admitting that he used the entail to prevent any creditors from seizing part of the estate (Van der Ploeg, 1945, 15). Others have claimed that testators were concerned about maintaining the economically optimal size of the patrimony (Epstein, 1984, 86–87). Although this may have been a useful strategy for nobles to preserve their estates, testators from Amsterdam hardly ever entailed assets that belonged to the family business. They predominantly entailed real estate and financial instruments, which seems to suggest that social motives prevailed over economic incentives.

### 3. Cancelling entails

Many people in the Dutch Republic were concerned about their patrimony: in Amsterdam and elsewhere in the province of Holland they recorded marriage contracts in order to keep capital goods in their families (Brand, 1996, 321–322; Schmidt, 2001, 83; Kooijmans, 1985, 128–129; De Jong, 1985, 136–137; Prak, 1985, 163–165). They also began to use the *fideicommissum* to this end: at the end of the sixteenth century we already encounter decrees stipulating registration of entails. These were to prevent deceit in financial markets: apparently quite some people mortgaged land burdened with an entail, thus using capital goods they merely held as usufruct as a collateral. In Flanders this legislation appears for the first time in 1586 and in Holland we encounter it in 1624, when the States decreed that entails had to be registered by local authorities (De Blécourt and Fischer, 1950, 361 note 3; Fockema Andreae and van Apeldoorn, 1926, 171).

Before we will return to these registers (Section 4), we will discuss our main source for Amsterdam: registers of requests to have entails cancelled, which have been preserved in five registers that were recorded by this city’s aldermen, and that are available in the Amsterdam city archives.<sup>8</sup> These registers contain many

<sup>8</sup> Besides requests to have entails cancelled, these registers also include other requests, such as to get the custody of orphans. However, the majority of requests in these registers deal with entails.

requests like the following, which was made by Cornelisje Cornelissen in 1685. This widow from the small town of Medemblik, 50 km to the north of Amsterdam, asked to have an entail cancelled.<sup>9</sup> She, as well as other relatives, enjoyed the usufruct of a house in Amsterdam called *De Vergulden Valck*, which had been entailed by one Pieter Fransz. Bruynvis. The widow asked for the entail to be cancelled, so that the house and yard could be sold, and she and her relatives could invest the profits in public bonds of the States of Holland.<sup>10</sup>

The right to file for cancellation was laid down in the town’s customary law:

[testators creating an entail] cannot prevent that the heirs... would sell or alienate the goods, either for profit or out of necessity, to use the profits in trade or to redeem debts...<sup>11</sup>

Two aldermen investigated whether requests should be honored. They inquired whether other family members involved agreed to cancelling entails.<sup>12</sup> Next, they sent a request to the States of Holland, in The Hague, where councillors had to confirm the cancellation. Only after this had been done – usually after a few weeks – the heirs were allowed to alienate the inherited goods.

It is our impression that the aldermen who handled the requests investigated whether the future possessors of the entailed assets (*expectanten*) did not object to cancellation. In case one or more of these were orphans, they made sure that the administrators of the *weeskamer* (called *weesmeesters*) agreed.<sup>13</sup> This means that the success of requests depended on the cooperation of relatives and administrators. This was no mere formality: in a few cases they bluntly refused to cooperate and thus obstructed the request.<sup>14</sup> However, in almost all cases requests were honored, usually within a few weeks time – although some investigations could take more than a year, which may have been due to the

<sup>9</sup> The term used for entails in our sources is *fideicommissum* or *fideicommis*. In this article we refer to these with the term ‘entail’.

<sup>10</sup> Stadsarchief Amsterdam (SA) 5061 inv. nr. 1308 (2-10-1685). As the pages of these registers are not numbered, in this article we will refer to the applications dates.

<sup>11</sup> Rooseboom, 1656, 219. The source indicates that this was already practice in the second half of the sixteenth century.

<sup>12</sup> Cf. SA 5061 inv. nr. 1308, 7-2-1686.

<sup>13</sup> Cf. SA 5061 inv. nr. 1308, 1-8-1686, 21-1-1688. The *weeskamer* was a civic institution that monitored whether the assets orphans inherited from a deceased parent were managed in a proper way by caretakers, to ensure these were still available when orphans reached adulthood.

<sup>14</sup> Cf. SA 5061 inv. nr. 1308, 7-2-1686, 14-12-1686.

complication of heirs staying abroad.<sup>15</sup> Therefore, it is our impression that most applicants inquired whether their relatives would agree with cancellation before they filed an official request.

The number of requests for cancellation is rather large: 2058 between 1685 and 1798 (Fig. 1). There is a peak around 1700 – with 51 requests in 1699 – and then the number of requests declines to c. 10–20 requests per annum after 1740. Of course it is difficult to use these figures to estimate the number of entails that was actually contracted in Amsterdam, but a figure of at least 5.000 – and probably much more – does not seem unreasonable. There are two reasons to arrive at this broad estimate. First of all, it is hard to imagine that every descendant would have felt the need to have an entail terminated. Many must have been quite content living in an entailed house or reaping the profits of land and obligations, and did not file requests. Second, if the majority of entails was terminated, testators inevitably would have ceased creating entails: they would not have taken the trouble to create legal constructions that were very likely to be cancelled by descendants. However, judging on the continuity of requests (see Fig. 1) testators created entails throughout the eighteenth century, expecting that descendants would respect the demands they had recorded in their testaments.

Why did people file requests to have entails from Amsterdam terminated? Unfortunately the vast majority of the requests was admitted without any motivation, but still our source mentions a few reasons. Some heirs did not want to cancel the entail altogether, but merely wanted to rearrange it.<sup>16</sup> For instance, one request was to sell land in the Beemster land reclamation project (25 km to the north of Amsterdam) and use the proceeds to buy real estate in Amsterdam, which would become part of the entail.<sup>17</sup> Other applicants, such as the aforementioned Cornelisje Cornelissen, wanted to sell real estate and use the profits to invest in government debt, which was also to become part of the entail.<sup>18</sup> These rearrangements were probably aimed at making

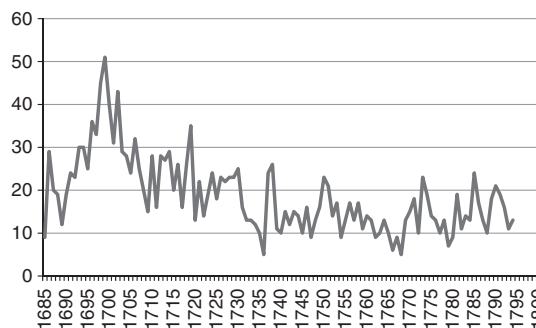


Fig. 1. Nr. of requests to have entails cancelled in Amsterdam (1685–1800). Source: SA 5061 inv. nrs. 1308–1312.

the entail more profitable, or reducing the troubles involved with having usufruct of real estate.<sup>19</sup>

Another reason to have entails cancelled was to be able to pay the transfer tax levied on inheritances. So, Jacobus de Raet asked permission to mortgage fl. 900 on two entailed houses, to be able to pay the 100th and 200th penny taxes he had to pay when he inherited the same houses. Marten van Loon asked permission to use as much of an entailed sum of fl. 14.130 to pay inheritance taxes.<sup>20</sup>

Most applicants wanted to have the entail terminated though, and a few also explained why: Lodewijk Egbertsz. wanted to ‘start something’, presumably some sort of business venture.<sup>21</sup> Someone else wanted to use the proceedings to start an apothecary.<sup>22</sup> Other applicants had more stringent motives: quite a few were looking to sell patrimonial goods to pay debts. One Evert Claesz. asked permission to use an entailed sum of 1000 guilders ‘to make ends meet’. The couple Aernt and Margaretha van Westerhof wanted to use 6000 guilders of an entail to pay their debts and provide a dowry for their daughter.<sup>23</sup>

#### 4. Testators and heirs

To get a better impression of the importance of entailment in Amsterdam, it may be useful to investigate the assets and people that were involved. Therefore we have sampled the years 1685–1691, containing 123

<sup>15</sup> Cf. the investigation SA 5061 inv. nr. 1308, 13-2-1690 (...*rapport gedaen en favorabel receptis affgegeven*...). Cf. the timeline involved SA 5061 inv. nr. 1308, 12-5-1690 (request still not concluded upon after nearly two years, and handed over to two other aldermen on 16-4-1692).

<sup>16</sup> Cf. similar ways of rearranging inalienable property in Ghent: Howell, 2010, 85–86.

<sup>17</sup> Cf. SA 5061 inv. nr. 1308, ?-?-1688.

<sup>18</sup> Cf. SA 5061 inv. nr. 1308, 2-10-1685, 18-4-1686. This move away from investments in real estate, and towards investments in government debt, was also observed by Oscar Gelderblom and Joost Jonker, but then with respect to the portfolio’s of religious institutions (Gelderblom & Jonker, 2009).

<sup>19</sup> The latter is perhaps visible in a request to sell land in the land reclamation project Beemster and invest the proceedings in houses in Amsterdam (SA 5061 inv. nr. 1308, [1688]). Cf. attempts to reduce the assets that would require full-time management by investors in England: Grassby, 2001, 331.

<sup>20</sup> SA 5061 inv. nr. 1308, 26-11-1686, 30-5-1691.

<sup>21</sup> ...*teen of ander bijder hant te nemen*... (SA 5061 inv. nr. 1308),

<sup>22</sup> SA 5061 inv. nr. 1308, 17-1-1690.

<sup>23</sup> SA 5061 inv. nr. 1308, 10-10-1685, 30-5-1686.

Table 1  
Composition of entails 1685–1691.

| Entailed asset | N   | %    |
|----------------|-----|------|
| Real estate    | 61  | 48,8 |
| 'Goods'        | 36  | 28,8 |
| Obligations    | 8   | 6,4  |
| Cash           | 20  | 16   |
| Total          | 125 | 100  |

Based on 123 entails. Some entails cover several categories.  
Source: SA 5061 inv. nr. 1308.

requests to have entails cancelled. We have divided the assets that were entailed among four general categories (Table 1): real estate, 'goods' (referring to unspecified inheritances), obligations and cash. Nearly 50% of the entails consisted of real estate, usually one or two houses with yards, whereas obligations and cash were less frequently immobilized.

It is not easy to uncover the value of entailed goods because the bulk is either not specified ('goods') or specified but not valued ('real estate'). However, values of obligations and cash sums are recorded (Table 2): the value of obligations and cash ranged from fl. 250 to more than fl. 10.000, yet most of these entails were worth between fl. 2.000 and fl. 5.000 — or the equivalent of c. 1400 to 3500 day wages of a master.<sup>24</sup>

Another indicator of the size of entails can be obtained by looking at requests to extract a certain sum from entailed goods, for instance by selling part of the entail or spending part of a cash sum. Heirs could also ask permission to use entailed real estate as collateral for a loan — something that was usually not allowed because creating a mortgage carried the risk of expropriation. When we assume that the sum that was extracted or mortgaged could not exceed the value of the entail, we get another indication of its minimum value. The column 'extractions/collaterals' in Table 2 shows the sums involved. These data confirm that most entails were worth several thousands of guilders.

Entailed houses and yards were to be found all over town, but since detailed data on the location of real state is often missing, it is difficult to tell their value. There are a few, admittedly indirect, methods that may help us to get an impression though. Houses that were relatively valuable often carried a name. In our sample nine names of houses appear, such as the aforementioned *De Vergulden Valck*, and *Sint Jans Hooft* and *De Drie Cruyssen*.<sup>25</sup> At the other end of the spectrum we also

<sup>24</sup> Based on the average wage of 28 st. a day (De Vries & van der Woude, 1997, 610–611).

<sup>25</sup> SA 5061 inv. nr. 1308, 2-10-1685, 18-6-1686, 1-10-1686.

Table 2  
Value of entails 1685–1691 in guilders.

| Value       | Obligations/cash | Extractions/collaterals |
|-------------|------------------|-------------------------|
| <500        | 2                | 1                       |
| 500–1000    | 3                | 6                       |
| 1000–2000   | 6                | 7                       |
| 2000–5000   | 11               | 9                       |
| 5000–10.000 | 5                | 2                       |
| >10.000     | 4                | -                       |
| Average     | 4.564            | 2.000                   |

Source: SA 5061 inv. nr. 1308.

encounter houses in a dismal condition,<sup>26</sup> as well as houses in neighbourhoods characterized by low rents. For instance, three requests to have entails cancelled involved houses in the Vinckestraat, which was a low-rent area where the *Diaconie van de Hervormde Gemeente*, an institution for poor relief, leased property to the poor.<sup>27</sup>

Our source does not allow for an in-depth investigation of the people that created usufruct constructions: only in a few cases our sources provide (scanty) information about the testators. For the purposes of determining the social groups affected by entailment, we can only say that among the testators mentioned very few bear the family names of the patriciate of Amsterdam.<sup>28</sup>

However, it is possible to look at the people affected by entailment — the applicants filing for cancellation. This approach will give us an idea of the social groups affected and may thus also tell us something about the testators that had created them — although we should warn the reader that this is an indirect method that can only provide a very general impression. Few of the applicants appear to have been truly upper-class: we do not encounter nobility, and names of wealthy families are rare. In a few cases applicants stated their occupation, and these include a lawyer, a preacher, a former alderman and a silversmith, who are likely to have been rather distinguished.<sup>29</sup> However, we also encounter a bargeman's assistant (*slepersknecht*), a ballast carrier (*ballastvoerder*), a tyre blacksmith

<sup>26</sup> ...seecker bouwvallich huys... (SA 5061 inv. nr. 1308, 5-6-1685).

<sup>27</sup> SA 5061 inv. nr. 1308, 2-7-1686; 11-2-1687; 17-10-1687; Lesger, 1986, 119. The same goes for houses at the Leliedwarsstraat (SA 5061 inv. nr. 1308, 2-10-1686; Lesger, 1986, 99).

<sup>28</sup> The family name Bicker is the only one suggesting that testators may have been members of the Amsterdam elite (SA 5061 inv. nr. 1308, 5-6-1685).

<sup>29</sup> SA 5061 inv. nr. 1308, 25-6-1689, 20-2-1687, 17-1-1688, 10-12-1687.

(*hoepelsmit*) and a master mason (*meester metselaar*), who seem to cover lower social classes.<sup>30</sup>

There are also some other reasons to believe that at least some of the applicants came from lower social classes: seven of 123 requests were labeled *pro deo*, indicating that the applicants were deemed so poor that they did not have to pay a fee to the aldermen when they filed for cancellation. So, when Margaretha de Cocq, widow of Harmen Keyser, asked permission to use ¼ house and yard as collateral for a loan of a mere fl. 300, this was ruled *pro deo*.<sup>31</sup>

A more systematic way to get an impression of the wealth of applicants is to link these to tax records. To this end, we have linked the applicants from 1740 to 1742 to a register of the *Personele quotisatie* tax of 1742, which was levied from every household with an income exceeding 600 guilders (Oldewelt, 1945). The results are processed in Table 3. From our small sample of 40 applicants, 21 are to be found in the taxation source, and thus were part of the upper class. Some of these were wealthy, which is also reflected in some of the occupations mentioned: six merchants, five rentiers, two brokers, a professor and a former alderman. Some also had households that included more than five servants, which may serve as another indicator of wealth, and surely, these were also the people that were labelled ‘capitalist’ in the tax record, indicating they held a considerable investment portfolio.

The data on income and rent also shows that apart from wealthy people, we encounter some people from what we may call the ‘upper middle class’: applicants who earned between 600 and 1000 guilders (between 400 and 700 day wages of a master; De Vries & van der Woude, 1997, 610–611) and lived in houses with rents below 501 guilders. Among them we find a demolition contractor (*slopersbaas*), pastrycook (*koeckenbakker*), cooper (*kuiper*) and paper merchant (*papierkoper*). Furthermore, 19 out of 40 applicants are not mentioned in the 1742 tax records, which seems to suggest that it is very well possible that some of them did not meet the benchmark income of 600 guilders.<sup>32</sup> This is not to say that lower social classes are very likely to have inherited entailed goods, but that the data from Amsterdam point at a relatively

Table 3  
Tax assessment of applicants 1740–1742.

| Income      | N  |
|-------------|----|
| 600–1000    | 5  |
| 1001–2000   | 4  |
| 2001–5000   | 8  |
| 5001–10.000 | 2  |
| >10.001     | 2  |
| Rent        |    |
| <501        | 10 |
| 501–1000    | 7  |
| 1001–2000   | 1  |
| >2001       | 2  |
| Servants    |    |
| 0           | 2  |
| 1           | 7  |
| 2–5         | 9  |
| >5          | 3  |
| Capitalist  |    |
| No          | 10 |
| Yes: 0,5    | 5  |
| Yes: 1      | 6  |

broad use of entails, particularly when we compare this town to another merchant town: Antwerp.

## 5. A comparative perspective

To get an impression of entailment in Antwerp, we use a register of entails covering 1611–1798. It was recorded in the wake of a decree issued in 1611 by the Archdukes Albrecht (1559–1621) and Isabella (1566–1633) of the Southern Low Countries. This so-called *Eeuwig edict* prescribed among others that contracts involving nonalienation clauses were to be held null and void, unless they were registered properly (Thijs, 1966, 325). This measure fits right into a more general policy that already originated in the 16th century, and that aimed at registering all sorts of transactions, including sales, mortgages and gifts. Usually, the sovereigns justified registration by referring to several types of abuse that could be countered by allowing local authorities to monitor transfers of real estate (Zuiderduijn, 2009, 191–199). Equally important, but obviously not mentioned in the decrees, was the possibility to use registers to improve taxation.

Before we turn to the contents of the registers that were kept in Antwerp, it will be useful to point out some peculiarities of this source. According to the historian Thijs, officials recorded entails when these came into effect (i.e. when the testator passed away). This is why the register from Antwerp contains some contracts that had been recorded before 1611, going back as far as 1560. Furthermore, not all entails mentioned in the

<sup>30</sup> SA 5061 inv. nr. 1308, 21-5-1686, 2-7-1686, 20-2-1687, 12-10-1687, 17-1-1688.

<sup>31</sup> SA 5061 inv. nr. 1308, 22-6-1691.

<sup>32</sup> Of course we must also consider the possibility that some of these 19 applicants lived outside Amsterdam and were therefore not taxed in 1742, or had moved away shortly before 1742.

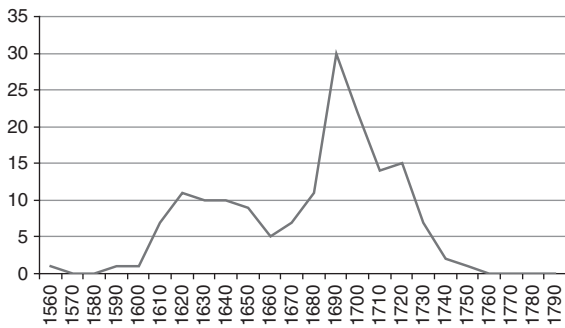


Fig. 2. Nr. of entails recorded in Antwerp per decade (1611–1798). Source: Thijs, 'Klapper'.

register were contracted in Antwerp: the authorities also included contracts recorded elsewhere, but affecting real estate in Antwerp.<sup>33</sup>

Fig. 2 shows the general trend of entails that were registered. Only two contracts were recorded before the 1610s, which is a bit puzzling because we would expect already existing wills to have come in effect after 1611. Furthermore, the figure shows that between the 1610s and 1680s the register has c. 5–10 contracts per decade, but then there is a peak in the 1690s (30 contracts) and 1700s (22 contracts). Afterwards the number of contracts gradually drops, although we must consider that Antwerp stopped recording entails in 1798, which means that an increasing number of entails from the second half of the 18th century may never have been added to our register — again: entails were only recorded when the testator passed away.

Perhaps the peak around the 1690s must be ascribed to the turbulent era between 1652 and 1678, when the naval wars between England and the Dutch Republic paralyzed the economy of Antwerp, and the attack English, French and German armies launched against the Dutch Republic in 1672 did not help much either.<sup>34</sup> The decline of trade probably induced wealthy inhabitants of Antwerp to take conservative measures for their descendants — the entails they created came into effect in the last decades of the century (De Vries & van der Woude, 1997, 476, 773).

The most striking conclusion is that in Antwerp a relatively small number of entails was recorded since 1611, on average fewer than one per year (Table 4).<sup>35</sup>

<sup>33</sup> Thijs, 1966, 325–326. Also, the decree of 1695 makes clear that local authorities had to register entails in Antwerp and its seven quarters — its surroundings (Wouters, 1738, 264–266).

<sup>34</sup> Three anglo-dutch naval wars: 1652–1654, 1664–1667 and 1672–1678.

<sup>35</sup> Cf. Godding's claim that entails were often used to by-pass common law (Godding, 2001, 33).

Table 4  
Entails per annum.

|           | Nr.   | Years | Per annum | Inhabitants |
|-----------|-------|-------|-----------|-------------|
| Antwerp   | 168   | 187   | 0,9       | 50.000      |
| Amsterdam | >5000 | 115   | >43,5     | 221.000     |
| Frisia    | 2600  | 157   | 16        | 161.000     |

Estimates in italics; nr. of inhabitants estimated around 1800.

Who recorded these entails? Our data give some information about social status (noble or clergy) and occupation for 71 out of 168 testators. Only a few of them had a low social status, such as Sara Bachelier, who was a member of a beguinage, a female religious order, and who was the daughter of a baker. For the rest we encounter nobles and clerics and their relatives (24 out of 71), as well as officials of the Council of Brabant, an Archbishop, (former) civil servants of Antwerp and merchants. So, based on the additional data the registers provide about social status and occupation it would seem that entails were predominantly contracted by elites — at least more so than in Amsterdam.

One of the few other sources about entailment in the Low Countries comes from Frisia, a predominantly agrarian province in the North of the Dutch Republic. Here, entails were registered on penalty of annulment (Fockema Andreae, 1964, 65; Noomen, 1994): registers of entails have been preserved for 1656–1811. The historian Kuiper analyzed these and counted 2600 entails — 16 per annum, which is much more than in Antwerp, but still far less than our estimates for Amsterdam (more than 43 per annum). Kuiper also discovered that entails were not strictly used by the nobility: only 9% involved noblemen and women. He concludes that the use of such non-alienation clauses had clearly spread to the rest of the population as well (Kuiper, 1993, 196–197).

The situation in Antwerp and Frisia thus seems to be in line with the international historiography: inhabitants of large towns made little use of entails, whereas those of agrarian provinces were more likely to create usufruct constructions. In Antwerp on average less than one entail was contracted per annum, and in Frisia 16 (Table 4). Our estimates for Amsterdam indicate that in this town at least 43 entails were created per annum, which was much more than in Antwerp and Frisia, even when we take into account that Amsterdam had the largest population.

What can account for the differences between Amsterdam and Antwerp? There is no reason to believe that testators from these towns had different incentives: most of them would have cared for their offspring and lineage, and incentives such as asset shielding and maintaining economically viable units would not have

been restricted to either town. Therefore, to explain the difference between Amsterdam and Antwerp, it is necessary to look at alternatives for long-term asset management: could people in Antwerp use other instruments to this end? We may consider primogeniture as an alternative to entailment: this allowed families to prevent the scattering of their property by only allowing the eldest son to inherit (Fichtner, 1989) — although we have to keep in mind that primogeniture did not prevent the alienation of property. It is possible that in some towns of the Low Countries primogeniture may have been used to circumvent common law, which generally prescribed partible inheritance (Howell, 2001, 191; Godding, 2001, 36). However, it seems that testators in Antwerp did not use primogeniture that often — at least its existence is not mentioned in the literature.<sup>36</sup> This does not mean that testators were not concerned about keeping the patrimony intact: there is ample evidence they were (Degryse, 2005, 333; Baetens, 1976, 292–293; Brulez, 1959, 221–222). But instead of using primogeniture, families rather protected their patrimony by reducing the number of children, and if this was not possible, by limiting the number of marriages; this amounted to some very strict policies aimed at keeping the patrimony intact (Degryse, 2005, 332; Godding, 1992, 15–16). In the odd case that parents feared they could not trust their offspring with the inheritance, they could place their children under custody, whether they were mentally ill, handicapped, or spendthrift (Degryse, 2005, 356–358). Entails were rarely used: according to the historian DeGryse entailment was only regarded as a solution for heavy disputes among descendants that posed a serious threat to the patrimony (Degryse, 2005, 353).

Such strategies may have helped parents to protect the patrimony. However, it is easy to see their main drawback: parents could only coerce their own children to protect patrimonial property in this way, and had to hope that they would do the same when their grandchildren married. Entails on the other hand made sure that future generations would also comply with the strategies of the testators.

In Antwerp it was not possible for descendants to cancel entails in the same way as in Amsterdam.<sup>37</sup> As a result, testators from Antwerp rarely used the entail:

<sup>36</sup> Baetens only mentions the practise to let the eldest son inherit the family home, but also indicates that ‘the inheritance was always shared equally’ (Baetens, 1976, 292–293; cf. Stols, 1971, 373).

<sup>37</sup> Nowhere in the historiography the possibility to cancel entails is mentioned, nor in Antwerp’s customary law. Furthermore, the city archives of Antwerp do not provide any clues about a trajectory leading to cancellation of entails.

they knew very well the importance of being able to respond to more and less favorable developments in urban markets, and hence that liquidity was crucial for the wellbeing of descendants (Howell, 2010, 99). In Amsterdam the institutional framework surrounding entailment combined rigidity and flexibility. It prevented that any single heir would squander the inheritance, but at the same time it allowed descendants to cancel or adjust the entail when this was in the interest of the lineage.

By allowing cancellation, Amsterdam created an institution that did a relatively good job at solving an intergenerational agency problem. Since entails could only be cancelled when all descendants agreed upon this, foolish decisions by individuals were pretty much ruled out. Entails were likely only to be cancelled out of strict necessity, that is: when all descendants agreed upon cancellation. This reduced much of the rigidity of the entail, which made this legal instrument an option for a relatively large part of the population.

Why did Amsterdam create a flexible entail? And why did Antwerp not adopt this practise? Unfortunately, we can only speculate about this. For Antwerp it may have been difficult to change the rules once a large number of entails was already in effect. Since entails in Amsterdam probably gained popularity at a later stage, authorities may have had more leeway. However, to understand why these actually felt it was necessary to allow for cancellation of entails would require a much better insight in the decision-making process than the sources for early-modern Amsterdam allow for.<sup>38</sup>

## 6. By way of conclusion

The ambition to protect patrimonial goods in the long run was probably shared by many testators in pre-industrial Europe. However, the strategies they created to this end differed: whereas nobles and other people in rural areas did not object all that much to rigid entails that only allowed descendants the usufruct of patrimonial goods, merchants demanded more flexible instruments. This is probably why entailment did not gain much popularity in commercial towns such as Antwerp or, for that matter, Florence (Cohn, 1995, 164–166). But when the institutional framework that surrounded entails improved, and these became more flexible, entails could gain popularity among urban testators as well. This

<sup>38</sup> A cursory view of the *vroedschapsresoluties* of Amsterdam did not yield any clues to the motives the government may have had to allow heirs to file for cancellation of entails (van der Laan & Bessem, 2008; van Itersson & van der Laan, 1986).

happened in Amsterdam, where entails allowed testators to solve the intergenerational agency problem of securing patrimonial goods without doing much harm to liquidity. Of course cancelling entails required negotiations, but after the descendants had reached an agreement, the restrictions could be lifted in a couple of weeks. Poor heirs were even allowed to file a request at no costs, which suggests that authorities did not consider the cancellation process as a possibility for rent seeking. All of this suggests that the transaction costs involved were probably modest.

It should not surprise us to discover that entails could, under the conditions described above, gain popularity in Amsterdam. This town was characterized by the European Marriage Pattern: children moved out to establish their own households, causing families to be relatively small and uncomplicated. This made for a dynamic society where capital and labour could circulate freely, but where households also risked losing parts of the patrimony. Martha Howell (2010) has recently suggested that late-medieval societies in Northwest Europe had trouble to adjust to this type of ‘proto-capitalism’: in the course of 1300–1600 they slowly managed to create the social and cultural requirements to regard property as freely alienable — and thus in a capitalist way. Howell stresses this was no linear development, but rather a ‘crooked path’ people in Northwest Europe ventured upon (Howell, 2010, 13).

Testators in Amsterdam appear to have ventured on this crooked path as well. Even though they lived in one of the main commercial centers of Europe, they were not yet ready to accept that their patrimony was freely alienable. They found a compromise in a type of entail that countered the risks commerce posed, but also allowed descendants to profit from the market economy. The story of entailment in Amsterdam is thus one of conservative testators looking for ways to come to terms with the ongoing commercialization of society.

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