

THE HISTORICAL DEVELOPMENT OF GROUNDS FOR DIVORCE IN THE FRENCH AND DUTCH CIVIL CODES

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1. Introduction

This contribution for Laurens Winkel, my colleague at the Erasmus School of Law at the Erasmus University of Rotterdam, deals with the grounds for divorce in the French Civil Code and in the Netherlands. In May 2013, together with Laurens, I attended the Conference of the Southern African Society of Legal Historians, where I presented a paper on divorce and discussed the subject with Laurens. That is why I would like to dedicate to him the lecture I gave in South Africa.

Even in ancient times in Rome, there were several grounds for divorce. Some of those will be discussed in this contribution, as will the grounds mentioned in Hugo Grotius' *Introduction to Dutch Law* and the proposal made by the Dutch lawyer Joannes van der Linden, who in 1806 proposed a Dutch Civil Code. All these sources will be examined to determine whether these divorce grounds became part of the Dutch Civil Code in 1838. Because the French Civil Code was introduced into the Netherlands in 1811, when the Netherlands became a part of the French Empire, the grounds for divorce in that Code will also be discussed in this contribution. The French Civil Code was in force in the Netherlands for twenty-eight years. Even after the French were defeated at the battle of Waterloo and left the Netherlands, their Code remained in force there. For political reasons the Netherlands introduced its own national Civil Code only in 1838.

The grounds for divorce in the French Civil Code were adultery (*adultère*; art. 229 & 230 CC fr), exorbitance (*excès*), cruelty (*séviçes*) and insult or outrage (*injures graves*; art. 231 CC fr). Divorce was also possible if one of the spouses was sentenced to a severe penalty (art. 232 CC fr). In this contribution, some divorce cases of a district court in the Netherlands will be examined to illustrate how the French Civil Code was applied in the Netherlands.

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2. Divorce in ancient Rome

In classical Roman law dissolution of the marriage (*cum manu*) was possible. Roman sources refer to a number of causes of divorce. In *Roman Antiquities* (2.25.5) of Dionysius of Halicarnassus, published in 7 B.C., we read that drinking wine induced women to commit adultery. Cato mentions that drinking wine was “adjudged” as serious as adultery (*adulterium*¹). If a woman was condemned for one crime, she was automatically convicted of other crimes too. Thus, a woman accused of immoral or obscene behaviour was also accused of mixing poison. The wife was found guilty of acts that infringed on the purity of the marital relationship, such as drinking alcohol, leaving the marital home without her husband’s knowledge, vice and adultery, even when she had played a passive part.

In Roman law, if the wife had committed adultery, one of the husband’s obligations was to call together a family council (*iudicium domesticum*) before executing the prescribed punishment.² An early reference to the summoning of a family council is that of Dionysius of Halicarnassus (born in 60 B.C.) in his *Roman Antiquities* (2.25.5), using the word *συγγενεῖς*. There Dionysius tells us that Romulus, the founder of Rome, gave the father of the family the right to kill his children and his wife if the wife had committed adultery or drunk wine. According to this source, the husband was assisted by a type of family court.³ So he had to pronounce judgement and decide on the punishment his wife should receive together with family members. He had absolute power in such a case.

Sources dating back to the Roman Republic and the beginning of the Roman Empire mention that women were judged by their relatives (*propinqui* and *cognate*) in criminal and public cases. It was the *pater familias* who was allowed to assemble the family council. He had *patria potestas*,⁴ which was always of great importance in Roman law:⁵ we still find traces of the *patria potestas* in the first Dutch codification that followed on the French Civil Code of 1804. In the Roman Republic the *pater familias* could not exercise his power arbitrarily but had to obtain advice from a *consilium domesticum*.⁶ The *pater familias* retained this power until the period of the Roman Empire.⁷

1 Gell. 10.23.

2 E.K.E. von Bóné, “The Roman family court (*iudicium domesticum*) and its historical development in France and the Netherlands”, in: *Osaka University Law Review* 60/Feb. (2013) pp. 25-44.

3 *Leges Regiae* 1.8 (Dion. Halic. 2.26.27). See Santaluccia’s reference to “leges regiae”, in: B. Santaluccia, *Diritto e processo penale nell’antica Roma*, 2 ed., Milano 1998, p. 5 n. 5. According to him “la legge, attribuita a Romolo, che concede al marito, assistito dal *consilium* domestico, di punire con la morte l’adulterio o altra colpa grave della moglie”.

4 M. Kaser, *Das römische Privatrecht* 1, 2 ed., München 1971, p. 58; M. Kaser, “Der Inhalt der ‘patria potestas’”, in: *ZSS* 58 (1938) pp. 62-87.

5 L. Capogrossi Colognese, “La famiglia romana, la sua storia e la sua storiografia”, in: *Mefra* 1221/1 (2010) pp. 146-174.

6 W. Kunkel, “Das Konsilium im Hausgericht”, in: *Kleine Schriften*, Weimar 1974, pp. 117-149. This article is also published in *ZSS* 83 (1966) pp. 219-251. For a different opinion see, also, E. Volterra, “Il preteso tribunale domestico in diritto romano”, in: *Scritti Giuridici II. Famiglia e Successioni* [Antiqua 58], Napoli 1991, pp. 127-177, also published in *RISG* 85 (1948) pp. 103-153.

7 M. Kaser, *Das römische Privatrecht* 1 cit., p. 60.

3. The grounds for divorce in Hugo Grotius' *Introduction to Dutch Law*

In Hugo Grotius' *Introduction to Dutch Law*, which he wrote in 1619 during his captivity in the prison of Loevestein castle, not far from Rotterdam, Grotius defines marriage as follows: "het huwelijk is een verzameling van man ende wijf tot een gemeen leven medebrengeende een wettelick gebruik van malkanders lichaem" which means that marriage allows the parties to live together as husband and wife and to have the legal use of each other's bodies. Grotius also gives a description of the position of married women: "der wijven geslacht heeft, als kouder en vochtiger, minder bequaemheid tot zaken, verstand vereisschende, als't gheslacht der mannen, zoo is het mannelick gheslacht genoegzaam aengeboren eenig opperheid over de wijven" placing men in a position inherently superior to that of their wives.⁸ According to Grotius, wives had to obey their husbands; but cruelty towards them was strictly forbidden and a husband risked punishment if he treated his wife cruelly. The only possible reason to dissolve a marriage was adultery or *desertio religionis causa* or *malitiosa desertio*, in other words, abandoning the marriage *matrimonium consummatum*. Here the influence of canon law may be seen. In Matthew 5:32 and Matthew 19:9 it was stated that dissolution of marriage was possible if there had been adultery, and in such a case remarriage was allowed.⁹ In certain cases "scheidinge van de by-wooning" (separation) was possible (par. 18).¹⁰ Here, too, the influence of canon law may be seen. The marriage continued but the duty to live together came to an end.¹¹ Separation was a temporary measure. The judge could allow separation if there was the possibility of reconciling the parties.¹²

Van Bynkershoek in his *Quaestiones juris privati* declares that separation is allowed if there is a serious reason for it. In general, consent by both parties was not an adequate reason for separation. Husband and wife could agree in a special contract to separate, but then also had to obtain the consent of the Supreme Court, which during the time of the Dutch Republic was the Hoge Raad van Holland en Zeeland. However, the Supreme Court generally refused permission unless the judge of a lower court had agreed to the separation.

Simon van Leeuwen, the famous lawyer of Leiden, and later clerk at the Hoge Raad van Holland, Zeeland en West Friesland, describes in the first book of his famous work on Roman-Dutch law, *Het Rooms-Hollands regt*, the possibility of separation "sচেয়ding van tafel en bed" and of divorce "egtsচেয়ding".¹³

8 H. de Groot, *Inleidinge tot de Hollandsche rechtsgeleerdheid*, I, 5, Leiden 1952, p. 1.

9 L.J. van Apeldoorn, *Geschiedenis van het Nederlandsche huwelijksrecht vóór de invoering van de Fransche wetgeving*, Amsterdam 1925, pp.174 and 181.

10 H. de Groot cit., I, 5, p. 20.

11 C. Asser, *Handleiding tot de beoefening van het Nederlandsch burgerlijk recht, deel I, Personenrecht*, Zwolle 1957, p. 331.

12 L.J. van Apeldoorn, *Inleidinge tot de Hollandsche rechtsgeleerdheid beschreven in Hugo de Groot met aantekeningen van Mr. S.J. Fockema Andreae*, 4 ed., Arnhem 1939, p. 25.

13 Simon van Leeuwen, *Het Rooms-Hollands regt waar in de Roomse wetten met het huydenaagse Nederlands regt*, Amsterdam 1708, p. 84.

In the Dutch Republic of Seven Sovereign States, divorce by mutual consent was not possible. There were two grounds for divorce: adultery and malicious desertion.¹⁴ These grounds are also to be found in the later *Rechtsgeleerd practicaal en koopmans handboek*, the work of Joannes van der Linden: "Echtscheiding wordt by ons toegestaan om twee redenen: 1. Uit hoofde van overspel en 2. Van kwaadwillige verlaten. Redenen van eenen en anderen aart, hoe gewichtig zij ook schijnen mochten, gelden hier niet."¹⁵ In addition to these causes Van der Linden mentions sodomy, which may also be found in the doctoral thesis of Hermannus Noordkerk (1702-1771) *Dissertationes de matrimoniis ob turpe facinus jure solvendis*.¹⁶ According to Van der Linden life imprisonment is also a ground for divorce. In his *Rechtsgeleerd practicaal en koopmans handboek* he further mentions separation: "separatie van tafel, bed by-wooning en goederen", referring to Van Bynkershoek, who considers separation acceptable if life is unbearable and dangerous for the parties. Van der Linden points out that a judge may confirm the parties' separation agreement after he has studied the reasons for the separation. The consequence of separation confirmed by a judge was that the community of property and the marital power of the husband over his wife came to an end.¹⁷

During the time of the Dutch Republic, there was no family court.¹⁸ So in this field Dutch Law, unlike French law, was not influenced by Roman classical law with its family courts. In 1795, when the Dutch Republic became the Batavian Republic, a start was made with the codification of civil law in accordance with the first Dutch Constitution of 1798, which was called the Staatsregeling. The Dutch lawyer, Gockinga, started to codify Dutch family law. In his first proposal of 1799/1800, he mentions grounds for divorce such as desertion, life imprisonment, malicious desertion and also sodomy. Another member of the codification committee, Wierdsma, referred to adultery and desertion, as well as separation, as grounds for divorce.

It is uncertain whether Gockinga based the Dutch proposal on the French proposals of Cambacères, but it is almost certain that he was influenced by the Allgemeines Landrecht für die Preussischen Staaten, since this codification had already been introduced in 1796 in Prussia.¹⁹ In this Code we also find mention of the consequences of divorce, for example in paragraph 745: "Bey den Ehescheidungsprozesse muss die Frage ob und

14 L.J. van Apeldoorn, *Geschiedenis van het Nederlandsche huwelijksrecht* cit., p. 186. See, also, J. van der Linden, *Rechtsgeleerd practicaal en koopmans handboek*, Amsterdam 1806, p. 31.

15 J. van der Linden cit., pp. 31-33.

16 Hermannus Noordkerk, *De matrimoniis ob turpe facinus quod peccatum sodomiticum vocent jure solvendis, dissertatio*, Amsterdam 1733. See, also, J. van der Linden cit., p. 31.

17 J. van der Linden cit., p. 32.

18 In the Dutch Republic there were orphan chambers, which were also introduced in South-Africa. See H.C. Gall, *Bronnen van de Nederlandse codificatie Personen en familierecht 1798-1820*, proefschrift, Leiden 1980. See, also, H.C. Gall, "Treatise on the origin, progress and present state of the orphan chamber at the Cape of Good Hope", in: *Die Siviele Appèlhof en die Raad van Justisie, Hofstukke en Uitsprake wat Betrekking het op Siviele Sake, 1806-1827 'n Evaluering van Capita Selecta uit Bepaalde Gebiede van die Reg aan die Kaap*, 1992 available at <http://hdl.handle.net/10394/9140>.

19 E.K.E. von Bóné, "Comparaison entre le droit au divorce dans la République Batave (1798-1806) et dans l'Allgemeines Landrecht für die der Preussischen Staaten", in: *Juges et Criminels, étude en hommage à Renée Martinage*, l'Espace Juridique, Lille 2000, pp. 173-187.

welcher von den Ehegatten für den schuldigen Theil zu achten sey, mit zur Untersuchung gezogen, und das Erforderliche darüber in den Scheidungsurteil festgestellt werden.” In his Dutch proposal, Gockinga followed the provisions of the Prussian Code concerning the patrimonial consequences of divorce.²⁰

4. The grounds for divorce in the first French divorce law

In France, the first divorce law was introduced in 1792. It created a family court (the so-called *tribunal de famille*) to handle divorce cases.²¹ Mirabeau founded these courts,²² having pleaded in the French Parliament for their introduction. In his words “en copiant les institutions des peuples anciens”.²³ Mirabeau perhaps refers to the Roman family courts that had dealt with divorce cases. He had probably read about the family courts in *De l'esprit des lois* of Montesquieu, who in that work alludes to the “institutions des peuples anciens, le tribunal de famille chez les Romains”. Chapter 10 of book 7 of *De l'esprit des lois* deals with the “tribunal domestique chez les Romains”²⁴ and refers to the revival of the family court in divorce cases.²⁵ Montesquieu was a “cultural humanist” and had studied Roman law. In his library in La Brède, Montesquieu had studied the work of the Italian professor of Roman law, Giovanni Vincenzo Gravina (1664-1718). In 1713 Gravina published the *Originum iuris civilis*. This work was later translated from Latin into French by Jean-Baptiste Requier as *Esprit des loix romaines*, edited in 1766 in Paris and Amsterdam.

Gravina remarks that it was customary for the Romans to punish adultery severely. He alludes to adultery in the laws of Romulus, the *lex Cornelia* and the *lex Iulia*. A careful

20 A.H. Huussen, *De codificatie van het Nederlands huwelijksrecht 1795-1838*, proefschrift, Amsterdam 1975, p. 164.

21 E.K.E. von Bóné, *De familieraad in Nederland 1811-1838*, Rotterdam 1992, p. 12.

22 Mirabeau had been a victim of the *patria potestas* of his father, and was imprisoned on the Ile de Ré by a lettre de cachet. See, Honoré Gabriel Riquetti comte de Mirabeau, *Des lettres de cachet et des prisons d'état ouvrage posthume, composé en 1778*, (s.n.) Hamburg 1782.

23 *Courier de Provence*, séances du 5 au 7 août 1790, t. 173.

24 Montesquieu, *De l'esprit des lois* 1, rev. and corrected ed., Genève 1749, p. 167. Montesquieu mentions Dionysius of Halicarnassus.

25 “Du tribunal domestique chez les Romains. Les Romains n’avaient pas, comme les Grecs, des magistrats particuliers qui eussent inspection sur la conduite des femmes. Les censeurs n’avaient l’œil sur elles que comme sur le reste de la république. L’institution du tribunal domestique suppléa la magistrature établie chez les Grecs ... Le mari assemblait les parents de la femme, et la jugeait devant eux. Ce tribunal maintenait les mœurs dans la république. Mais ces mêmes mœurs maintenaient ce tribunal. Il devait juger non seulement de la violation des lois, mais aussi de la violation des mœurs. Or, pour juger de la violation des mœurs, il faut en avoir ... Les peines de ce tribunal devaient être arbitraires, et l’étaient en effet; car, tout ce qui regarde les mœurs, tout ce qui regarde les règles de la modestie, ne peut guère être compris sous un code de lois. Il est aisé de régler par des lois ce qu’on doit aux autres; il est difficile d’y comprendre tout ce que qu’on se doit à soi-même ... Le tribunal domestique regardait la conduite générale des femmes. Mais il y avait un crime qui, outre l’animadversion de ce tribunal, était encore soumis à une accusation publique; c’était l’adultère; soit que, dans une république, une si grande violation de mœurs intéressât le gouvernement; soit que le dérèglement de la femme pût faire soupçonner celui du mari; soit enfin que l’on craignît que les honnêtes gens mêmes n’aimassent mieux cacher le crime que le punir, l’ignorer que le venger.”

study of Montesquieu's text on the family court, *le tribunal de famille chez les Romains*, reveals a reference to the Roman institution of *iudicium domesticum*. He points out that the Romans, unlike the Greeks, did not have special magistrates to control the behaviour of women; the censors monitored them and the husband called in his wife's relatives if she had committed adultery. The husband and those relatives together then had to judge the wife. Montesquieu relies on Dionysius of Halicarnassus when he mentions crimes such as adultery by women. The *tribunal domestique* supervised the behaviour of women. In this tribunal, family members could administer justice without interference from the state or a judge.

In terms of the first French divorce law of 1792, the family court (*assemblée de famille*) was competent to grant a divorce on the grounds of "incompatibilité d'humeur", which means incompatibility of the parties or of their characters. This court could try to reconcile the spouses. The French family court also had jurisdiction to grant a divorce on certain grounds relating to only one of the parties, such as mental illness, being sentenced to a dishonourable punishment, maltreatment of the spouse, immoral behaviour (for example adultery), desertion, and emigration. In the first French divorce law of 1792 we see almost the same reasons for divorce as in antiquity, when grounds for divorce were also desertion, immoral behaviour such as adultery and being sentenced to a dishonourable punishment.

The first French divorce law of 1792 had a great impact in France. In Paris, there were suddenly more divorces than marriages. After the French Revolution, however, the attitude to family life changed completely. The new reform bill of Jacqueminot (1799) proposed to restore the family and reduce divorce. In the French Civil Code, a strong emphasis on the *patria potestas* is noticeable. In the famous work of Robert Joseph Pothier *Traité de la puissance du mari sur la personne et les biens de la femme*²⁶ we read that the husband is again "chef du mariage" and has authority over his wife. In France, the marriage bond was considered very important, and so divorce became more difficult as the number of grounds for divorce was reduced. In the French Civil Code of 1804, divorce by "incompatibilité d'humeur" was no longer allowed. Only "séparation des corps" was possible, a divorce on specific grounds. Grounds such as mental illness, desertion and emigration were no longer recognised, and it became more difficult to obtain a divorce by mutual consent (art. 275, 276, 277, 278 CC fr).²⁷ The only grounds for divorce in the French Civil Code were adultery (art. 229 and 230 CC fr), exorbitance, cruelty, insult or outrage (art. 231 CC fr) and the sentencing of a spouse to a severe penalty (art. 232 CC fr). These grounds for divorce were also introduced in the Netherlands in 1811, when it became a province of France.

26 R. Pothier, *Traité de la communauté auquel on a joint un traité de la puissance du mari sur la personne et les biens de la femme, par l'auteur du Traité des Obligations* 1, Paris 1806.

27 Divorce by mutual consent was not possible if the man was younger than twenty-five years and if the woman was younger than twenty-one. Another limitation on divorce by mutual consent was that spouses had to have been married for two years. Divorce by mutual consent was not possible for spouses who had been married for twenty years and also if the woman was forty-five years or older.

5. Grounds for divorce in Dutch practice

In the archives of Dordrecht, an old city located about fifteen kilometres from Rotterdam, interesting divorce cases may be found dating back to the period when the Netherlands was part of the French Empire.²⁸ Divorce was possible in terms of the French Civil Code which was introduced in the Netherlands in 1811 and remained in force until 1838.

An interesting divorce case in Dordrecht concerns a woman, Sya Landmeter, who filed for divorce in the district court of Dordrecht on 24 December 1822.²⁹ She sought a divorce because her husband had gravely injured her, which constituted a ground for divorce (art. 231 CC fr). She contended that her husband was leading a riotous life; and in her divorce file we read that he was often drunk, had beaten her several times and had humiliated her. In the summer of 1819 he deserted her and their young child, although she was pregnant with her second child, and went to live with another woman. In the summer of 1821 he came back to his wife and beat her and his mother-in-law. As a result, Sya Landmeter asked the President of the district court to summon her husband to court so that she might obtain a divorce.

The President of the district court tried unsuccessfully to reconcile the parties. What happened to the children is of interest. Sya, the mother of the children, asked the court to award the guardianship of her son to her husband and the guardianship of her daughter to herself.³⁰ The divorce file does not reveal the reason for the separation of the children. Maybe the mother could not afford to raise two children, since she had no income.

In another case, divorce was authorised by the court because a father had beaten his children. Files indicate that the most frequent cause of divorce was *injures graves*, which means that the wife and/or the children were the victims of violence. But there are also cases in which it was the wife who injured the husband, not vice versa.³¹

Other divorce actions in Dordrecht concerned adultery. It is remarkable that, in order to prove adultery, a wife had to catch her husband red-handed committing adultery in their common home, but the husband did not need such proof in respect of his wife. Because proving a husband's adultery was so difficult, the wife could instead opt to claim *injures graves*. One case in Dordrecht in which adultery was committed but not proved, concerned a man who led a dissolute life and visited prostitutes. His wife then filed for divorce because of *injures graves*.

A remarkable case in the district court of Dordrecht concerned Maria de Wilde, the spouse of Pieter van de Laar. They were married for almost forty years. Maria filed for divorce because her husband brought a concubine home. This concubine stayed in the couple's house for some years. She became pregnant, and gave birth to a daughter. Strangely enough it was, according to the prosecutor, not proved that she was the husband's concubine and adultery was not proved. This explains why Maria in her divorce petition mentioned as a ground for divorce not only adultery, but also ill

28 National Archives of the Netherlands, Archief van de Rechtbank eerste aanleg Dordrecht, inventory nr. 133.

29 Ibid.

30 Idem, nr. 77, 23 juni 1823.

31 Idem, nr. 133.

treatment. The divorce records show that her husband had beaten her several times, and had once even thrown her out of the house and tried to kill her with a piece of wood. In spite of all these incidents, the court did not grant a divorce, because it held that all the disagreements between the parties had arisen because the concubine was living in the couple's home and had given birth to a daughter there. The court refused to dissolve the marriage because of its duration. The court held that the other woman should not live in the marital residence, and the man was ordered to pay his wife some alimony. The parties were given the chance to reconcile within a year. When this did not happen, the wife was permitted to file for divorce.

The discrimination against an adulterous wife is striking. When the French Civil Code was introduced into the Netherlands, women continued to be subordinate to their husbands. According to the Code civil, the husband did not have to prove that his wife had co-habited with her lover, but a wife had to prove that her adulterous husband had co-habited with his concubine. In addition, a woman who committed adultery received a prison sentence but a man did not.

A study of the grounds for divorce shows that the man was always in a better position. As indicated, the French Civil Code remained in force in the Netherlands until 1838, but in the first Dutch Civil Code that followed, the grounds for divorce remained the same. They were: the sentencing of one of the spouses to a severe penalty (art. 232 CC fr), but also desertion, ill treatment, insult, drinking and adultery (art. 264 BW 1838). We have seen that some of these grounds were already recognised in ancient times in Rome. However, in the case of adultery the man was in a better position under the French Civil Code of 1804 because of the differentiation between an adulterous man and an adulterous woman. The two relevant sections are article 229, which reads: "Le mari pourra demander le divorce pour cause d'adultère de sa femme"; and article 230, which reads: "La femme pourra demander le divorce pour cause d'adultère de son mari, lorsqu'il aura tenu sa concubine dans la maison commune" which means that the wife had the difficulty of proving that her husband had kept his mistress in the common home. In the Dutch Civil Code of 1838 (art. 264 BW) there was no such differentiation. The only evidence required in divorce proceedings on the ground of adultery was the penal judgement (of the court of last resort) in which the adultery had been mentioned. Because the Dutch legislator wanted to prevent unnecessary scandal, the penal sentence was a *praesumptio juris et de jure* and evidence to the contrary was not possible. Under the Dutch Civil Code of 1838, divorce by mutual consent was not possible. In France, divorce was abolished in 1816 when the catholic religion became a state religion. Only in 1884 did divorce again become possible in France.³²

6. Concluding remarks and epilogue

In conclusion, we have seen that the grounds for divorce mentioned in the French Civil Code and subsequently in the first Dutch Civil Code of 1838 made divorce in the Netherlands very difficult. Women remained subject to the authority of their husbands

32 A. Naquet, *Code annoté du divorce*, Paris 1884, art. 1; A. Naquet, *Le divorce*, *Chambre de Députés (séance du 27 mai 1879) extrait du Journal Officiel*, Paris 1879, p. 12.

for a long time. In the Netherlands, they were under the marital power of their husbands until 1956. When the *patria potestas* and the marital power were abolished, the Roman-French tradition came to an end. The grounds for divorce were retained in the Dutch Civil Code until 1971. Since then the only ground for divorce – according to the Dutch Civil Code – has been the irretrievable breakdown of the marriage.

In the Netherlands, divorce has become easier although it can still be difficult where there has been domestic violence. Special family courts, such as those in Seoul, Tokyo, New York and Istanbul would be better equipped to deal with such cases: these jurisdictions have specialised courts with judges, and provision is made for mediation; in divorce cases the assistance of psychologists and social workers are made available.

In the Netherlands there are no such specialised family courts. There are huge district courts with family divisions. The family division of the Dutch district court is competent in, for example, divorces, disputes over parental authority, adoption (including adoption by homosexuals), and child support. But there is no special mediation room where judges may meet with the parties; nor is there social assistance in the court or psychologists trained in divorce problems. With its high divorce rate, the Netherlands would do well to introduce such family courts. In this respect, we could learn from the Roman-French tradition.

Abstract

In this contribution the grounds for divorce in ancient Roman law as well as in Hugo Grotius' *Introduction to Dutch Law* and the 1806 proposed Dutch Civil Code of Joannes van der Linden are examined to determine whether these grounds had become part of the Dutch Civil Code of 1838. The grounds for divorce in the French Civil Code, too, are analysed as this Code, which was introduced into the Netherlands in 1811, when the Netherlands became a part of the French Empire, remained in force until 1838 when the Netherlands introduced its own national Civil Code.