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Getting Justice: A Comparative Perspective on Illegitimacy and the Use of Justice in Holland and Germany, 1600-1800

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Acknowledgments1

Abstract
Extramarital sexuality has always been regarded as a transgression of the accepted norms. The increasing criminalization of extramarital sexuality after the Reformation led to an intensification of the prosecution of illegitimacy by secular authorities. But in the pluriform early modern legal landscape a whole range of judicial, semi-judicial and extrajudicial institutions and mechanisms existed to exercise control over deviant behavior.
This paper focuses on the institutional setting in which social control over illegitimacy was exercised in the early modern period in Holland and Germany, working with Martin Dinges' concept of the "uses of justice." Both regions experienced several waves of criminalization of sexuality during and after the Reformation, and women were disproportionately affected by this. However, research for both regions has shown that women were not only 'passive victims' in this process, but also shaped the institutions, by actively making use of them. It has been suggested in the literature that in the early modern period Dutch women enjoyed a rather favorable position compared to women in neighboring countries, and that they were granted considerable leeway in social and legal respects. Considering the differences in the legal system in both countries, the question arises whether there were fundamental differences in the way that social control was exercised over illegitimacy in Germany and the Netherlands, and whether Dutch women were truly granted more leeway in a social and legal respect with regard to illegitimacy.

1. Introduction

Extramarital sexuality has always been regarded as a transgression of the accepted norms.[1] The increasing criminalization of extramarital sexuality after the Reformation led to an intensification of the prosecution

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of illegitimacy by secular authorities. But in the pluriform early modern legal landscape a whole range of judicial, semi-judicial and extrajudicial institutions and mechanisms existed to exercise control over deviant behavior: secular judicial courts, church courts, neighborhoods, notaries, and even bystanders possessed various legal and informal competences that were used to discipline offenders against illegitimacy. These instruments of conflict settlement were used not only by third parties to uphold moral norms in society, but also by the parties who were directly involved in attempting to get justice, including women.

This article focuses on the institutional setting in which social control over illegitimacy was exercised in the early modern period in Holland and Germany. Scholars no longer view social control as a simple top-down process, but have emphasized the way it has been shaped by a process of negotiation between individuals, rulers and institutions of control. Pieter Spierenburg has argued that this process might be illuminated by considering the specific "power resources" that individuals were able to bring to bear on these negotiations.[2] Particularly important is Martin Dinges' concept of the "uses of justice," which refers "to the many ways in which contemporary individuals have dealt with the courts" and in turn shaped these institutions by doing so.[3] Dinges has argued that women's access to justice was restricted. He assumes that women were more inclined to resolve conflicts informally or extrajudicially - using social control or the help of family and neighbors - than via judicial institutions. The legally subordinated status of women as well as their economically dependent position (or in the words of Spierenburg, their power resources) would have prevented them from making optimum use of formal legal procedures, which may well have been expensive.[4]

To substantiate his argument, Dinges refers to Shoemaker who has shown in his research on petty criminality in London and Middlesex that women appeared less often in court as plaintiffs. Whether this was a result of women's reluctance to use justice because they had less confidence in a positive outcome than men, possibly assuming that cases initiated by women were less likely to proceed, or whether, as Shoemaker put it, "women thought that they were morally above engaging in conflict and litigation" remains unanswered. Shoemaker also suggests the possibility that women may have been discouraged

from prosecuting because they were intimidated by the formal judicial procedures in a system that was largely a male domain.[5] Shoemaker points to some important nuances to this generalization: the proportion of women starting a procedure increased over time, and gender differences in the use of justice were smaller in towns than in the countryside.[6] Obviously, such "gender impediments to the uses of justice"[7] varied through time and space, and women's uses of justice may have varied accordingly.

It has been suggested that in the early modern period Dutch women enjoyed a rather favorable position compared to women in neighboring countries, and that they were granted considerable leeway in social and legal respects.[8] Manon van der Heijden has argued that the strong position of Dutch women was also evident in the way they used the various judicial options available to them, and has suggested that in this respect Dutch women may have differed compared to women in Germany and England.[9] During and after the Reformation, both regions experienced several waves of criminalization of sexuality, which disproportionately affected women. However, women were not merely passive victims in this process. By actively making use of the often newly constructed institutions that prosecuted moral offenses, women were able to shape them.[10] Considering the differences in the legal system in both countries, the question arises whether there were fundamental differences in the way that social control was exercised over illegitimacy in Germany and the Netherlands, and whether Dutch women were truly granted more leeway in a social and legal respect with regard to illegitimacy.

In his research on illegitimate births in the Netherlands in the 19th century, Jan Kok has shown that the social control exercised over illegitimacy was not only relatively effective, but also far less repressive in character than in some other countries.[11] No explicit comparisons between Holland and the German territories in the early modern period have previously been made. Although both regions experienced increasing criminalization of extramarital sexuality, illegitimacy rates remained rather low and were comparable in both regions until the last quarter of the eighteenth century.[12]

In this contribution, we will compare the legal treatment of illegitimacy in Germany with that in Holland. We aim to understand how different legal norms might have influenced the use of various forms of social control. The situation of unmarried women who found themselves pregnant was particularly

precarious. Premarital sexuality was condemned by parents, neighbors, peer groups, the church and secular authorities. Besides social stigmatization, many unmarried mothers faced harsh economic conditions. They were barred from jobs like domestic service, and wages for women were usually low. For large groups of unmarried mothers, it must have been difficult to maintain themselves and their children. What could these vulnerable women expect from the law and the various judicial and semi-judicial institutions? Were they subject to harsh discipline, or could they use the law strategically for their own benefit as well?

In order to answer these questions, we will first analyze the situation in Dutch towns, starting with extrajudicial and semi-judicial strategies, before moving to the civil courts and finally assessing the treatment of illegitimacy before the church and criminal courts. In the second part of the article, we will analyze the situation in Germany. The legal options of women in Germany were more restricted, as there was often no option to pursue a case before the civil courts. Women had to plead their cases before the same secular courts that prosecuted them, which also shaped their extrajudicial and semi-judicial strategies. This analysis will allow us to provide a complete overview of all the possible strategies women could employ by region, which will make it possible to draw a better comparison than dealing with the various institutions individually. Given the difference in the legal opportunities of women in Germany and the Dutch Republic, we expect to find considerable differences in the strategies they employed in cases of extramarital pregnancy.

2. The Uses of Justice in Dutch Towns: Extrajudicial and Semi-judicial Strategies

In early modern Holland, extramarital sex was illicit, but was often tolerated in practice as long as the two partners had promised to marry one another. Problems arose when the prenuptial sexual relationship became public, resulted in a pregnancy, and/or when marriage vows were broken. The spectrum of reactions to this situation was broad, varying from responses in the judicial, semi-judicial or extrajudicial spheres. The role women assumed, or were assigned, could vary from victim to offender and everything in between.[13]

Unmarried pregnant women could choose from a variety of informal, extrajudicial and semi-judicial procedures, either to induce the father to marry them, to get him to acknowledge paternity, or to be rehabilitated or financially compensated. Social control by neighbors was in the first place directed against the unmarried mother, who had lost her honor. Unmarried mothers mobilized neighbors, family members and friends to remind the father of his obligations and to restore her honor. By doing so, the women ensured that the father was also subjected to social control by the community as the denial of paternity was considered equally blameworthy. In Twente, a rural region in the east of the Dutch Republic, it was common practice for mothers to ask representatives to inform the father-to-be about the pregnancy. Such "men of honor" (*goede mannen*) should be reliable as witnesses and thus preferably unrelated to the mother. Bystanders, either these *goede mannen*, neighbors, family members or even midwives, were mobilized to bring the newborn baby to the father's house to claim compensation. The rumor caused by this public action could persuade him to take responsibility. A third common strategy of getting justice was to name the child after its father.[14] All these strategies were aimed at making *his* behavior public and thus used the social control exercised by bystanders.

Whether these attempts at informal conflict settlement were successful remains unknown. In some cases, they persuaded fathers to agree to an informal arrangement with regard to his financial obligation or pass a paternity agreement before a notary. In others, these practices formed the first steps to resolving the dispute via judicial procedures. In each of these procedures midwives frequently played an important role. Sworn midwives were obliged to ask the unwed mother the name of the father in the midst of her labor. The declaration by the midwife regarding the name of the father could be important evidence in a possible lawsuit. This practice could serve the interests of various parties involved. It was important to the urban authorities to know the identity of the father in order to be able to hold him financially responsible for raising the child. For church courts, it was an important means of finding out the truth in the process of disciplining moral offenders.[15] Fathers were afraid that their name would be mentioned. Some tried to persuade midwives not to ask a woman in labor about the father's name of the child, or they tried to persuade mothers to name someone else.[16] The pressure put on midwives could be severe. In

1705, Amsterdam midwives complained that many mothers refused to say the name of the father as it would disgrace distinguished people. When midwives were called at night to assist in poor and distant neighborhoods, they were often scolded by bystanders when they asked mothers about the father's identity. In some cases, they were even threatened with drowning in the canals.[17] By asking the name of the father in the midst of such a life-threatening event as childbirth, midwives could put an enormous strain on women. Some mothers retracted earlier statements about the paternity, and declarations passed before notaries were nullified. There were also midwives who refused to force women in such precarious situations. In 1796, Gouda midwife Anna van Hensbeek, for example, came into conflict with the urban authorities over this issue and eventually lost her job due to her persistent refusal to force women to divulge the father's name.[18]

The declaration by the midwife about paternity could, however, also serve the interests of the unwed mother. Women could ask midwives to pass a notarial act.[19] Such official documents were used as evidence - and undoubtedly strengthened the woman's case - in a paternity suit. But such cases did not always result in a legal procedure. Women used the various forums instrumentally and in most cases official documents were used as a warning, to threaten the opponent with a lawsuit in negotiations about disputes that, in the end, were settled extrajudicially.[20] Depositions made before the notary were often used to put pressure on the adversary to accept a solution without the interference of a court and in this way, as Van Meeteren has shown, notaries became a common instrument of conflict settlement. Many conflicts ended in mutual financial arrangements established in official documents signed before a notary or supported by depositions from midwives.[21] It is very likely that the case between the Leiden domestic servant Geertruijt van Thienen and medical doctor Franciscus Gomaris was settled in this way. Van Thienen's attempts to come to an informal agreement and persuade Gomarus to pay a compensation for the defloration and the costs of the child's education initially failed. She subsequently passed an act before the notary that Gomarus refused to pay, even though he admitted to being the father of the child. But it was most probably the midwife's deposition about paternity, given one month later, that finally resulted in a financial agreement, as a court case was prevented in the end.[22]

3. Illegitimacy and the Civil Courts

In Holland, unmarried pregnant women could initiate a paternity suit, a civil lawsuit to demand either marriage to the father of the child, a payment to compensate for the loss of honor caused by the defloration, payment of the childbirth costs, and/or child support.[23] As we will see later, this option was largely absent in early modern Germany. The actual number of women starting a lawsuit was quite small. Both in Rotterdam and in Leiden, only a small minority of all unmarried mothers filed a paternity suit. In Rotterdam the majority of these women claimed to have had a long-term relationship with the father of their child. It is however remarkable that only a minority of all women (25 percent) appealed to broken marriage promises.[24] Apparently, the other 75 percent felt confident enough to take their case to court even without a marriage promise to justify their illicit premarital sexual relationship. In Leiden the relative share of paternity suits increased during the eighteenth century,[25] which also indicates the growing confidence of women in the legal justice system.

But what were their actual chances of a favorable outcome in a civil law suit? Declarations under oath by one of the parties involved were important evidence in paternity suits. As lawyers attached more credibility to the oaths of men than to those of women, men were put at an advantage.[26] This explains why women usually withdraw their case when men were prepared to swear under oath. It also explains the reaction of Gijsbertje Jacobs, who dissuaded an unwed mother from starting a legal procedure as she would "lose anyway as he would swear the oath." Haks believes that this reaction does not do justice to the legal practice, first because lawyers took declarations made by women in labor very seriously, and second because in Leiden only 24 percent of the men brought to court swore the oath. That so few men took advantage of this option, which could have strengthened their case to such a large extent, illustrates that Gijsbertje was too pessimistic.[27]

The position of women who chose to start a paternity suit was indeed relatively strong. In Leiden between 1671 and 1795 only 100 of the 343 paternity suits were pursued to their conclusion. No fewer than 65 percent of the plaintiffs in these cases were successful.[28] The debate among lawyers in the

Hollandse Consultatiën - a collection of sentences and legal advice compiled between 1555 and 1666 that, in the absence of a uniform legislation, served as legal code - reveals that a distinction was made according to marital status and reputation. A young woman who started a suit against a married man of good reputation needed additional evidence on top of a declaration by a midwife. For domestic servants in particular it was extremely difficult to get financial compensation, let alone a marriage promise.[29] The social position and marital status of the defendant remained decisive in legal processes in the late seventeenth and eighteenth centuries. Unmarried mothers were almost powerless against married men of high social standing and even had a difficult case when they litigated against social equals who were married. The chances were more reasonable if the man was unmarried and of higher social standing, and lawsuits against unmarried men of equal social standing were usually won by women.[30] In many cases, the high socio-economic status of the father may have been what motivated the unmarried mother to take action. The Rotterdam evidence shows that men from the middle and higher social classes were overrepresented among the defendants in paternity suits.[31] This reveals the aim of plaintiffs who in the first place wanted financial compensation. In eighteenth-century Leiden, most women demanded marriage alongside payment probably for strategic reasons.[32] In late eighteenth-century Rotterdam, only one-third of the female plaintiffs demanded marriage, whereas all women asked for child support.[33] In taking this approach, women may also have anticipated the feasibility of their case. The courts—probably well aware of the instability of marriages based on paternity suits - were not very inclined to force the defendant to marry the plaintiff, but more often sentenced men to pay financial compensation.[34] Not all cases were pursued to the end. Lawsuits, as Van Meeteren argued, "were launched in the hope of accelerating the settlement of disputes, preferably without having to fight them through to the end."[35] Civil actions on paternity were no exception. Many were discontinued when an agreement with the father came into view.[36]

Most recently, Griet Vermeesch analysed the differences between single mothers who did take legal action and those who did not in Leiden during the second half of the eighteenth century. By combining a mixed set of sources (baptismal and marriage records, census records, paternity suits, and

consistory records) and record linking, Vermeesch was able to compare systematically the social profiles of the two different groups of single mothers. Based on this analysis, she demonstrates that the women who ended up taking legal action in the case of extramarital pregnancy were strongly incorporated in the local community. Unlike the group of women that did not pursue legal action, the women who did were more often members (*lidmaten*) of the Dutch Reformed Church, recipients of poor relief (which required fixed settlement and local belonging), and able to rely on their paternal family. Vermeesch hypothesized that women seeking legal action had been actively encouraged by overseers of the poor and the consistory to do so.[37]

Research has revealed that unmarried mothers in the eastern region of Twente were far less successful than women in the cities in Holland in securing compensation via a paternity suit. According to Koorn, this may be explained by the relation between urban magistrates and public poor relief institutions. The magistrates in Holland were highly motivated to achieve a financial arrangement to avoid unmarried women and their children becoming a burden on public poor relief. In Twente, the bailiff had little to do with the local charity boards and acted from more archaic, rigid procedures. That women, despite the limited chances of success, nonetheless initiated legal procedures might be explained from the perspective of honor. All their extrajudicial attempts to be rehabilitated were highly public in nature, as were the paternity suits. Initiating a legal procedure was a means for them to attempt to reverse the accusation and to focus attention to the men who did not keep their word and broke their promise of marriage.[38]

4. Prosecuting Illegitimacy: Church Courts and Criminal Courts

Historians have shown that people selected the options for conflict settlement strategically and that their choice in favor of a particular institution was often motivated by the desired solution.[39] Haks demonstrates that in the late seventeenth and eighteenth centuries, the Leiden Peace Makers court (*Vredemakers*) dealt with one paternity suit per year. Most paternity suits were passed on to the civil

court, where fewer than three cases were filed annually. An unknown number of agreements were concluded extrajudicially.[40]

In civil courts, unmarried mothers appeared as plaintiffs. In criminal and church courts they obviously played a different role—that of defendant. In contrast to Germany, church discipline in Holland was only exercised over the members of the congregation (*lidmaten)* and the church courts were a purely ecclesiastical institution. Prenuptial sexuality was condemned by the Reformed Church and disciplining fornicators occupied much of the time of the church courts from at least the late sixteenth century onwards. In contrast to the secular courts, the Dutch church courts could not impose criminal punishments. After the Further Reformation (*Nadere Reformatie*), the prosecution of extramarital sexuality was intensified and in Delft, Rotterdam and Amsterdam church courts were increasingly concerned with illegitimacy.[41]

Discipline was enforced less severely in the case of an intended marriage. Although at the height of the Further Reformation even recently married couples were summoned before the church court when a child was born too early,[42] in general bridal pregnancy was considered to be a less serious transgression than illegitimacy. In Amsterdam between 1578-1700 only 52 church members were punished for pre-martial conception (meaning that the date of the birth indicated that the child was conceived before marriage) by being suspended from the Lord's supper for one time. From 1674 on, pregnant brides no longer needed to appear before the church court, but were simply admonished by ministers at home.[43] By contrast, in the same period 925 unwed mothers were summoned before the church court. Whereas in the first half of the seventeenth century most of them appeared to have been deserted by their fiancés, after 1660 the majority had become pregnant without a marriage promise.

Fornication and illegitimacy were considered not only sins, but also serious threats to the reputation of the whole church community. This influenced the disciplining process. Church courts were not very inclined to deal with these cases openly and sometimes even refrained from action if the misconduct was not widely known. Names of moral offenders were often kept secret and church courts usually did not report sexual misbehavior to the secular authorities.[44] Publicity regarding an offense,

however, required immediate action. The importance of publicity also becomes clear from the role played by neighbors. They reported moral offenses to the church court on the grounds that overtly sexual misbehavior would harm the reputation of a whole street or neighborhood. Once the offense had become public - and this was likely to have happened in the case of pregnancy - publicity became even more important. Only an open confession of fault could lead to reconciliation.[45]

Church discipline was aimed at reconciliation of the malefactor with the church and at upholding the morality of the church community. As church courts in the Netherlands could not impose criminal punishments, admonition and suspension were among the common sanctions to achieve this goal. Women were rehabilitated when a wedding was conducted. For the Reformed church, moral purity was more important than financial security for mother and child. Ministers did not accept that a child born from a relationship between an unmarried woman and a married man would remain in the home of the child's father. Illegitimate children could best be boarded out. Married men who had impregnated their servants were suspended from the Lords' supper until the mother of their illegitimate child had left their home. A master remained subject to church discipline even when there was no absolute certainty that he was the father and even though his wife had forgiven him. The double standard applied by the church in such situations is remarkable. An adulterous woman was allowed to keep her illegitimate child after she had openly confessed her guilt, expressed regret and restored the peace at home.[46]

Even though church discipline was only exercised over church members, the Further Reformation probably also had an impact on the prosecution policy of the secular authorities. Van der Heijden has shown that fornication was punished more harshly over the course of time. Whereas initially the birth of an illegitimate child was often seen primarily as evidence for the existence of an extramarital sexual relationship, after 1650 the focus shifted, and illegitimacy more often became prosecuted as a criminal act in itself.[47] The motivation of criminal courts, though, differed markedly from that of the Reformed church. As prenuptial sexuality was illicit, in theory, the instrumental use of diverse extrajudicial and semi-judicial procedures to obtain justice put unmarried pregnant women at risk of being prosecuted by criminal courts as, simply by having had sexual relations without being married, they were guilty of a

criminal act. It is remarkable, though, that there are no indications that secular authorities started criminal procedures on a large scale against women who had initiated a paternity suit.[48] In seventeenth- and eighteenth-century Amsterdam, the total number of cases relating to extramarital sexuality brought before court was remarkably small.[49] The most probable explanation is that women who had started a paternity suit had taken responsibility and demonstrated that they were honorable. That these women were more likely to have made agreements with the father about the costs of raising the child also played a role. Whereas church courts were driven by moral considerations, economic motives were paramount for the magistrates. Unwed mothers and their children who were not able to support themselves would become a burden to the city's public poor relief. In criminal sentences, the inability to name the father of the child and the lack of an agreement about alimony were aggravating factors.[50] In these cases, the father could not be forced to take responsibility and maintain his child.

That secular authorities refused to be burdened with the financial responsibility also becomes clear from the sentences for illegitimacy; women who were found guilty were often banished from the city.[51] Whereas church courts required pregnant servants to leave the house, criminal courts were prepared to close a case when a financial agreement was concluded. Courts refrained from harsh punishments when couples ultimately married. This might explain their reaction in the case of Jacobus Riettie, who had one illegitimate child, aged 10, born from the relationship with Rachel Abrahams with whom he had lived out of wedlock for about 8 years, and another one with Sara Abrams whom he eventually married. Sara received a reprimand, Jacobus had to pay a fine. [52] A woman who did not want to - or could not - indicate the fathers' name received public punishment showing the community that she had had an illegitimate relationship and had been unable to persuade the father to save her honor.[53]

In other cases, authorities reacted with less leniency. Marietje Jans van Rooijen, a woman without a permanent place of residence and reportedly unware about the fate of her legal spouse, was found guilty for living in concubinage with different men (some of whom were married), and giving birth to four illegitimate children. She was banned from the province for 15 years for her transgressions. Another case is that of Catrijn van Ingen, who was a known recidivist. She had previously been sentenced for theft and

was caught for begging. Moreover according to her declarations, she had lived in concubinage and had two illegitimate children, both of whom had died and been buried in Amsterdam. Catrijn was whipped and subsequently banned from the city. Similarly, Sara Bisson, domestic servant, was prosecuted for "domestic theft" *and* having an illegitimate child. [54] These examples are illustrative of a more general trend. Records from seventeenth- and eighteenth-century Amsterdam and Rotterdam reveal that criminal courts were likely to prosecute illegitimacy if : 1) the offender appeared to be particularly persistent despite earlier reprimands and had given birth to more than one illegitimate child, had been adulterous or lived in concubinage for a long period, 2) if illegitimacy was combined with related offenses (such as prostitution) or other crimes, or 3) if the woman had tried to keep her pregnancy secret. Keeping a pregnancy secret was not only considered as extremely disgraceful, it gave the unwed mother the opportunity to opt for one of the most extreme solutions to an unwanted pregnancy: child abandonment or even infanticide.

Many of the women brought before the criminal court for cases related to illegitimacy were highly mobile. Some of them had moved from one city to another, while others lacked a permanent place of residence. These women did not have a particularly strong social position; they did not belong to the strata of settled citizens in the urban community. For these women, access to either informal forms of conflict settlement or to legal institutions that provided the opportunity to settle the conflict by mutual agreement was probably limited.

5. The Uses of Justice in German Territories: Plaintiff or Defendant? The Role of Women in the Prosecution of Illegitimacy

The situation in early modern Germany was somewhat different from that in Holland. Sexual offenses were generally handled by lower criminal courts, which usually did not have the authority to hand out physical punishments (*peinliche Strafen).* The way these institutions were organized varied greatly throughout Germany.[55] In eighteenth-century Frankfurt am Main, for example, the *delicta carnis* were handled by the *Konsistorium*: a mixed secular-ecclesiastical institution composed of seven secular

members of the city council and three members of the clergy.[56] The marriage court (*Ehegericht*) in Basel was constructed in a similar way.[57] Although such examples of a joint venture between lay and church authorities were not uncommon, the early modern period was in general marked by a process of secularization with regard to the punishment of moral crimes.[58] These institutions are not to be confused with the church courts in the Netherlands, discussed in the previous section. In contrast to the latter, they were essentially secular lower criminal courts. They had the authority to impose criminal sentences (apart from serious punishments). In contrast to the Dutch church courts (confusingly also called consistories), the authority of the moral courts in Germany was not limited to members of their own congregation only, but affected the entire population. The following section will deal with the way that these lower courts were used, both by the women that initiated a paternity suit as well as by the authorities to discipline their subjects.

Regardless of the institutional differences, in many of the territories in early modern Germany the regulation of the subjects' moral behavior was dealt with by the same court that also dealt with the settlement of paternity suits and alimony cases. Usually, the criminal prosecution preceded a paternity suit, or was even mandatory to start a lawsuit (at the same court) to claim alimony or compensation for the costs of childbirth and the loss of honor.[59] In many cases it is impossible to distinguish the criminal procedure from the civil one. This, of course, influenced the way in which women were able to use the court in order to pursue their objectives. Going to court to start a paternity case meant that authorities would be notified about the criminal offense of extramarital sex and prosecute this accordingly. Although going to court was therefore risky for women, they nevertheless *did* make use of the courts, and could do so successfully as well.

Whether or not women were allowed to start a paternity suit differed from territory to territory, and the rules appear to have been somewhat more restricted than those faced by women in Holland. Not every woman was eligible to go to court and claim marriage, compensation and/or child support from the child's father. In Frankfurt, for example, women had to prove that the prenuptial intercourse only happened after marriage vows were exchanged. Regulations regarding marriage vows were strict. Only

those vows exchanged in front of the parents or, if they were deceased, in front of two men of good conduct, were approved.[60] All other marriage vows were considered invalid and complaints based on such vows were rejected by the consistory. The same law, however, offered a loophole. In the event that a relationship without proper marriage vows resulted in a pregnancy, the *Geschwächte* ("weakened") could make up for this by getting the consent of her parents retroactively, allowing her to start a complaint and demand the marriage with the father of the child after all.[61] Only this action gave women the opportunity to receive financial compensation via legal action for the care of her illegitimate child. The accused father had the choice of marrying the woman or paying her expenses for childbirth and support of the child.[62] Similar regulations were found in more rural areas, such as the territory of Altmark.[63] In other territories (most often Catholic ones) such regulations were less strict. In Bavaria, even secret marriage promises without parental consent could be enforced in court.[64]

But even if the exchange of marriage vows was not necessary to claim financial support, women would still argue that they only engaged in intercourse after the man had made the promise of marriage. Without providing precise numbers, several authors have claimed that the majority of the women who started a paternity suit declared that the men had promised them marriage.[65] Such a statement could be crucial for a woman to have a chance of success in court. The first step in the legal procedure for the court was to determine the identity of the impregnator. The initial reaction of many men was to deny that they had engaged in any sexual intercourse with the women completely or to claim that the women had other partners as well.

If the court's regular interrogation methods could not clarify the case, both the plaintiff's and the defendant's reputation became crucial. If the woman was able to prove that she had lived an honorable life and enjoyed a good reputation, she was allowed to swear an oath (an *Unterstützungseid* or *Reinigungseid*).[66] This proof heavily depended on reliable witnesses. Due to the strong social control in early modern communities, women were able to mobilize neighbors and family members to testify on their behalf. In turn, if the illegitimate mother was not able to produce liable witnesses and the accused impregnator repeatedly denied he was the father, he could swear an oath as well and be discharged of any

financial responsibility.[67] Many men strategically portrayed women as promiscuous in court in order to undermine their credibility and position in court. Authorities, however, were not always inclined to believe the man's word. If they had enough reasons to distrust his testimony, they could imprison him to enforce a confession (*Beugehaft*). In the territory of Altmark the clergy suspended men from the Lord's supper if they refused to acknowledge their illegitimate children.[68]

Thus, having a respectable position in society and access to social support networks was crucial for women, even more so than for men, since living with the consequences of an illegitimate child were more profound and long-lasting for women than they were for men. Women with strong social ties to the community were often able to settle paternity charges with the father out of court and were more likely to receive help from neighbors or others. Rebekka Habermas has argued that women from the lower strata of society, who often did not possess burgher rights or financial means and family support, were particularly likely to turn to authorities (i.e. the criminal court) in times of need, appealing to them as *"eine Anwältin in Nöte"* (an advocate in need).[69] During the course of the eighteenth century, the position of women without burgher rights worsened. Fearing the financial burden that these women and their children would pose to the city's social support system, the city of Frankfurt issued a decree in 1755 stating that all unmarried pregnant women without burgher rights were to be banned from the city.[70]

Of course, this raises a question about women's chances of actually winning a paternity suit before the criminal court. Numbers are scarce, but Stefan Breit has shown that in the case of Bavaria, close to 50 percent of paternity charges were settled during the lawsuit and no final judgment was needed. In those cases where this was not possible, one-third of the accused fathers were ordered to pay.[71] Generally women - and men - favored a settlement with merely a financial agreement, rather than a forced marriage.[72] To some extent this was due to the fact that the demand for marriage was a more complicated legal procedure than a paternity suit.[73]

The chances of success in such cases were therefore relatively high and comparable to those calculated for Holland.[74] In early modern Bavaria, about 66 percent of the women either settled the case or were compensated.[75] This may explain why women were willing to take the risk of reporting their

extramarital pregnancies to the authorities and exposing themselves to possible punishment. The fine that they had to pay was usually less than the financial compensation they could receive from the child's father. Additionally, reporting oneself to the authorities often meant the restoration of honor for women.[76] The procedures in court often meant that the child's father was now publicly known, something that not only helped women to restore their honor, it also strengthened their negotiating power and increased their chances of financial compensation. As we will see, for some men it was crucial to keep their misconduct secret. Making the father's name public through a court procedure could therefore strengthen the bargaining position of women to settle the case outside the court.

It is thus clear that in early modern Germany, too, women *could* and *did* use these disciplining courts to their own advantage. The very institutions that prosecuted women for their sexual conduct, were also used by women to improve their situations. In this sense, their strategies resembled that of women in Holland, even though the latter were provided with the opportunity to start separate civil law suits. Women in early modern Germany were not afraid to start a paternity suit in one of the lower criminal courts, even if this led to prosecution and possible punishment. This is underlined by the fact that many women reported themselves if the case was not yet known to the authorities. In more than half of the paternity suits in Bavaria, authorities had not yet started a criminal investigation about the extramarital pregnancy when the woman reported the case to the court herself in order to receive financial compensation by the child's father.[77] This could even happen several years after the child's birth if the couple had failed to settle the case outside the court.

The way women used the lower courts strategically is shown by the case of Maria Magdalena Beyer. She was already under investigation by the consistory in Frankfurt for her extramarital pregnancy when she appealed to the court for financial aid. She had no relatives or other people she could turn to for help and due to her situation, she was not able to find any employment to support herself. In short, her situation was quite hopeless. Maria Magdalena, however, felt confident enough to apply for aid from the same institution that was prosecuting her.[78] Although the authorities were reluctant to provide the necessary assistance, as it could set a bad example to other "*liederliche Dürnen"* (loose women), they

agreed to pay her childbirth charges in fear of her possibly committing suicide, or—even worse—infanticide.[79] This case shows that women not only perceived these courts as disciplining actors, but also as institutions that they could turn to for help. In many cases, women appeared before these courts as both plaintiff and offender, and no clear distinction can be made between the two.[80]

As we have seen, the same institution dealt with criminal prosecution and paternity suits. One could argue that women took the risk to being prosecuted because there were no other judicial opportunities for them to start a paternity case. However, the example of the territory of Kurmainz shows that even if there were separate criminal and civil courts to turn to, reporting oneself to the criminal court could be a strategic decision, and could even be favored over starting a civil law suit. For one, the inquisitory criminal procedure was faster than the ordinary civil process. The main goal of the criminal court was to determine who the child's father was.[81] Due to the interrogation methods of the criminal court, the identity of the impregnator was established more easily than in a civil law suit where women where the onus of proof lay with the women alone. The criminal judgment could then be used by women as evidence in a civil law suit, strengthening their claims for financial compensation. It was therefore not uncommon for women to report themselves to the authorities in order to pursue their goals—even before the criminal court.[82] Appealing to the criminal court in these situations, resembles the way women in Holland were able to use the declaration by a midwife to pass a notarial act.

However, it is important to mention that the courts in early modern Germany were not only used by women to enforce the child's father to pay. Contrary to the Netherlands, many regions in early modern Germany imposed strict demands that a couple had to fulfill before they were granted permission to get married. People often had to prove that they earned sufficient income to support a family. In some cases, men had the obligation to perform military duties

(three to four years) in order to obtain permission to marry.[83] Having an illegitimate child could help couples living in concubinage to obtain the permission to get married.[84]

6. Prosecuting Illegitimacy

The previous section made clear that women took the risk of going to court and being punished in order to claim financial support from the child's father. But what did this risk actually entail? What type of punishment did women receive? As mentioned earlier, the prosecution of moral offenses was normally dealt with by the lower criminal courts which did not possess the authority to hand out severe corporal punishments (*Peinliche Strafen*).[85] Both women and men who were sentenced for having extramarital sex were usually ordered to pay a fine. The sum of these fines was usually high and could put women (and men) in serious financial difficulties. The nominal fees usually comprised between a third and the entirety of their annual wages.[86] However, it was not uncommon for people to get remission. First of all, sentences were reduced if people intended to marry.[87] Secondly, people could plead for leniency and reduction based on their own financial situation. Most often they were allowed to pay the fine in instalments, which often resulted in payment of only a part of the fine. In some extraordinary cases, the court even decided not to burden the women with a monetary fine because of their precarious financial situation. In the case of 26-year old Barbara Drauth, for example, the consistory in Frankfurt decided not to impose a fine because of the penury of her situation. She was later arrested by the city's constables for sleeping in the streets and expelled from the city.[88]

Although the majority of the moral offenses were dealt with by the lower criminal courts, in some exceptional cases they were passed on to the higher courts, which possessed the *Peinliche Gerichtsbarkeit* (i.e. the power to impose corporal punishments). An investigation of

the criminal court records of Frankfurt am Main show that these higher criminal courts rarely dealt with cases of extramarital pregnancies. In her study based on the city's criminal court records, Rebekka Habermas counted 44 cases between 1680-1752: less than one case per year. At the same time, the consistory (one of the lower courts in Frankfurt) dealt with 52 cases of illegitimacy in 1746 alone (40.3 percent of all the cases dealt with by the consistory).[89] If the higher criminal court *did* prosecute a case of illegitimate pregnancy, it had usually been passed on by the consistory because the women had been prosecuted for this offense several times before. These women were most commonly banished from the city, whether they were local women or not.[90] Furthermore, illegitimacy was investigated by the criminal courts if it was related to cases like infanticide, child abandonment or if women gave birth in secret.

Although there were large territorial differences, the numbers indicate that the prosecution rate of illegitimate pregnancies could be relatively high. In eighteenth century Lippe, between 65.4 percent and 77.8 percent of the mothers of baptized extramarital children were sentenced.[91] As mentioned above, the consistory in Frankfurt dealt with 56 cases of extramarital pregnancy in 1746. In the same year, Frankfurt registered only 35 baptisms of illegitimate children, which points towards a similar high prosecution rate.[92] What needs to be studied further is if the use of justice by women to claim support from the father increased these prosecution rates.

7. Extrajudicial and Semi-judicial Strategies

Just as in the Netherlands and elsewhere in Europe, the courts in early modern Germany were not the only institutions that shaped the way that contemporaries dealt with extramarital pregnancies. There was a close-knit web of other formal and informal institutions of social

control, such as the neighborhood, guilds and the institute of the *Haus,* all of which influenced the actions women could take, directly or indirectly, in cases of extramarital pregnancies.

Regardless of the way a woman pursued an arrangement, she needed to make sure that she had a strong bargaining position. The previous section showed some examples of territories where the prosecution rate of illegitimacy was relatively high. Not every territory, however, showed equally high levels of prosecution. Ulrike Gleixner has argued that in Altmark the majority of the women tried to reach an agreement with the child's father out of court.[93] With the help of family and other community members, they were able to put the father under pressure to pay. Threatening the alleged father with a court case often strengthened the bargaining position of women.[94] In the course of the eighteenth century, the prosecution practices of the courts in Altmark shifted: men ceased to be an object of the court's investigation efforts, while women continued to be investigated and disciplined for illegitimacy. This shift went hand in hand with a rise in paternity suits because women were no longer able to put pressure on the men to settle out of court.[95]

In early modern German cities, guilds played an important role in regulating and disciplining the moral conduct of their members.[96] Guild membership was bound to proper moral conduct: illegitimate children were excluded and members who were prosecuted for fornication, adultery or other immoral behavior could lose their guild membership.[97] Such emphasis on legitimate births by guilds was absent in early modern Holland. Historians have argued that this may have been a factor contributing to the relatively strong economic position of women in Holland, or to put it differently, the relatively weak economic position of women in early modern Germany.[98] The emphasis on legitimacy as a prerequisite for guild membership shaped the way in which journeymen and masters dealt with the results of their pre- or extramarital relationships.

Keeping illegitimate children hidden from the authorities, including the guild authorities, was crucial for their livelihood. It often persuaded men to settle with the child's mother informally and in secrecy. The case of Catharina Rau and Niclas Burg, fought out before the moral and criminal court in Frankfurt in 1703 is exemplary in this regard. In order to prevent Catharina Rau from disclosing him as the father of her illegitimate child to the authorities, Niclas Burg, member of the local fishermen's guild, had promised her to pay half a guilder weekly for the care of the child and to cover her other expenses with 100 guilders. Still, Catharina revealed that Niclas was the father when she was interrogated by the authorities for giving birth out of wedlock. He was then summoned to the court, where he admitted to having sexual intercourse with Catharina but denied that he was the father. He stated that he had offered to pay her because he feared the repercussions of the guild if Catharina disclosed their affair, which gave her the opportunity to pressure him into an informal financial settlement. However, as the date of birth of Catharina's child did not align with the time of intercourse, the authorities acquitted Burg from any financial responsibilities towards the illegitimate child. Nevertheless, Niclas was sanctioned for fornication and excluded from the guild for a year, which shows that financial and social consequences could be severe for men as well.[99]

Threatening the alleged father with a court case was a strategy frequently used by women, although they did employ other means as well. In 1739 the city council of Frankfurt am Main issued a decree that prohibited men and women from settling their disputes on child payment before a notary.[100] The consistory had repeatedly complained to the city council about notaries settling paternity conflicts in secrecy without notifying the authorities. According to the consistory, these practices in many instances led to complications because women would often conceal the identity of the true father. And, even if the real father was named, these settlements

undermined the disciplining authority of the consistory and people would be able to commit sexual offenses without being punished for them.[101] The desire to keep tight control is also exemplified by the regulations concerning the boarding of children, which was forbidden unless the consistory was notified and had given its explicit consent.[102] Thus, it appears that the efforts of secular authorities to keep control over the disciplining of extramarital sexuality was far greater in early modern Germany than it was in Holland, where authorities were usually relatively lenient if the parents had reached a settlement outside the court.

Determining the identity of the true father was one of the main objectives of women, whether they tried to settle their case through the courts or pursued other extrajudicial or semi-judicial strategies, as it offered them much needed leverage and negotiating power. As in the Netherlands, midwives played an important part in this process, and just as in Holland midwives were obliged to report the mother and the illegitimate child to the authorities. That not all midwives did so is shown by the oath they had to swear: it explicitly stated they were not allowed to protect unwed mothers, regardless of whether or not they were family, close acquaintances or had paid them to do so. But, midwives were also obliged to report the name of the father and to have the child baptized after birth. This means that the midwives were responsible for who was written down as the father of the child.[103] The name that was written in the birth certificate was generally seen as an important piece of evidence when the identity of the fathers was investigated in court. Thus, the declaration of midwives could be used by women strategically as well.[104]

8. Conclusion

In this article, we have examined the institutional setting in which social control was exercised over illegitimacy in early modern Holland and in Germany. The comparison between the two regions has revealed some remarkable differences. German authorities tried to keep strict control over the regulation of proper moral conduct in all respects. It would be a caricature to suggest that Dutch authorities were more lenient, but they do seem to have been more inclined to refrain from interfering if parties were able to settle their conflicts through extrajudicial arrangements. The cases brought before the (high) criminal courts were cases in which offenders were particularly persistent or when illegitimacy was combined with other offenses. The tight control by the German authorities is apparent in various ways. The prosecution rate of illegitimacy-related cases in Germany was quite high, whereas in Holland only the most persistent offenders—recidivists, women accused of a combination of offenses—ended up before the criminal courts. Some German cities explicitly prohibited the settlement of disputes related to illegitimacy extrajudicially, without notifying the authorities or without their explicit consent. Apparently German authorities were not inclined to give up any of their competences in this respect and even restricted the ways such conflicts could be settled outside the court. Further research is needed on this issue. Currently we can only speculate about the reason for this difference, but it may have been related to the different path of state formation. In the German territories, state formation and confessionalization were inextricably linked and lay authorities took more control over religious and moral matters than they did in the Netherlands, where the Reformed church did not have the status of a state church.

What may be even more remarkable, however, is that considering the differences in the legal systems and in the social position of single women in the respective societies, there were many similarities in the strategies employed by women. The position of unwed mothers was

precarious, and the consequences of the loss of honor and dignity could be devastating. A prenuptial pregnancy, however, did not make these women necessarily passive, unresisting and helpless victims. Women received help from family members, were able to mobilize neighbors and were thereby able to make use of the informal of social control on premarital sexuality and pregnancy that could also be directed towards the father. Women seem to have been well aware of the various judicial and semi-judicial routes to rehabilitation, including making the father's conduct public and thus subject to social control, using the declaration by midwives to their own advantage, and initiating paternity suits (either through criminal or civil law procedures).

In both regions, women's cases were certainly not hopeless in paternity suits. Both in Holland and the German territories many women were able to exact compensation via a paternity suit. As we have seen, in German territories two-thirds of the women either settled the case or were compensated, in Leiden two-thirds of the paternity suits concluded were successful for women. It is likely that their chances depended upon their socio-economic position. What is clear, however, is that it was crucial for women to be incorporated within networks of social support such as the family and the neighborhood. Statements of support from relatives and neighbors were crucial for a woman's chances of securing a favorable outcome in court. This concurs with the findings in criminal court records in Holland that show how female migrants were far more vulnerable than their local counterparts. Many of them must have lacked the support of social networks, and cities were not inclined to take the financial risk of providing for them and their illegitimate offspring. The socio-economic position of men, however, could be just as important. In Germany, for example, the importance of honor for guild members strengthened the negotiating position of women: if the man had something to lose by his illicit

behavior being made public, he was more likely to settle with the mother out of court and in secrecy.

Although the judicial systems in Holland and the German territories showed remarkable differences, in both regions even the very vulnerable women - those who became pregnant while unmarried—were able to use instruments of social control and the legal forums strategically. Sometimes women chose to make their pregnancy public to defend their own interests. Women put opponents under pressure by threatening them with a law suit without ever actually starting one. In Holland, declarations by midwives or notary acts could be employed as semi-judicial instruments to persuade fathers to reach informal agreements. Even in the German territories, where they could fear strict punishments, women used the criminal law to their own advantage, in some instances choosing to report themselves to the authorities.

Several historians have suggested that women were more inclined to settle conflicts informally or extrajudicially because of their - assumed - restricted legal status and their weak socio-economic position. Although more research is needed on the actual strategies of conflict settlement employed by women, we have shown that the disciplinary institutions that are often interpreted as being detrimental for women were the very same institutions that were taken up by women and used by them to their own advantage. When studying the uses of justice, it is important to realize that legal instruments could be employed in unexpected ways. This is exemplified by unmarried women who—finding themselves in the unfortunate position of being pregnant outside marriage—used the various legal and extrajudicial instruments for their own needs.

Endnotes

[1]An abridged version of this article has been published in Dutch in Holland Historisch Tijdschrift. Jeannette Kamp and Ariadne Schmidt, "*See you in court?* Recht en rechtsgebruik door ongehuwde moeders in Holland en Duitsland in de vroegmoderne tijd," Holland 3 (2015).

[2] Pieter Spierenburg, "Social Control and History: An Introduction" in *Social control in Europe, I 1500–1800*, eds. Herman Roodenburg and Pieter Spierenburg (Baltimore, 2004), 17.

[3] Martin Dinges, "The Uses of Justice as a Form of Social Control in Early Modern Europe" in *Social Control in Europe*, *I 1500–1800*, Roodenburg and Spierenburg, 160.

[4] Ibid., 167–168.

[5] Robert Shoemaker, *Prosecution and Punishment. Petty Crime and the Law in London and Rural Middlesex, c. 1660–1725* (Cambridge, 1991), 211, 215.

[6] Shoemaker, *Prosecution and Punishment*, 215–216.

[7] Dinges, "The Uses of Justice," 167.

[8] Ariadne Schmidt, "Vrouwen en het recht. De juridische status van vrouwen in Holland in de vroegmoderne tijd," *Jaarboek Centraal Bureau voor Genealogie* 58 (2004): 27–44. There are only few studies on early modern Germany that explicitly compare the legal status of German women to that of women in other European countries. An exception is Sheilagh Ogilvie, who explicitly contrasted the position of women in Württemberg to that of women in the Netherlands and to a lesser extent England: Sheilagh C. Ogilvie, *A Bitter Living. Women, Markets, and Social Capital in Early Modern Germany* (Oxford, 2003), 9, 328, 347. For a general overview of women's legal position in early modern Germany see: Elisabeth Koch, "Die Frau im Recht der Frühen Neuzeit. Juristische Lehren und Begründungen" in *Frauen in der Geschichte des Rechts*, ed. Ute Gerhard (München, 1997), 73–93.

[9] Manon van der Heijden, "Women, Violence and Urban Justice in Holland c. 1600–1838," *Crime, History & Societies* 17 (2013): 94–95.

[10] This was particularly the case for marriage conflicts, but also applies to cases of broken marriage vows and illegitimacy. See e.g.: Heinrich R. Schmidt, *Dorf und Religion. Reformierte Sittenzucht in Berner Landgemeinden der Frühen Neuzeit* (Stuttgart, 1995); Susanna Burghartz, *Zeiten der Reinheit, Orte der Unzucht. Ehe und Sexualität in Basel während der frühen Neuzeit* (Paderborn, 1999); Manon van der Heijden, "Punishment versus Reconciliation. Marriage Control in Sixteenth- and Seventeenth-century Holland" in *Social Control in Europe 1500–1800*, Roodenburg and Spierenburg, 55–77; Ariadne Schmidt, "Gelijk hebben, gelijk krijgen? Vrouwen en vertrouwen in het recht in Holland in de zeventiende en achttiende eeuw" in *Het gelijk van de Gouden Eeuw. Recht, onrecht en reputatie in de vroegmoderne Nederlanden*, eds. Michiel van Groesen, Judith Pollmann and Hans Cools (Hilversum, 2014), 109–125.

[11] Jan Kok*, Langs verboden wegen. De achtergronden van buitenechtelijke geboorten in Boord-Holland 1812–1914* (Hilversum, 1991), 138–139.

[12] In the Dutch cities of Amsterdam, Rotterdam, Delft and Leiden just 1 percent percent of baptized infants were registered as illegitimate during the seventeenth century and a large part of

the eighteenth century. Numbers grew rapidly from the 1780s but still remained far behind the figures in other European capitals. Frankfurt had also had an illegitimacy rate of 1 percent in the seventeenth century, a number that rose to 4–5 percent after 1725 and increased to 10 percent in the second half of the eighteenth century. In seventeenth century Schwäbisch Hall the number was even lower (0.5 percent), a number which rose to 5 percent after the first decades of the eighteenth century. For figures see: Kok, *Langs verboden wegen*, 135; Renate Dürr, *Mägde in der Stadt. Das Beispiel Schwäbisch Hall in der Frühen Neuzeit* (Frankfurt am Main, 1995), 220–230; Wilhelm Hanauer, "Historisch-statistische Untersuchungen über uneheliche Geburten," *Zeitschrift für Hygiene und Infektionskrankheiten* 108 (1928): 660–661. For developments into the 19th century see: Michael Mitterauer, *Ledige Mütter. Zur Geschichte unehelicher Geburten in Europa* (München, 1983), 23–30.

[13] Donald Haks, *Huwelijk en gezin in Holland in de 17de en 18de eeuw* (Utrecht, 1985), 70–104.

[14] Manon van der Heijden, *Huwelijk in Holland. Stedelijke rechtspraak en kerkelijke tucht* (Amsterdam, 1998), 125; Florence Koorn, "Illegitimiteit en eergevoel: ongehuwde moeders in Twente in de achttiende eeuw," *Jaarboek voor Vrouwengeschiedenis* 8 (1987): 92–94, 98; Haks, *Huwelijk en gezin*, 87.

[15] Ibid., 86; Van der Heijden, *Huwelijk in Holland*, 122.

[16] Haks, *Huwelijk en gezin*, 86.

[17] Herman Roodenburg, *Onder censuur: de kerkelijke tucht in de gereformeerde gemeente van Amsterdam, 1578- 1700* (Hilversum, 1990), 271.

[18] Digitaal Vrouwenlexicon van Nederland. "Hensbeek, Anna van." http://resources.huygens.knaw.nl/vrouwenlexicon/lemmata/data/Hensbeek [accessed 23/03/2017].

[19] Haks, *Huwelijk en gezin*, 57.

[20] Christi Boerdam, "Ongehuwd moederschap als sociaal verschijnsel. Casus: Rotterdam op het einde van de achttiende eeuw," *Tijdschrift voor Geschiedenis* 98 (1985): 165; Haks, *Huwelijk en gezin*, 87.

[21] Aries van Meeteren, *Op hoop van akkoord: Instrumenteel forumgebruik bij geschilbeslechting in Leiden in de zeventiende eeuw* (Hilversum, 2006), 382.

[22] Van Meeteren, *Op hoop van akkoord*, 203.

[23] Haks, *Huwelijk en gezin*, 89.

[24] Boerdam, "Ongehuwd moederschap," 165–167.

[25] Haks, *Huwelijk en gezin*, 98.

[26] Maartje Vermeulen, "Vrij onder voogdij. Rechtsgeleerden aan het woord over de rechtspositie van de vrouw in de Hollandse Consultatiën" (MA diss., Utrecht University, 2009), 24; Haks, *Huwelijk en gezin*, 90–93.

[27] Ibid., 93.

[28] Haks, *Huwelijk en gezin*, 88–91.

[29] Vermeulen, "Vrij onder voogdij," 14, 24–26.

[30] Haks, *Huwelijk en gezin*, 93–94.

[31] Boerdam, "Ongehuwd moederschap," 166.

[32] Haks, *Huwelijk en gezin*, 88.

[33] Boerdam "Ongehuwd moederschap," 166.

[34] Haks, *Huwelijk en gezin*, 91.

[35] Van Meeteren, *Op hoop van akkoord*, 384.

[36] Haks, *Huwelijk en gezin*, 98.

[37] Griet Vermeesch, "The Legal Agency of Single Mothers; Lawsuits over Illegitimate Children and the Uses of Legal Aid to the Poor in the Dutch Town of Leiden (1750–1810)," *Journal of Social History* 50 (2016): 51–73.

[38] Koorn, "Illegitimiteit," 96–97.

[39] Van Meeteren, *Op hoop van akkoord*; Van der Heijden, "Punishment versus Reconciliation," 55–77.

[40] Haks, *Huwelijk in Holland*, 97–98.

[41] Haks*, Huwelijk en gezin*, 71: Van der Heijden, *Huwelijk in Holland*, 216; Roodenburg, *Onder censuur*, 388.

[42] Van der Heijden, *Huwelijk in Holland*, 216.

[43] Roodenburg, *Onder censuur*, 255.

[44] Meeteren, *Op hoop van akkoord*, 141–142.

[45] Van der Heijden, *Huwelijk in Holland*, 205–207; Roodenburg, *Onder censuur*, 277.

[46] Van der Heijden, *Huwelijk in Holland*, 217, 251–253, 266, 271.

[47] Ibid., 216; Manon van der Heijden, *Misdadige vrouwen*, (Amsterdam, 2014), 82–83.

[48] Haks, *Huwelijk en gezin*, 70–104.

[49] Faber, "Seksualiteit en strafrechtspleging in de achttiende eeuw," *Documentatiewerkblad Achttiende eeuw* 65/66 (1985): 99, and note 40.

[50] Van der Heijden, *Huwelijk in Holland*, 124.

[51] This becomes clear from the datasets on criminal cases in Amsterdam (1620–1670) and Rotterdam (1750–1810) Stadsarchief Amsterdam (SA), 5061, nos. 572, 576, 579, 580, 581, 583, 587. Supplemented with cases registered in the Confessieboeken, SA, 5061, 298, 304, 308, 313, 319; Gemeente Archief Rotterdam (GAR), Oud Rechterlijk Archief (ORA), Criminele sententieboeken, nos. 255, 256, 257, 259, 261, 264; Criminele examenboeken nos. 155, 157, 158, 164, 172; Criminele besoigne- en examenboeken 196–198, 204–208, 231–234b, Quadeclap boeken nos 269, 270, 271, 272, 27, 282.

[52] SA, ORA 587, f.78, 29-4-1670.

[53] Van der Heijden, *Huwelijk in Holland*, 124.

[54] GAR, ORA 15–256, 15-8-1770 f.204–204v; 29-5-1770, f.200v–202; SA 5061, 579, f.61v, 18-8-1640; f.63, 18-8-1640; 581, f.62v–63, 10-11-1650; 583, f.191, 25-6-1660.

[55] Karl Härter, "The Early Modern Holy Roman Empire of the German Nation (1495–1806): A Multi-Layered Legal System," in *Law and Empire: Ideas, Practices, Actors,* eds. Jeroen Duindam, Jill Harries, Caroline Humfress and Nimrod Hurvitz (Leiden, 2013), 111–131; Isabel V. Hull, *Sexuality, State, and Civil Society in Germany, 1700–1815* (Ithaca, 1996), 58–61.

[56] Joachim Eibach, "Der Kampf um die Hosen und die Justiz – Ehekonflikte in Frankfurt im 18. Jahrhundert" in *Kriminalität im Mittelalter und früher Neuzeit. Soziale, rechtliche, philosophische und literarische Aspekte,* eds. Sylvia Kesper-Biermann and Diethelm Klippel (Wiesbaden, 2007), 176.

[57] Burghartz, *Zeiten der Reinheit*, 117.

[58] Hull, *Sexuality, State, and Civil Society*; Heinz Schilling, "Kirchenzucht und Sozialdisziplinierung im frühneuzeitlichen Europa," *Zeitschrift für historische Forschung* 16 (1994); Iris von Fleßenkämper, "Die Ordnung der Ehe. Zum Verhältnis von weltlicher und geistlicher Strafgewalt in der reformierten Grafschaft Lippe im 17. Jahrhundert," in *Kirche, Theologie und Politik im reformierten Protestantismus*, eds. Matthias Freudenberg and Georg Plasger (Wuppertal, 2011), 79–94.

[59] Burghartz, *Zeiten der Reinheit*, 276–284; Ulrike Gleixner, *"Das Mensch" und "der Kerl." Die Konstruktion von Geschlecht in Unzuchtsverfahren der Frühen Neuzeit (1700–1760)* (Frankfurt/New York, 1994); Stefan Breit, *"Leichtfertigkeit" und ländliche Gesellschaft; voreheliche Sexualität in der Frühen Neuzeit* (München, 1991); Karl Härter, *Policey und Strafjustiz in Kurmainz. Gesetzgebung, Normdurchsetzung, und Sozialkontrolle im frühneuzeitlichen Territorialstaat* (Frankfurt am Main, 2005), 820–929.

[60] Johann C. Beyerbach, *Sammlung der Verordnungen der Reichsstadt Frankfurt. Dritter Theil. Verordnungen, welche Sitten und Religion bezwecken* (Frankfurt am Main, 1798), 559–563. Original quote: *"*in Gegenwart zweijer unverwerflicher, unverläumbdeter Mannspersonen*."*

[61] Ibid.; Justinian von Adlerflycht, *Privatrecht der freien Stadt Frankfurt. In systematischer Ordnung vorgetragen* (Frankfurt, 1824) 23–24.

[62] Ibid.

[63] Gleixner, *"Das Mensch" und "der Kerl,"* 70. See also: Helga Schnabel-Schüle, *Überwachen und Strafen im Territorialstaat: Bedingungen und Auswirkungen des Systems strafrechtlicher Sanktionen im frühneuzeitlichen Württemberg* (Köln, 1997), 287–288.

[64] Breit, *"Leichtfertigkeit" und ländliche Gesellschaft,* 150.

[65] Härter, *Policey und Strafjustiz*, 863, 897; Gleixner, *"Das Mensch" und "der Kerl,"* 85.

[66] Burghartz, *Zeiten der Reinheit*, 279; Härter, *Policey und Strafjustiz*, 864; Gleixner, *"Das Mensch" und "der Kerl,"* 55.

[67] Härter, *Policey und Strafjustiz*, 900.

[68] Gleixner, *"Das Mensch" und "der Kerl,"* 59.

[69] Rebekka Habermas, "Frauen und Männer im Kampf um Leib, Ökonomie und Recht. Zur Beziehung der Geschlechter im Frankfurt der Frühen Neuzeit" in *Dynamik der Tradition*, ed. Richard van Dülmen (Frankfurt am Main, 1992), 124.

[70] Beyerbach, *Verordnungen III*, 571.

[71] Breit, *"Leichtfertigkeit" und ländliche Gesellschaft*, 149.

[72] Dürr, *Mägde in der Stadt*, 254–255; Michael Frank, *Dörfliche Gesellschaft und Kriminalität. Das Fallbeispiel Lippe. 1650–1800* (Paderborn, 1995), 326; Breit, *"Leichtfertigkeit" und ländliche Gesellschaft*, 150;

[73] Breit, *"Leichtfertigkeit" und ländliche Gesellschaft*, 150–160.

[74] See earlier in this paper.

[75] Breit, *"Leichtfertigkeit" und ländliche Gesellschaft*, 150–160.

[76] Frank, *Dörfliche Gesellschaft und Kriminalität*, 328; Gleixner, *"Das Mensch" und "der Kerl,"* 115–116.

[77] Breit, *"Leichtfertigkeit" und ländliche Gesellschaft*, 144.

[78] Institut für Stadtgeschichte (IfSG), Frankfurt am Main, *Criminalia* 6987 (1754).

[79] Ibid.

[80] Burghartz, *Zeiten der Reinheit,* 117.

[81] Härter, *Policey und Strafjustiz*, 840, 898–902.

[82] Ibid., 840.

[83] Ibid., 835–839.

[84] Breit, *"Leichtfertigkeit" und ländliche Gesellschaft*, 175; Härter, *Policey und Strafjustiz*, 895.

[85] Hull, *Sexuality, State, and Civil Society*, 58.

[86] Habermas, "Frauen und Männer," 113.

[87] Dürr, *Mägde in der Stadt*, 226; Härter, *Policey und Strafjustiz*, 837, 895.

[88] IfSG, *Criminalia* 6478 (1751).

[89] Habermas, "Frauen und Männer," 284, note 32; Eibach, "Der Kampf um die Hosen und die Justiz," 176.

[90] See f.e. IfSG, *Criminalia* 1904 (1692); 2401 (1704); 6398 (1750); 6632 (1752); 6760 (1753).

[91] Frank, *Dörfliche Gesellschaft und Kriminalität*, 331.

[92] Hanauer, "Historisch-statistische," 660. The number of cases brought before the consistory is higher than the number of baptisms of illegitimate children. This is caused by the fact that the consistory also dealt with cases in which the child was born outside of Frankfurt (and therefore is not counted in the baptismal records). Additionally, such cases could span over several years, which can create a small bias in the numbers.

[93] Gleixner, *"Das Mensch" und "der Kerl,"* 133.

[94] Breit, *"Leichtfertigkeit" und ländliche Gesellschaft*; Gleixner, *"Das Mensch" und "der Kerl."*

[95] Ibid., 133

[96] Hull, *Sexuality, State, and Civil Society*, 41–44;

[97] Maria R. Boes, "Dishonourable Youth, Guilds, and the Changed World View of Sex, Illegitimacy, and Women in Late Sixteenth-Century Germany," *Continuity and Change* 18 (2003): 345–372.

[98] Ogilvie, *Bitter living*; Merry E. Wiesner, *Working women in Renaissance Germany* (New Brunswick, 1986); Piet Lourens and Jan Lucassen, "Zunftlandschaften" in den Niederlanden und im benachbarten Deutschland" in *Zunftlandschaften in Deutschland und den Niederlanden im Vergleich*, ed. Wilfried Reininghaus (Münster, 2000), 11–43.

[99] IfSG, *Criminalia* 2395 (1703).

[100] Beyerbach, *Verordnungen III*, 563–564.

[101] Ibid.

[102] Johann C. Beyerbach, *Sammlung der Verordnungen der Reichsstadt Frankfurt. Zweyter Theil. Verordnungen, welche richtigen Gebrach und gehörige Verwaltung des Eigenthums zum Endzweck haben* (Frankfurt am Main, 1798), 313–315.

[103] Ibid.

[104] Gleixner, *"Das Mensch" und "der Kerl,"* 50.