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From Impropropriety to Betrayal: Policing Non-Marital Sex in the Early Modern Dutch Empire

Abstract

The policing of illicit sex formed a key mode of social control in early modern Europe, where reproduction in legally sanctioned marriage was the primary means through which property and status was passed. When Europeans formed overseas colonial settlements sustained by slave labor and populated by people of a broad variety of ethnic and religious backgrounds, this concern with sexually transgressive behavior took on new dimensions. This article takes the case of Dutch trade-company-led colonialism in the seventeenth and eighteenth centuries to examine how colonial visions of social order in Asia, Africa, and the Caribbean shaped authorities' responses to different types of non-marital sex. To facilitate comparison, these acts are read through narratives of criminalization, comprised of both conceptualizations of crime and prosecution practices. Through an analysis of legislation issued across the Dutch empire, most notably bylaws, combined with a selection of case studies from the juridical practice, we show that a concern with keeping different ethnic, religious, and status groups separate and maintaining European dominance shaped the policing of sexuality in such a way that the distinction between relatively benign sexual "improprieties" and a more serious criminal narrative of sexual "betrayal" was re-arranged along gendered and racialized lines. Conceptualizations and prosecutions alike show a considerably more stringent treatment of sex between non-Christian or non-white men and women of European status than between European men and enslaved or free local women, even when the latter scenario was coercive or violent.

Introduction

Having sex outside of marriage could be dangerous business in the early modern Dutch empire. This became all too clear to Tjieuw and Jerisina, a Chinese man and Malay Christian woman who in August 1748 confessed to having had intercourse in the former's home in the woods outside Malacca, then ruled by the Dutch East India Company, the VOC. Brought before the city's Council of

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Justice, Tjieuw faced the death penalty and Jerisina twenty-five years of forced labor.¹ In the Netherlands, it is unlikely the pair would have faced such serious charges, especially since Tjieuw claimed he had promised to marry Jerisina.² What, then, explains this extreme response from the Dutch authorities?

This article examines how VOC legislators and their West Indian colonial counterparts across the globe defined and prosecuted sexually transgressive behavior in cases such as Jerisina and Tjieuw's. In doing so, it explores how the various colonial contexts across the early modern Dutch empire shaped both legislation and prosecution. Criminalizing pre- and extramarital sex in its many forms was by no means an exclusively colonial project in the early modern period. As elsewhere in Europe, men and women in the Dutch Republic could face penalties ranging from fines or banishment to (public) flogging or even death if they crossed the boundaries of acceptable intercourse between legally married partners. Nevertheless, this mode of social control took on a new form when it was enacted in a colonial context by the VOC, or its western counterpart, the Dutch West India Company (WIC). Both trading companies had a stake in establishing themselves and their representatives at the top of the social hierarchy in the multi-ethnic colonies they oversaw. Relationships between men and women across ethnic and religious boundaries such as concubinage, various forms of "fornication," and adultery formed a highly charged social battleground in colonial social politics and therefore are useful tools of historical analysis.

We thus take Dutch-colonial judicial theory and practice as a window into the sexual politics that shaped the lived experience of people ruled by the trading companies. "Politics" here refers both to the explicit political concerns and economic goals that company elites pursued in adopting certain marriage policies and policing sexuality, and to power in the broader sense of social hierarchies differentiating people's experiences with the law. With regard to the first point, Dutch colonial legislators and jurors approached their task of presiding over populations' sexual behaviors not just as magistrates but also as employers and representatives of commercial organizations interested in extracting profit from the societies they governed. Perhaps the clearest example of this profit-oriented approach to human affairs was the ubiquitous presence of the institution of slavery throughout the Dutch empire, which Dutch law did not address due to slavery's theoretical absence in Dutch metropolitan society.³ Social historians of VOC Asia such as Jean Taylor and Deborah Hamer, moreover, have demonstrated that economic concerns such as keeping wage costs low and maintaining a loyal but mobile and flexible workforce also strongly informed company marriage policies.⁴ The fact that few white women migrated to the East Indies, for example, was not a coincidence or merely due to European women's unwillingness to make the long and arduous journey, but the result of a conscious policy decision to restrict European female migration after 1630.⁵ A similar argument has been made for Suriname by Rudolph van Lier, who in his classic work *Frontier Society* noted a decline in white Christian women after the financial crisis of 1773, when absentee ownership increased and on-site plantation managers were increasingly encouraged—if not required—to remain unmarried.⁶ In neither case were the male employees in question expected to be celibate, meaning that sexual contact of various levels of (il)legality with non-

European women—often coerced, as many of the women were enslaved—came to be implied in official colonial policies.

Simultaneously, within the patchwork of small Dutch-ruled societies along the Asian, African, and American coasts surrounded by rival powers, demographic factors raised constant questions of belonging, identity, and allegiance. While the Dutch Republic was home to significant Catholic and Jewish communities in addition to the dominant Dutch Reformed church and various other Protestant groups, this pluralism paled in comparison to the ethnic, linguistic, and religious diversity of sites such as Batavia, Cochin, or the Caribbean. As historians of VOC Asia such as Remco Raben and Ulbe Bosma have argued, a way Dutch administrators attempted to order this complex social world was through ethnic categorizations anchored in socially differentiated institutions.⁷ A key mode of enforcing the boundaries between these groups was to impose restrictions on inter-group sex and marriage.⁸ This effort was difficult in practice, especially with regard to the “European” group: because of the prevalence of inter-ethnic unions between European men and local women, many VOC and WIC settlements formed formally European communities in which European origin or parentage on both sides was not necessarily a defining factor.⁹

Religion provides another dimension to the political climate. Christianity had traditionally been a primary pillar for European self-identification, and this association continued in the colonial context.¹⁰ Christianity provided a useful marker of political, cultural, and sometimes military allegiance that tied select local populations to the company. This same process unfolded on a “micro level” with women who converted to Christianity to marry a company servant and thus moved from one social group to another.¹¹ Because of the role of the domestic sphere as a microcosm for larger social relations and the fluidity of female identity through marriage, sexual relationships inside and outside of marriage became strongly intertwined with questions of ethnic belonging and social status, with particular attention to the sexual fidelity of women.

This ties in to the second aspect of sexual politics, in the sense of categories of power and social difference (gender, race, religion, and social class, most prominently) informing how the sexual behavior of different people was policed in divergent ways. Historians of the Dutch Republic have established the importance of class and gender in explaining discrepancies in prosecution rates and outcomes for sexual offenses, with social class shaping what juridical options plaintiffs and defendants were aware of and had access to, as well as how their behavior was perceived by magistrates.¹² Gender—perhaps unsurprisingly—was a particularly decisive factor in the prosecution of “moral” (i.e., sexual) offenses. Allusions to a sexual “double standard” prevail in the literature, from prostitutes being prosecuted while their male clients walked free, to poor women facing disproportionate legal challenges when taking well-to-do men to court for rape or “defloration,” to Dutch law punishing adulterous women more harshly than men.¹³ Willemijn Ruberg’s study of adultery in the Dutch town of Haarlem, however, has shown that in contrast to the stark double standard in adultery *legislation*, prosecution *practices* were more historically variable, and particularly in the eighteenth century showed a less defined double standard between the judicial treatment of adulterous men and women than the letter of the law would suggest.¹⁴

To analyze legislation and prosecution practices in Dutch overseas settlements, the axes of gender and social class alone are not enough. Ethnicity, color, and slavery formed such decisive factors in the social hierarchies of these places that only intersectional analysis incorporating these categories can do justice to the complexity of colonial sexual politics. In anglophone scholarship, a rich body of literature exists that tackles these intersections, particularly for the English Caribbean and North America, focusing on themes such as the key connection between enslaved women's labor and their reproductive capacities, racialized femininities and masculinities, and the role of race and enslavement in sexual coercion and conceptualizations of rape.¹⁵ For the "Dutch" world, this literature is considerably more limited. Although there are several scholars who have done important work on gender and ethnicity in VOC Asia, research focusing explicitly on the dynamics of sex, power, race, and slavery is rare, especially for the Atlantic context.¹⁶ For the East Indies context, moreover, prior research on inter-ethnic sexuality has focused almost exclusively on relationships between European (and to a limited sense Chinese) men and Southeast Asian women, contributing to the perception of early Dutch colonialism in Asia as relatively "open" with regard to ethnic mixing compared to other contemporaneous colonial contexts (such as the Americas) and to the post-VOC Dutch East Indies.¹⁷ Much less attention has been given to what happened when women associated with the European group (whether through birth or marriage) had sex with Asian men, which poses the risk of overlooking the gendered power relations that this openness belied.

With this contribution we aim to fill these gaps, not only connecting the bodies of literature on Dutch early modern law and on colonial sexual politics, but also challenging the artificial divide between the Indian and Atlantic oceans as regions of analysis.¹⁸ We do this by analyzing legislation and judicial case studies from a small selection of settlements on both sides of the globe: Batavia, Cochin, and Ceylon in VOC territory, and Elmina (West Africa), Curaçao, Suriname, and Berbice (Guyana) in the WIC zone of operation. Taking adultery as a key mode of adult heterosexual behavior that was criminalized particularly severely in the Dutch early modern legal world, and contrasting it to other forms of unsanctioned sexual relations that generally met with milder legal responses (pre-marital sex and cohabitation, in some contexts called "concubinage," and other forms of "fornication"), we investigate how these categories of crime travelled where people of different ethnic and religious backgrounds formed consensual and coercive sexual relationships. How did European judges, governors, and councilors respond to the relationships people formed under their watch—and why? How did actors' positions in the social fabric (based on religious affiliation, gender, skin color, socio-economic status, and/or geographic origin) affect this reaction?

Key in this analysis is the understanding that categories of crime are both socially constructed and flexible: depending on the status of the parties involved and the priorities of the prosecutors, the same sexual act might be labeled a case of adultery (if marital fidelity and/or the interest of the aggrieved spouse were the priority), rape (if the sex was against the woman's will and she was in the position to press charges), fornication, or not be labeled at all because it was not registered. Whenever possible, we use the original term found in the source or a direct translation: *overspel* (adultery), *hoererij* or *boeleren* (fornication),

concubinagie or *concubinaat* (concubinage or pre-marital cohabitation), *vleesche-lijke conversatie* (carnal conversation or intercourse), and *bijzit* (unmarried female sexual partner) are frequently used terms.

In order to make comparisons across time and space and understand the policing of sexual transgressions through the lens of colonial sexual politics, we adopt the concept of “narratives of crime” comprised of two distinct but interconnected factors of authorities’ responses to specific sexual relations: the language used to describe the crime (including the categorizations outlined above) and the severity of prescribed and applied punishment. Both indicate how seriously authorities took specific sexual transgressions as a threat to the social order, colonial project, or privileged parties, while the first also offers clues regarding the logic on which the criminalization of the act was based. This allows us to show what was at stake for colonial authorities when they responded to sexual relations between people of different backgrounds and helps explain discrepancies and divergencies in prosecution practices. We identify two significant narratives at play in the policing of inter-group sexuality. The first of the two, which we might call the “narrative of impropriety,” and which covers most forms of heterosexual deviancy, criminalizes sexual relationships that posed practical problems for authorities (e.g., social unrest, or fatherless children dependent on public assistance) on the grounds of their unsanctioned nature and their violation of early modern Christian norms of chastity. In the second and more serious narrative, the criminalization was grounded in the notion of betrayal rather than mere impropriety. Crimes in this “narrative of betrayal” did not just break commonly held social norms, but the very relationships through which society was structured. In the Dutch legal and theological context, adultery is the prime example of this crime: to cheat on one’s spouse was not just to form an unsanctioned relationship, but to break a sacred bond, that of marriage, in the process.¹⁹ Since the two narratives involve two levels of relative seriousness, we can expect transgressions in the “impropriety narrative” to be met with milder punishments (a warning, a fine, or a short period of banishment) and harsher penalties (longer banishments, corporeal punishments, and death) to accompany the “betrayal narrative.”

Our central argument is as follows: while a gendered double standard existed to a varying degree in the Dutch Republic, in which the sexual transgressions (and in particular marital infidelity) of women were policed more strictly than those of (wealthy) men, the political goals and concerns of the Dutch trading companies and colonial elites led to a widening of this double standard along ethnic and racial lines. Gender and group identity (based on race, enslavement, religion, and class), not marital status, became the deciding factors in how sexual transgressions were defined and prosecuted, with relations between European-identified women and non-European men being prosecuted in the highly politically charged “narrative of betrayal” while those between European men (married or not) and non-European women being either tacitly sanctioned, ignored, or meeting a response in the “narrative of impropriety.”

Although we do not discuss any rape prosecutions in this study, non-consensual sex looms large over many of the sexual encounters discussed. The crime of rape poses particular historiographical challenges, because while early modern understandings of adultery (metaphorical use notwithstanding) roughly correspond to contemporary definitions, modern notions of rape differ

considerably from early modern conceptualizations, to the point that instances that were clearly cases of rape or sexual assault to modern readers would not have been labeled as such in the seventeenth or eighteenth century. Marital rape, for example, was not recognized as rape, nor was non-consensual sex when forms of coercion other than direct violence were used. In judicial treatises, the crime of rape was often discussed alongside other “moral” offenses such as adultery and pre-marital sex, because it shared some of the grounds for criminalization—loss of honor for the parties involved, and a breaking of moral norms of chastity—with the use of force as a distinguishing and aggravating factor.²⁰ Because of this overlap, and because it was often extremely difficult for women to prove they had not consented, it was not unusual for rape cases to be prosecuted as adultery or fornication instead, which could result in prosecution of the victim.²¹ In colonial settings, such effacement of rape was even more pronounced, because the law denied the very possibility of rape for an entire category of victims: enslaved men and women.²² This formed an integral part of the sexual politics that delegated certain sexual acts as more reprehensible than others, depending more on the involved parties’ position in the social hierarchy than on the factor of consent.

In this article, we combine two main bodies of sources in order to take into account both theory and practice: locally issued legislations (*plakaten*) and case files from colonial criminal court records. Legislative sources are often dismissed as theoretical, disconnected from practice and exclusively showing top-down mechanisms of governance. However, because *plakaten* tended to focus on a single issue and were published continuously in response to whatever local governors and councils considered pressing, they reflect local authorities’ specific concerns and indirectly form an imprint of daily reality. We thus treat legislation not as a static entity imported from Europe but as a highly local product of interaction between people’s daily practice and colonial interests. Therefore, even if these laws were not always enforced, they testify to the attempt of colonial authorities to police the sexual relations of the population under their control in a wide variety of contexts. Criminal court cases, the second body of sources we draw from, have been selected from an inventory of Dutch colonial criminal courts.²³ Criminal court records also have their shortcomings as only a minority of crimes made it to these courts. However, close qualitative analysis provides clues about the language and the logic behind the prosecution of sexual transgressions. An important point is that only cases labeled as adultery by colonial authorities are found in the criminal court records. Crimes associated with the narrative “impropriety” such as concubinage are virtually absent, probably because they were treated as minor offenses that would not make it to a full session in court, were settled outside courts, or were not prosecuted at all.

We start by examining legislation on non-marital sexual relations between men and women that was issued in the Dutch Republic, followed by a discussion of the specific institutional context of the colonies within VOC and WIC charter territory. We then show how Dutch legislation was selectively applied and expanded on in these contexts, by examining legislation issued in response to local concerns, along with a select number of case studies from the legal practice, from VOC Asia, the Caribbean, and the Gold Coast in West Africa.

Dutch Law and its Colonial Transformations

By and large the most influential Dutch legal document regulating marriage was the Political Ordinance of Holland.²⁴ It was one of the handful of legal texts accompanying Jan Pieterszoon Coen's instructions when he set out to found a Dutch headquarters in the Indies in 1621.²⁵ The 1580 Political Ordinance was a direct result of the newly independent Dutch Republic's embrace of the Reformation, under which jurisdiction over marital affairs moved from the Catholic Church to the worldly authorities.²⁶ The text affirmed the prohibitions against adultery, bigamy, and concubinage that had been issued in an ordinance under Philip II in 1570.²⁷ In addition, it stipulated mandatory procedures for formalizing marriage, specific degrees of punishable incest, and finally, penalties for various forms of adultery. In any case of adultery, regardless of which party was married, the man was to be declared dishonorable and stripped of any public office or privileged civic status he might have. For other punishments, there was a hierarchy of severity according to the gender and marital state of the adulterous partners. The most serious form of adultery, in which both partners were married, warranted a fifty-year banishment for both. Below this was adultery between a married woman and an unmarried man; the woman in question was to be banished for fifty years, but the man only if he was a repeat offender (for a single infraction the punishment was two weeks of imprisonment and a fine of one hundred guilders). If only the male partner was married, both parties could get off with two weeks imprisonment (plus a fine for the man) and both faced banishment upon a second offense.²⁸

Another legal document used by Dutch prosecutors was the *Echtreglement* (Marriage Regulations), issued for the *Generaliteitslanden*, the unrepresented territories in the Dutch Republic directly ruled by the States General.²⁹ The regulations essentially comprise the rules that the Dutch Reformed Church, for whom the Political Ordinance and other provincial legislations were not extensive enough, wished to see applied in the entire Dutch Republic.³⁰ This text more explicitly set punishments for other forms of illicit sex beyond incest and adultery, including concubinage: it defined fornication (*hoererei*) as any sex between unmarried partners and concubinage (*concubinarij*) as unmarried partners living like husband and wife. Everyone found guilty of either offense, regardless of whether they also had children or what their living arrangements were, had to pay a fine of one hundred guilders and either get married or swear to never "converse" again. Failure to do so could result being punished as "public fornicators" which could result in a ten-year banishment.³¹ The *Echtreglement* also set punishments for other sexual crimes such as prostitution, rape, kidnapping, and seduction, and for aiding and abetting such crimes, and it banned marriages between Christians and Jews or other non-baptized individuals.³² Because the regulations were more extensive than the provincial ordinances, they came to be regularly applied in Holland and Zeeland as well, and as such, also influenced legal practice in the WIC and VOC, both of which were directed from these provinces.³³

In the overseas context, the Dutch government delegated the administration of justice to chartered companies. Territories situated east of the Cape of Good Hope were under the authority of the VOC and those situated in the Atlantic Ocean, with the exception of Suriname and Berbice, were

administered by the WIC.³⁴ All Dutch colonies were formally under the sovereignty of the States General and were expected to comply with Dutch laws.³⁵ The foundation of legislation in the Dutch early modern empire was laid by the charter of the VOC, dating from 1602, and later, the Batavia Statutes book (1642, updated in 1766), for the settlements situated in the Indian Ocean.³⁶ The justice system in the Atlantic settlements was based on the 1629 Order of the Government and Justice.³⁷ Further complementing this base, instructions and commissions were given to the head of governments overseas by the directors of the companies back in the Republic. In overseas courts, judges followed Roman Dutch law, in particular, ordinances of the province of Holland.³⁸ However, for matters specific to the overseas context such as slavery, concubinage, or sexual relations across ethnic, religious, or free/unfree boundaries, legal administrators relied on *plakaten* issued by the governing councils in the colonies and on Roman law.³⁹ Generally speaking, local directors were granted a considerable amount of discretionary power in issuing local legislation as circumstances required. As local legal traditions and bodies of bylaws and ordinances grew, Dutch legal texts took on a more ancillary role, to be consulted when colonial legislation was insufficient.⁴⁰

What implications did this convergence of legal sources have for the legislation of non-marital sex? In the Dutch metropolitan context, legal sources make clear that adultery and fornication were both considered illegal and immoral, although there was a marked difference in perceived severity between the two: fornication, or “improper” relationships between unmarried partners, could result in a fine, the obligation to get married and, in case of persistent disregard for the law, a banishment of maximum ten years. Adultery, however, especially if it involved a married woman, was a much more serious crime. In the various colonial contexts, in which ideas about proper relations between individuals intersected with ideas about proper relations between social groups, as we will see, this disparity in seriousness became more pronounced and developed along gendered and (quasi-) racialized lines.

Before diving into Dutch overseas settlements’ specific legislations regarding *unsanctioned* relationships, it is useful to understand what constituted *sanctioned* relationships in these multi-ethnic and multi-religious settings. The ban on inter-faith marriages which was already present in the Dutch Republic, where it mostly pertained to Christians marrying Jews, became of greater consequence in both the East and West Indian context where Christians tended to be the minority. European company servants who wished to marry a local woman could only do so if the bride had converted to Christianity.⁴¹ Under the VOC, additional requirements were securing permission from the company, and that the bride-to-be spoke Dutch.⁴² Restrictions on marriage can be seen as a mode of communal gate-keeping: because married women took on the (ethnic) status of their husbands, ensuring only those with religious and linguistic markers of allegiance to the European group could marry into it served as a means of keeping this group exclusive and loyal to the company, at least in theory.

Religion and language were not the only markers of belonging, however: in the Caribbean in particular, race came to play an important role as well. Although significant groups of Christian free people of color emerged in places like Curaçao, integration of these groups with European co-religionists through marriage was met with resistance from white colonists. In 1753 white Curaçao

citizens successfully pushed for the adoption of the *Echtreglement* as the guiding source on marital law instead of the Political Ordinance. The *Echtreglement* was a means of controlling interracial marriage because it gave the prospective couple's relatives greater power in approving or blocking a marriage-to-be.⁴³ Another telling case is that of Elisabeth Samson, a wealthy free-born black woman in Suriname who wished to marry a white man, but had to turn to the States General to gain permission. Although marriages between white men and mixed-race women had become fairly common practice by the mid-eighteenth century, the governor and council of Suriname considered Samson's request to marry a step too far. In their minds it would have undermined notions of white superiority among slaves, who would have believed "they just have to be free, to be able to join in formal marriage with us, so that their children are on par and equal to us," something colonists considered a dangerous idea. The fact that Samson was considerably older than her prospective groom and much wealthier posed a curious conundrum for the council, who were quite explicit about their interests: although the marriage would be financially advantageous for the white community, who would now become more likely to inherit Samson's wealth after her death, as opposed to her predominantly black and mixed-race relatives, the pairing would also be humiliating for the groom and by extension whites in general.⁴⁴ The reverse scenario, in which a black man married a white woman, was even more unheard of.

The ban on inter-ethnic and specifically inter-religious marriages offers a first clue as to why the affair of the Chinese Tjieuw and the Christian-Malay Jerisina was considered such a serious offense: although Tjieuw claimed he had offered to marry Jerisina, as a non-Christian he could not uphold that promise, and thus the case was one of fornication (*boeleren*) and not sexual relations between fiancés that could be remedied by marriage. Even considering this, however, the recommended punishment of the death penalty suggests that the combination of the unsanctioned and inter-ethnic nature of the relationship made it a particularly grievous offense in the eyes of the Dutch prosecutor. How did this understanding of the crime come to be?

Legislating Inter-Ethnic Sex

One of the earliest ordinances criminalizing sex between regulated social groups was one issued in Batavia in 1622 under Governor-General Jan Pieterszoon Coen, and it mentions both adultery and the keeping of a "concubine or *bijzit*." The punishment for adultery (*overspel*), here, was considerably harsher than in the Republic: regardless of gender or which party was married, both adulterers were to be punished "with the sword, that death may follow, and with confiscation of all goods."⁴⁵ Concubinage could be punished with a fine, but if it happened between a Christian and a "Moor or Heathen" there could also be physical punishment and the "unchristian instigator" would be put to death. The placard is unique not just for its harshness, but because it offers lengthy motivation for its issuance: any decent government, but especially any Christian magistrate, it argued, ought to take extraordinary care to preserve the sanctity of the conjugal bond, and this sanctity was apparently under threat:

"[We are] noticing that on a daily basis many scandalous dissolutions besmirching the Christian name occur in vile meetings, hateful concubinages, and God-aggravating adultery, not only between Christians and Christians, Moors with Moors or Heathens with Heathens, but without any regard for person, religion or sect, shamefully among Christians, Moors, and Heathens, as if they were legal and permitted marriages."

The placard stressed that urgent intervention was needed "for the sake of everyone's soul and salvation."⁴⁶ Coen was well-known for his puritan Calvinist convictions, even by the standards of his own time, which might explain the severe fervor of these regulations: he infamously had the twelve-year-old daughter of a colleague under his care publicly flogged for engaging in premarital sex with the adolescent son of a VOC merchant and his Arakanese mistress—the boy was beheaded.⁴⁷ Indeed, no Batavian legislation that was to follow Coen's regime was quite so harsh on adulterers and fornicators, nor so explicitly religiously framed.

Nonetheless, the policing of inter-ethnic sexual infractions would become a recurrent theme across the Dutch empire. Here we observe a marked divergence between the narrative of "impropriety" and that of "betrayal" and the types of pairings associated with the two. Because of the rarity of single European women compared to male VOC and WIC employees and indigenous or enslaved women, crimes in the narrative of impropriety became conflated with relationships between European men (whether they were married or not) and non-European women. Discussions and prosecutions of adultery as a crime of betrayal, on the other hand, almost always came to involve the sexual transgressions of a woman belonging to the European community, even when that woman was not married and did therefore not technically commit adultery. The distinction between the two narratives of crime, therefore, came to rely less heavily on the marital status of the partners involved and more so on their position in the social fabric. With this shift, the divide between improper conduct and the more serious crime of betrayal became not only more pronounced but also took on more strongly gendered and racialized dimensions. Put differently: in the colonial context, sex between European men and local women largely became a managerial problem—a form of impropriety to be regulated—whereas the non-marital sex of women categorized as European posed a *political* problem expressed in terms of betrayal and the serious crime of adultery.

Batavia

In Batavia, after the harsh precedent initially set by Coen, later regulations concerning adultery returned to a standard comparable to that specified in the Political Ordinance of Holland, although with a stronger gender bias. Indeed, in the Batavia Statutes (1742, updated in 1766), a married man who "defiled or slept with" (*geschent ofte beslaepen hebben*) a single or widowed woman would not be banished but face a fine and a month "on water and rice" and, if he was a company servant, stripped of his position. The woman in question would be banished to the women's workhouse (*vrouwetuchthuys*), but for one year instead of the fifty years women could face in Holland for this offense. In the case of a married woman breaking her vows, however, the laws were much stricter: both

parties would face a fine and banishment with forced labor for fifty years—the man as a chain laborer and the woman in the women’s workhouse.⁴⁸ The description in the Batavia Statutes of the workhouse’s function offers a clue as to why women’s transgressions in particular were so heavily penalized: it was built after several women had been found to live such “scandalous, vile, and unfettered lives” that they not only threatened to corrupt the youth and bring about God’s wrath, but also denigrated the Christian name among the “Heathens and Moors.”⁴⁹ An affront to a Dutch woman’s sexual virtue was thus an affront to the entire community, as also becomes clear in the extreme discrepancy between legislative responses to Dutch men’s extramarital affairs and those involving Christian women and Asian men: “any Heathen, Moor, or other non-Christian person, having intercourse with a Christian woman, married or unmarried, will be punished by death without mercy.”⁵⁰ In addition to the marital status and gender of the offender, religion or ethnicity thus formed a second category to factor in the severity of the punishments for sexual offenses in VOC Asia. Free or unfree status was a third. An enslaved man who committed “dishonor” with a woman or girl who had never been enslaved herself was to be sentenced to chain labor for life. If the woman was Dutch or his master’s wife or daughter, however, he would be hung.⁵¹

The Batavia Statutes applied in all of VOC Asia, and the case of the Chinese Tjieuw and the Malay Christian woman Jerisina in Malacca indicates that this application was not merely theoretical: although Tjieuw was spared the death penalty that the prosecutor had recommended, both he and Jerisina were sentenced to twenty-five years of forced labor without pay.⁵² Curiously, although neither Jerisina nor Tjieuw was married, the court records describe the relationship as “adulterous” (*overspelig*). This, combined with a severity of punishment that in Europe would match adultery rather than premarital sex, suggests that in the minds of the Dutch councilors, a relationship between a woman whom they counted, through her religion, as belonging to their community, and an outsider, was analogous to marital infidelity. Although relationships between Christian single women and non-Christian men did not fall under the *technical* definition of adultery (an extra-marital relationship in which at least one partner is married, thus breaking a marriage vow), they did come to be included—rhetorically and practically—in the narrative of “adulterous” betrayal, which hinged on a breaking of exclusivity and belonging. The reverse was true for European men whose sexual misconduct, even when technically adulterous, was rarely prosecuted as adultery and instead met a legislative and judicial response in the impropriety narrative, which treated it as disorderly behavior to be punished with fines or other mild corrective measures. In the Batavia Statutes, the concept of “concubinage” is used exclusively for sexual offenses of Christian men while for non-Christian or enslaved men the legislation uses terms such as “*boeleeren*” or “commit dishonor.” These offenses were also met with a higher penalty (death by hanging) than for the offense of “concubinage” (a fine).⁵³

Both in terminology and in severity of punishment, therefore, we see a re-arrangement of the narratives of betrayal and impropriety along the lines of ethnicity, gender, and social status. This can in part be explained by patterns in people’s everyday behaviors and the degree to which these, in practice, could be controlled. A ban on concubinage had already been declared in 1622 under Coen and was regularly re-issued in Batavia. Indeed, the legislation against

keeping a “concubine” was promulgated again in the early 1680s, for the fourth time in sixty years.⁵⁴ Company servants, it seems, continued to keep concubines in large numbers despite the threat of fines. However, this repeated issuing of legislation appears to decrease in the eighteenth century. From then onward, the strategy of legislators was to regulate rather than outright forbid VOC employees from having non-marital sex. Regulations enabled VOC men to legitimize children born outside of marriage by paying a percentage of their wealth to the company.⁵⁵ In a particularly flagrant example, a VOC administrator in Java filed a request for the legitimization of his ten children, all born outside of marriage with different Malay women, that was accepted against payment of 10 percent of his wealth.⁵⁶ Although this privilege had to be granted by the high government and only was accessible to the minority of high VOC officials who could afford it, it demonstrates a certain adaptation of the legislation to the reality of the phenomenon: administrators created paths toward increased tolerance of the extra-marital sex that was already taking place on a large scale. Another such path was the alimony that was asked of European fathers to provide for their (illegitimate) children if they returned to Europe, thereby acknowledging the existence of these relationships.⁵⁷ Although “concubinage” was never formally accepted in legislation, VOC legislators seem to have eventually treated it as a fact of life that was to be regulated as a managerial problem, in stark contrast to the more serious criminalization of the sexual exploits of European-identified women.

Dutch East Indian juridical practice demonstrates the discrepancy between male-centered “concubinage” and the sexual exploitation of enslaved women, treated as an impropriety to be regulated, on the one hand, and female-centered adultery and other forms of sexual “betrayal” on the other. Although adultery as a prosecuted crime is relatively rare in the Batavian court records considering its prominent position in written criminal law, concubinage is almost completely absent. Out of the 1617 criminal court cases indexed from the Batavia Council of Justice archive for the years 1637–1790, only thirteen deal with adultery, and all but one involve a married woman as one of the adulterous partners.⁵⁸

A case from 1762, however, shows that Dutch men did not have entirely free reign when it came to extra-marital sex, even if their punishment was considerably milder than that of adulterous women. The dispute came to the court’s attention when bookkeeper Johannes Hoffman’s wife, Elisabeth Slood, wished to divorce her husband on the grounds of physical abuse and his “disorderly” behavior. She pressed the case with the court commissioners in charge of marital disputes, claiming her husband not only beat her, but also regularly had “very familiar conversations” with a certain “dishonest woman” who turned out to be a neighbor’s former *bijzit* named Leentje, now reportedly living with Hoffman. The VOC’s prosecutor questioned him, asking whether it was true he was living in “overt concubinage” with Leentje. Hoffman confirmed this, with the explanation that she was his “housekeeper.” He was subsequently sentenced to once month of solitary confinement, given a fine of one hundred reals, and was fired from his position on charges of adultery—hardly a slap on the wrist.⁵⁹

The case reveals the conceptual overlap, for European men’s extramarital affairs, between “concubinage” and “adultery”—a word that was only used in the final criminal charges brought against Hoffman. It also suggests that only under exceptional conditions did such cases come to a criminal prosecution.

Elisabeth Sloom, who was able to take up residence with her uncle, the Dutchman Jan Hendrik Sloom, could count on a number of free Christians in the community to back up her claims. She claimed to not be financially dependent on her husband, meaning that unlike many less well-connected and poorer Batavian women, she was relatively well-positioned to take her husband's behavior to the authorities. Hoffman was punished exactly as the Batavia Statutes prescribed, but there is no evidence that Leentje was prosecuted.⁶⁰ For the married women prosecuted for adultery, the courts largely seem to have followed the Statutes quite faithfully, sentencing the female offender to fifty years of banishment in the women's workhouse if enough evidence of adultery could be found.⁶¹ Their male lovers—at least those who had not managed to escape being caught—were punished according to status and station. In the majority of cases, the male adulterous partner was a VOC employee, a reflection of Batavia's dual court system in which non-VOC defendants would appear before the *Schepenenbank* (Bench of Aldermen).⁶²

A notable exception is the 1738 case of Anna Maria Keppelaer and Alexander van Boegis, which fell under the Council of Justice's jurisdiction because Anna Maria was married to a company servant.⁶³ Anna Maria and Alexander were brought before court after the former's husband had taken them to the council's prosecutor, *Fiscaal* Adrianus Bergsma. Bergsma's statement reflects the complex legal politics of East Indies society. Although he acknowledged that the Statutes of Batavia prescribed a fifty-year banishment for adultery, he argued that such prescriptions "appear to only apply to adulterers of the same state, condition, and birth" and that the current circumstances called for a heavier punishment.⁶⁴ Anna Maria had brought utter shame and humiliation on both herself and her husband by engaging in adultery with "a vile slave" and therefore deserved to be flogged and branded in addition to her banishment. What made the crime particularly egregious for Bergsma was the wedded couple's ethnic status: Anna Maria should be considered Dutch because her father had been a Dutchman (she was the illegitimate daughter of a gunpowder maker and a woman he held in slavery) but, more importantly, her husband was a Dutchman and deeply aggrieved by this insult. Bergsma also compared the case to a prior one involving a Susanna Dolmaker who had been sentenced to a lashing and fifteen years in the workhouse for "fornication" with an enslaved man. Although she had been a widow at the time and a "mestiza born in Amboina," her lover Paris of Makassar had nonetheless been sentenced to death.⁶⁵ Bergsma recommended the judges condemned Alexander to the same, in accordance with Article 7 of the Statutes as well as with Roman law.⁶⁶ Curiously, the statement of claim pays little attention to another lover Anna Maria confessed to have had, a Dutch colleague of her husband named Jan Jurgens. Company personnel records indicate that this Jurgens had repatriated a year before the trial took place, so we do not get to see what his recommended punishment would have been.⁶⁷ Another case from the mid-eighteenth century, this time from Cochin (present-day Kochi), however, does allow such a comparison.

Cochin was the administrative center of the VOC on the Malabar coast in the South of India. The company shared its territory with the Raja of Cochin and claimed jurisdiction over not only the population living in the fort (mainly company servants and their dependents), but also over all Christians in the area.⁶⁸ Sixteen-year-old Cochin-born Adriana van der Hulst belonged to the

former group since she had married the VOC sergeant and trumpeter Johan Lodewijk Stolsenberg and moved to the fort. She faced adultery charges in October 1749 after she confessed to her husband that she had regularly shared her bed with three young men: the mestizo soldier Jan Lameer and the enslaved youths Jason and Jupiter. Most relevant for present purposes is the legal distinction made between Lameer and the two enslaved boys. Whereas the soldier is repeatedly referred to as “arrested,” meaning he was not jailed but obliged to present himself at court, the other two were held in the fort’s prison (where Jason would die of complications of scurvy before the trial), where prosecutor Nicolaas Bowijn demanded they be tortured.⁶⁹ The most striking difference, however, is the recommended punishment: Jupiter, the surviving enslaved youth, was to be hanged; Jan Lameer to be stripped of his military office and put on “water and bread” for fourteen days; and Adriana was to lose her rights and privileges as a company wife, be led out of the city while wearing a sign reading “adulteress,” and banished for fifty years. Bowijn based this recommendation on a bifurcation in legal sources: for Jan and Adriana he applied the Political Ordinances of Holland and Zeeland, while for Jupiter and Jason he cited the Statutes of Batavia (“rightfully the legal code of India”).⁷⁰ Although the court did not consider the evidence sufficient to convict any of the defendants, the divergent treatment of the men suggests that adultery with an enslaved man was considered a far greater affront to both a woman’s husband and the Dutch community than the same act with a company servant.

Ceylon

Around the same period that the first Batavia Statutes were issued, the administration in Ceylon (Sri Lanka) started publishing legislation of its own. As of 1641 the garrison in Galle was formally forbidden to live with local women and in 1658, general *concubinage* was prohibited in Colombo.⁷¹ According to the first *plakaat* such a ban was necessary because “most of them [members of the garrison] be they officers, soldiers or sailors or other, are living in overt whoredom and concubinage, publicly and shamelessly living with each other as if they were legally married.”⁷² The punishment was left to the judge’s discretion, but the legislators seem to have had some understanding of their employees’ inclinations: “to meet those who do not possess the gift of abstinence in their weakness, anyone who requests such will be allowed to enter into matrimony with one of the native women.”⁷³ These women marrying into VOC circles would become targets of great company suspicion, however. A 1659 *plakaat* proclaimed a strenuous warning: “whenever a native [*inlandse*] mestiza or black woman who is married to a Dutchman should commit infidelity and thus come to break the dignity of her marriage and the respect of the nation through adultery, [and] have intercourse with a native man, slave or any other black and her equal, that same woman should be . . . punished with death.”⁷⁴ In contrast, Dutch men committing adultery with a local woman would be flogged. The language of the ordinance is revealing: although these “native” wives were formally part of the Dutch community and thus responsible for that community’s dignity and moral standards, their loyalty was in question as their identity as “mestizas and blacks” continued to link them to the men who were supposed to be both removed from and subordinate to the European group the women married into.

The ordinance was issued after several VOC officers had complained of their wives' affairs with local men. One young woman, married to the Dutch lieutenant Jacobsen, had formed a relationship with a man who, like her, was Ceylonese, and faced severe consequences. She was publicly flogged and shamed, but the council was so outraged by her association with a man whom it considered "a vile black," that it decided a more potent deterrent was needed. The council's reasoning for going to the extreme of the death penalty was as follows: first, since the company intended to build a colony on Ceylon with local women, the sin of adultery needed to be stamped out to ensure "an honorable reproduction of our own nation."⁷⁵ Second, the company relied heavily on its officers stationed there, and the latter needed to be reassured that the honor of their marital state would be protected.⁷⁶ There are other indications that Dutch authorities did not fully trust the allegiance of Christianized South Asian brides. A 1666 instruction for deacons and those in charge of the orphanage in Colombo specifies that children of Dutch fathers and native mothers whose fathers had died were to be placed under special diaconal supervision to ensure they were still educated in the Christian religion, because otherwise the majority would, "because of the weakness and fragility of the mothers' faith in Christ," fall back into "heathendom" or at the very least into "papal superstitions."⁷⁷

The Caribbean

Legislation across the globe in the Caribbean formed remarkably similar patterns to VOC Asia. Like in early Batavia, one of the first criminal ordinances issued in Suriname after the Dutch takeover from the British is exceptionally strict: married adulterers would be put to death, and the unmarried partner "heavily and rigorously punished" according to the specific situation.⁷⁸ It is unlikely that this threat of capital punishment was frequently put in practice, but it can be read as a statement of intent for the newly established colony. Perhaps the new government was concerned the newly forming European community, so far from the metropole, would slacken in its moral standards, or perhaps the need to maintain the European community's prestige was felt to be particularly pressing in light of the close proximity of both the Amerindian and enslaved African populations. The latter seems to have been a factor in the 1681 regulations for employees of Abraham van Peere (then private owner of the colony of Berbice), which admonished some colonists for their "godless unchastity" in impregnating Amerindian women and then pushing them to abortion or infanticide, much to the vexation of the "heathens" toward whom, the instructions claimed, Europeans were to set a pious example.⁷⁹

This emphasis on not antagonizing Amerindians, however, also reflects a diplomatic rather than strictly religious concern, of maintaining good relations with neighboring peoples. This was seen elsewhere too: in Curaçao a bylaw forbidding harassment of indigenous or black women was recorded in 1638 and in 1643 free planters were banned from having sexual relations with Native women.⁸⁰ The prohibition on sexual relations with indigenous women was part of a larger ban on spoiling indigenous gardens and other properties. Whether this Curaçao ban was respected is doubtful since it was re-issued ten years later.⁸¹ These bylaws nevertheless show that Dutch authorities tried to limit frictions with indigenous people and demonstrate that indigenous groups were important

political players the Dutch had to accommodate. Similar bylaws regulating sexual relations between European men and non-European women came in Guyana (Berbice) in 1681.⁸² The bylaw punished “relationships” (which in many cases likely constituted harassment or rape) with African and Amerindian women by a fine. Interestingly, the legislation also contained the requirement to provide alimony for children who were born out of these illegal unions as would be the case a few decades later in Batavia. Legislators were thus not just concerned with sexual piety but also with maintaining orderly relationships with Amerindians and enslaved Africans and managing the potential social burden of needy fatherless children.

While in Suriname and Curaçao no more legislation against sexual relations of European men with non-European women could be found during the eighteenth century, in Berbice the bans continued to be issued. Indeed, a ban specifically focused on Amerindian women was issued in 1700 and another one, in 1741, concerned relationships with both African and Amerindian women.⁸³ Lastly, in 1750 a bylaw stated that sexual relations between soldiers and enslaved women were to be punished.⁸⁴ Despite this resurgence in bans well into the eighteenth century, legislators offered opportunities for (European) fathers to recognize children born out of wedlock. In a *plakaat* issued in 1712, a child called Jan Pietersen, born of an “unknown father” and the enslaved “Indian female” Elsie, was freed and adopted by his master (also called Jan Pietersen) with the authorization of the Dutch.⁸⁵ Even if bans prohibited sexual relations with African and Amerindian women in Berbice, a form of tolerance similar to that in Batavia is visible. And, just as in Batavia, the ability to legitimize unlawful children was probably restricted to a minority of the European male population: plantation owners and the children they fathered with enslaved women.

Another point that strengthens this argument is the fact that in the settlements where the legislations against sexual relations between European men and non-European women could be found in the eighteenth century, the bans seemed to be aimed more at lower-ranking European servants and plantation employees and less at slave owners or high-ranking company servants. A 1741 ban in Berbice specifically addressed “servants of a plantation as well as free artisans” and the legislation of 1750 in the same place applied exclusively to soldiers.⁸⁶ A similar phenomenon is visible in the other Dutch settlements where such bans were found in the eighteenth century, specifically the Cape.⁸⁷ As Deborah Hamer points out for Batavia, the ban on sexual relations and marriages between free and unfree people was not exclusively determined by concerns about the ethnic mixing between Europeans and non-Europeans.⁸⁸ Company authorities were anxious that the free/unfree boundary should not be blurred by inter-group relationships and discriminated between European men of different social position. The tolerance toward European men’s “improprieties” should therefore be nuanced by the social group to which European men belonged within the company and colonial hierarchy. A property-oriented approach to sexuality prevailed in all these ordinances: the sexual transgressions that were actively criminalized were those between European men and women who were not “theirs.” This began with the early bans against harassment of indigenous and African women, which was never described in terms of rape or sexual abuse but instead as affronts to the

communities to which these women belonged, alongside disturbances to physical property.⁸⁹ It continued with ordinances that banned sexual contact between rank-and-file Europeans and women who were not their property, but remained silent on the sex slave masters coerced from their female slaves.

The discrepancy in moral standards to which European men were held did not go unnoted: the Directors of the Society of Berbice in the Netherlands, for example, responded rather laconically after the governor of the colony wrote to them in 1738 to complain of pervasive “familiarities between whites and blacks and reds.” While the directors “praised his concerns” they also admonished him to take a critical look at his own behavior and hinted at his transgressions with “*bokkinnen*,” a term used for enslaved Amerindian women.⁹⁰ This suggests that while authorities in the Netherlands might conceive of the laws as applying to all, the governing elites in the colony (which in Suriname and Guyana consisted predominantly of wealthy white planters) were more inclined to adopt a “rules for thee, but not for me” approach. A notable dissident voice on the trend of (married) European men having sex with their enslaved women was the Reformed minister Jan Willem Kals, who famously clashed with Suriname’s white planter class over questions of race, religion, and morality. In a scandalized complaint to his superiors in Amsterdam, he wrote:

Fornication and adultery are two sisters that seduce [the colonists] so much, that they judge mixing with the blacks to be almost necessary, healthy, and in agreement with that land and therefore not sinful. Commonly, even if one has a young, sweet, honest wife at home, one also has a young black or red girl along in the tugboat, that they doll up with a pretty little skirt, golden earrings, various corals, and bare arms, legs, and neck, to take their pleasure with. Such a black [girl] is taken by them to be more pleasing than a white. Some have even dared to ask me whether I would baptize their little mulatto as they had the misfortune of conceiving one with their negresses.⁹¹

While regulations regarding European men’s relations with Amerindian and African women started emerging more or less immediately but did not stop such inter-ethnic forms of “fornication” from becoming widespread and to some extent tolerated, sexual contact between white women and non-white men seems to have been more uncommon, but all the more shocking to authorities. A 1741 *plakaat* from Berbice claimed to have “weighty reasons” to declare that any white woman who could be proven to have had intercourse with a black or Amerindian man, whether free or enslaved, would not only be flogged but banished from the colony for life (if she was married she would also be branded). The man, if a slave, would be killed “without mercy.” A free Amerindian guilty of this crime was to be whipped, have his ears cut off, and be enslaved.⁹²

The punishment is almost identical to that set out in a *plakaat* issued thirty years earlier in Suriname, suggesting the legislators in Berbice were exposed to the regulatory customs of its larger neighbor. Just like the case of Mrs. Jacobsen in Ceylon, the Suriname *plakaat* was issued in direct response to a specific case that made it to the criminal court. Although virtually no court records from Suriname before the 1720s remain, the meeting minutes and resolutions of Suriname’s Governing Council offer some key insights into what transpired. In November 1710, the Governing Council in Paramaribo (which functioned both as a criminal court and a legislating body) received a request from Barend

Roelofs. He wished to divorce his wife Maria Keijser, who had had intercourse with “a negro” and had recently given birth to “a mulatto girl.”⁹³ The council considered this such a serious matter “with regards to the whole colony” that it decided to have Maria and the suspected father punished as an example to others.⁹⁴ By mid-January both were held at the fort.⁹⁵ The prosecutor, however, could not find enough evidence that the enslaved man taken prisoner from Jacobus Wildenland’s plantation was the perpetrator, and he was released. Maria Keijser’s guilt was self-evident to the court, however, and on January 28 she was banished from the colony.⁹⁶ The Governing Council used the occasion to crack down on another case of interracial sex that had transpired a few years prior. Judith de Castre (her name suggests she was part of the Portuguese Jewish community), unmarried at the time, had also been impregnated by a black man and now, to the council’s outrage, openly frequented Paramaribo with her “mulatto” child. The court decided to forbid her, her mother, or anyone else to ever bring the child to town again, and started a manhunt for the boy’s father, fearing that the news of the Maria Keijser case would prompt him to flee.⁹⁷ When this proved to be true—there were reports he was hiding around the plantation of a Captain du Rhon—the council decided to put a price of fifty guilders on his head.⁹⁸ To prevent any other such “scandalous and unnatural fornications and adulteries” in the future, the council decided to issue a new ordinance that stated that “any unmarried white woman having carnal intercourse with a negro . . . will be severely lashed and banished from this Colony for life.” If she was married, she would also be branded. The man would be put to death.⁹⁹ Marital status was thus an aggravating but not a defining factor in this crime. The defining factors were gender and race.

The use of the word “white” (*blank*) to refer to Europeans was quite common in the Americas by the early eighteenth century.¹⁰⁰ The word “unnatural” being used to refer to sex between a white woman and black man is striking, however, for it evokes post-Enlightenment doctrines of racial purity. However, the great disparity between the moral outrage the mixed-race children of Maria Keijser and Judith de Castre gave rise to and the apparent ease with which the large numbers of “mulattos” born to white male enslavers (usually conceived with their female slaves) were accepted as a fact of life, suggests that “unnatural,” here, should not be read in the context of nineteenth- and twentieth-century pseudo-scientific ideas about the biology of race, but rather as denoting a breach of the “natural” social order. Because extramarital sex in the early modern period was considered an act in which a woman was (or let herself be) dishonored by a man, the former scenario challenged established ideas about the white community’s superiority over (enslaved) Africans, whereas the latter did not. To put it in our “narrative” terms: the Keijser and de Castre cases broke and “betrayed” the premises on which colonial society was built, whereas the sexual exploitation of female slaves by their masters, even if “improper,” if anything only affirmed those premises.

It should be noted that documented cases such as those above, just like adultery cases in VOC courts, were relatively rare: while sexual crimes in general are underrepresented in Caribbean court records compared to crimes related to property, commerce, violence, and *marronnage*, the adultery cases that do emerge tend to concern illicit relationships *within* ethnic and religious communities. As Jessica Roitman and Aviva Ben-Ur have argued in their analysis of

adultery in Suriname and Curaçao's Portuguese Jewish communities, however, here too concerns with preserving the status and honor of individuals involved as well as of the community as a whole (vis-à-vis ethnic groups considered socially inferior) were primary factors in authorities' responses.¹⁰¹

Elmina

As previously mentioned, a form of tolerance applied to European men and their "concubines" despite a class bias. While it was tolerated and opportunities to legitimize children existed, nowhere were non-Christian inter-ethnic sexual relationships ever as institutionalized as in Elmina. The case of the West African port is nevertheless relevant to add to the analysis because it illustrates different power dynamics and gender relations than those discussed above.

Legislation in Elmina banning inter-ethnic sexual relations seems at first glance quite similar to other Dutch settlements. Between 1690 and 1692 a series of four bylaws were promulgated in Elmina reinstating a ban against sexual relations with African women, two of which stress the responsibility of the father to pay alimony if he was to leave children behind when returning to Europe.¹⁰² As in Batavia and Berbice, the responsibility of the father for the children born outside of formal marriage appears in the legislation in Elmina showing some adaptation to the circumstances. However, the tolerance toward local marriage went much further in Elmina than in other settlements analyzed so far. Marriages between WIC servants and African women according to local traditions (*calecharen*) were common.¹⁰³ *Calecharen* became accepted by Dutch authorities as official. An inheritance dispute dating from 1731 illustrates this phenomenon. The case opposed a woman named May Accomma, *muliere* ["woman"] of the director general of Elmina, against Wilhelmina van Naerssen, daughter of an enslaved woman "gecalesjaard" (i.e., married in the *calecharen* tradition) with a company servant.¹⁰⁴ The enslaved woman in question, Amba Intiem, had been offered as a gift by the director general to May. Wilhelmina, after receiving an education in Europe, wanted to marry a company servant and was asking for the inheritance of her deceased mother. In this dispute, all female protagonists were married or soon to be married to company servants and at least two were married according to local traditions. The presence of "muliere" and "gecalesjaard" in legal documents demonstrates that these women were accepted and considered as wives of company servants by the WIC authorities. Another case of the sort appears in the criminal court records when in 1773 a company assistant, Isaac Rigagneau, complained that another assistant had kissed Rigagneau's "negress." While the outcome of the case is not relevant for the argument, the fact that the company assistant could file a complaint about his African partner as if she were his official wife demonstrates the normality of such relationships.¹⁰⁵ A last example of this is the presence of an "Akt van callecharen" between a WIC official and an African woman registered in the WIC documents in 1794.¹⁰⁶ The formal recording of this term in the company documents give an idea of the official value of these unions. Here, and in the previous cases, Dutch company servants and administrators in Elmina adapted to local marriage regulations and included them in their official records rather than the opposite.

Even more particular in the Elmina setting, however, is the company's response to women's sexual transgressions. Indeed, there does not seem to be

WIC-issued legislation and persecution in the fort specifically aimed at women's sexual behavior. Instead, Elmina directors-general signed contracts based on Akan customary law (in 1772 and again in 1780) in which the European and African authorities agreed on the rules of *calecharen*: a woman who had married according to local custom with a European and who was caught having "carnal conversation" with someone else, was to pay a fine (as did her "partner in crime") of or equivalent to "one fine female slave" to the injured party. The same applied if her lawful partner was African and her lover a white man.¹⁰⁷ Although doubtless European men stationed in Elmina were no less displeased at their partner's involvement with other men than those in Suriname or Ceylon, the local power dynamics made for a completely different response from the company. Unlike in colonies where the Dutch attempted to build a self-reproducing Christian community, Elmina women in relationships with WIC servants did not formally join the European group, did not fall under the company's jurisdiction, and therefore their relations with other men could not be treated as a communal betrayal, but rather as an impropriety: a personal affront that threatened good relations between the European and African communities and therefore a company concern, but not one that threatened the foundations of European society in Africa. If anything, it was the European men who became part of local networks and subjects to the obligations this entailed when they were *gecalesjaard* rather than the other way around. Natalie Everts has shown this in her analysis of the *abusua*, powerful matrilineal networks who could hold their members' European husbands accountable for duties such as contributing to the woman's funeral costs.¹⁰⁸

Conclusion

"You are a Christian woman, what are you doing here with this Chinese in the woods?"

These are the words the arresting officer reportedly said to Jerisina before taking her and Tjieuw to the VOC fort in Malacca. Jerisina and Tjieuw, it can be assumed, had no intention of making a subversive political statement in taking up residence together. Tjieuw simply wanted a partner, and Jerisina, as she would later explain, was riddled by debts and hoped to find financial security through a union with him.¹⁰⁹ Yet, in the eyes of Dutch company officials, their relationship was not just a case of illicit sex between unmarried partners, but one that was aggravated by political concerns around their respective positions in colonial society, marked by factors such as gender, ethnic belonging, and religion.

They were far from the only people who confronted a legal landscape shaped by political concerns over sexuality: colonial legislators throughout the Dutch empire prohibited sexual relations between men and women of different backgrounds in order to control individuals and their households in varying ways and to varying degrees of severity, depending on their position in the (envisioned) social hierarchy. Considering that adultery, concubinage, and fornication were forbidden in the Republic, it appears consistent that colonial legislators would prohibit the phenomenon across the empire. In the colonial setting, gender, religion, ethnicity, and race affected the distinction between these offenses. Relationships between European men and local women

manifested themselves as a managerial and sometimes diplomatic problem for company officials: regulating these affairs was a matter of controlling the workforce, avoiding the burden of fatherless children, and maintaining good relations with neighboring peoples. As such, it was grafted onto the legislative response to non-marital sex between men and women as a form of disorderly conduct for which a relatively mild, correctional punishment such as a fine was appropriate. This could even be the case for cases of rape which, because of colonial power relations and particularly the institution of slavery, were often not recognized as such.

The omnipresence of legislations against non-marital sexual relations of company servants or European colonists with Asian, African, and Amerindian women shows how common the phenomenon was while the recurrence of these laws testifies to the frequent breaching of the rules. Moreover, snippets of evidence—the most glaring of which may be the ubiquitous presence of mixed-race illegitimate children whose existence seems to have become accepted, over time, as inevitable—suggest a widespread normalization of these breaches. However, the official recognition of these relationships through opportunities for legitimization of children born outside of marriage seemed to have been reserved for male members of the elite—high-ranking company officials or plantation owners—with the notable exception of Elmina, where marriages according to local customs seemed to have official value in the company records. Although Dutch legislators might have wished to institute a strict regime of sexual piety—as early forms of legislation seem to suggest—the widespread practices of company employees and local inhabitants made this simply impossible to enforce. Relationships between women considered European by affiliation (whether they were wives of company servants or local women of Christian faith) and non-European men, however, were a different story.

The harshness with which Dutch authorities responded—both in legislative sources and in the courtroom—to Christian married and single women's "adulterous" behavior outside the Christian community, should be read through the context of power dynamics. In societies where the trade companies' aim was to establish naturally reproducing European communities that were dominant over neighboring free and enslaved populations, women's sexual contact with outsiders betrayed both the exclusivity of the European group and the pillars on which this colonial hierarchy was built. Firstly, because of (married) women's central role in biological reproduction and in the passing on of status and wealth, policing Christian women's sexuality was a way of maintaining the community's exclusivity. Secondly, because sex in the early modern moral paradigm was itself a relation between unequal partners, and extra-marital sex an act whereby a man dishonored a woman, pairings that went against the grain of established social hierarchies undermined the notions of superiority on which these hierarchies were built. The case of Elmina, where the WIC was strongly dependent on local elites and unable to establish the European community as the dominant group in the area, and where authorities' response to women's infidelity was much more limited and marked by local customs, suggests this reading of sexual relations as a microcosm of inter-group relations was not merely symbolic. Indeed, the extent to which colonial authorities were able to police local women's sexuality may be a useful proxy for the reach of colonial power and Europeans' relative position in the local social fabric. To test this, it may be

fruitful to examine other locations in which Dutch presence was more marginal than in Caribbean colonies or Batavia, such as Makassar in Sulawesi.

The double standards in the prosecution of sexually transgressive behavior was not an exclusively colonial phenomenon. Differentiation on the basis of class, gender, or place of origin is quite well-documented in Europe, but in the colonial context these differences became more explicit and therefore more visible. In addition, as we have shown, the specific features of company-ruled colonial society introduced new factors that affected one's position in the legal system, such as enslavement and skin color. While the connection between black skin and enslavement has been extensively documented for the Atlantic, VOC Asia has generally been cast in a more multifaceted, less racialized light, with scholars positively comparing Dutch inter-ethnic marriage patterns to both the Dutch Caribbean and to the British approach in Asia in the same period, as well as to Dutch colonialist policies in the nineteenth century and beyond. Exhortations against "vile, lowly blacks" as in 1658 Ceylon, however, suggests that (proto-) racial forms of denigration became part of Dutch administrators' vocabulary earlier than might be expected, and tended to be expressed at moments of particular tension and uncertainty. These perceptions of status and social difference in the multi-ethnic and hierarchical societies of the early modern Dutch empire are key to understanding the complex and seemingly inconsistent ways in which authorities responded to the many forms of illicit sexual acts committed under their watch.

Endnotes

We would like to thank Henk Jan van Dapperen for sharing the unpublished manuscript of Jacob A. Schiltkamp, *Reglement, Resoluties, Plakaten En Andere Regelingen van Juridische Aard Voor de Kust van Guinea 1597-1872* (see endnote 44). The indexation of court cases (see endnote 23) is part of an ongoing effort to produce an inventory of Dutch Early Modern colonial juridical sources available at the National Archives of the Netherlands, as part of the project *Resilient Diversity: The governance of racial and religious plurality in the Dutch empire, 1600-1800*, funded by the Dutch Research Council (NWO) under file number 360-53-210. We thank Karwan Fatah-Black for providing exploratory statistics for Suriname's criminal cases. We would like to thank the members of the Resilient Diversity project for their comments on previous versions of this article. We are also thankful to the anonymous peer-reviewers for their insightful suggestions. Address correspondence to Sophie Rose, Leiden University, Doelensteeg 16, 2332GB Leiden, The Netherlands. Email: a.s.rose@hum.leidenuniv.nl; Elisabeth Heijmans, University of Antwerp, Sint-Jacobsmarkt 13, 2000 Antwerp, Belgium. Email: elisabeth.heijmans@uantwerpen.be

1. British Library: India Office Records and Private Papers Judicial [hereafter IOR], IOR/R/9/16/2: "Minutes of the Council of Justice Malacca," August 7–20, 1748.

2. Manon van der Heijden, in her study of early modern (pre-)marital trials in church councils and urban courts, has shown that premarital sex and relationships were usually not (or only mildly) prosecuted if there was a prospect of marriage. If no marriage plans could be demonstrated, punishment could range from a reprimand to up to twenty-five years of banishment. Even here, however, justices were considerably milder than in cases involving bigamy or adultery. Manon van der Heijden, *Huwelijk in Holland: Stedelijke Rechtspraak En Kerkelijke Tucht, 1550-1700* (Amsterdam, 1998), 96–114.

3. Jacob A. Schiltkamp, "Legislation, Government, Jurisprudence, and Law in the Dutch West Indian Colonies: The Order of Government of 1629," *Pro Memorie: Bijdragen Tot de Rechtsgeschiedenis Der Nederlanden* 5, no. 2 (2003): 332; Carla van Wamelen, *Family life onder de VOC: een handelscompagnie in huwelijks- en gezinszaken* (Hilversum, 2014), 115–16, 126.
4. Jean Gelman Taylor, *The Social World of Batavia: Europeans and Eurasians in Colonial Indonesia*, 2nd ed. (Madison, 2009); Deborah Hamer, "Marriage and the Construction of Colonial Order: Jurisdiction, Gender and Class in Seventeenth-Century Dutch Batavia," *Gender & History* 29, no. 3 (2017): 622–40; Reggie Baay, *De Njai: het Concubinaat in Nederlands-Indie* (Amsterdam, 2008); Ann Laura Stoler, *Carnal Knowledge and Imperial Power: Race and the Intimate in Colonial Rule* (Berkeley, 2010).
5. H. E. Niemeijer, *Batavia: een koloniale samenleving in de zeventiende eeuw* (Amsterdam, 2005); Van Wamelen, *Family life onder de VOC*.
6. Jacob van der Lier, *Frontier Society: A Social Analysis of the History of Surinam*, trans. Jacob Asveer (Den Haag, 1971), 43.
7. A mechanism through which this worked was the census analyzed by Remco Raben in Remco Raben, "Batavia and Colombo: The Ethnic and Spatial Order of Two Colonial Cities 1600-1800" (PhD diss., Leiden University, 1996). Examples of differentiated institutions include the dual court system in Batavia—the Council of Justice for VOC employees, the Bench of Aldermen for everyone else—the appointment of "captains" to administer each "nation," spatial segregation along ethnic lines, and linguistically separated churches. See also Ulbe Bosma and Remco Raben, *Being "Dutch" in the Indies: A History of Creolisation and Empire, 1500-1920* (Singapore; Athens, 2008).
8. Hamer, "Marriage and the Construction of Colonial Order."
9. Bosma and Raben, *Being "Dutch" in the Indies*, 8–14. Jean Gelman Taylor famously described the closely knit network of European men and their "mestizo" wives and daughters that formed in upper-class Batavia, in Taylor, *The Social World of Batavia*.
10. Bo Stråth, "A European Identity: To the Historical Limits of a Concept," *European Journal of Social Theory* 5, no. 4 (2002): 392.
11. Leonard Blussé, *Strange Company: Chinese Settlers, Mestizo Women and the Dutch in Voc Batavia* (Dordrecht, 1986), 163.
12. Pieter Spierenburg, *The Spectacle of Suffering: Executions and the Evolution of Repression: From a Preindustrial Metropolis to the European Experience* (Cambridge, 1984), 155; Van der Heijden, *Huwelijk in Holland*, 86; Aries van Meeteren, *Op Hoop van Akkoord: Instrumenteel Foruungebruik bij Geschilbeslechting in Leiden in de Zeventiende Eeuw* (Hilversum, 2006), 298–99; Ariadne Schmidt, *Prosecuting Women: A Comparative Perspective on Crime and Gender Before the Dutch Criminal Courts, c. 1600-1810*, *Crime and City in History* (Leiden, 2020), 73, 248.
13. Lotte van de Pol, *Het Amsterdams Hoerdom: Prostitutie in de Zeventiende en Achttiende Eeuw* (Amsterdam, 1996), 128; Amanda C. Pipkin, *Rape in the Republic, 1609-1725: Formulating Dutch Identity* (Leiden, 2013), 23-24; Van der Heijden, *Huwelijk in Holland*, 48-49; Ariadne Schmidt, *Prosecuting Women*, 22.
14. Willemijn Ruberg, "Adultery and the Double Standard in a Dutch City in the Eighteenth and Nineteenth Centuries," *Cultural and Social History* 12, no. 4 (2015): 445–64.
15. Jennifer Lyle Morgan, *Laboring Women: Reproduction and Gender in New World Slavery* (Philadelphia, 2004); Sasha Turner, "Home-Grown Slaves: Women,

Reproduction, and the Abolition of the Slave Trade, Jamaica 1788-1807," *Journal of Women's History* 23, no. 3 (2011): 39–62; Sasha Turner, *Contested Bodies: Pregnancy, Childrearing, and Slavery in Jamaica* (Philadelphia, 2017); Marisa J. Fuentes, *Dispossessed Lives, Enslaved Women, Violence, and the Archive* (Philadelphia, 2016); Hilary Beckles, "Sex and Gender in the Historiography of Caribbean Slavery," in *Engendering History: Caribbean Women in Historical Perspective* (Kingston, 1995), 125–40; Hilary McD Beckles, "Perfect Property: Enslaved Black Women in the Caribbean," in *Confronting Power, Theorizing Gender: Interdisciplinary Perspectives in the Caribbean* (Kingston, 2003), 142–58; Kathleen M. Brown, *Good Wives, Nasty Wenches, and Anxious Patriarchs: Gender, Race, and Power in Colonial Virginia*, (Chapel Hill, 1996); Barbara Bush, "White 'Ladies,' Coloured 'Favourites' and Black 'Wenches': Some Considerations on Sex, Race and Class Factors in Social Relations in White Creole Society in the British Caribbean," *Slavery & Abolition* 2, no. 3 (1981): 245–62; Sharon Block, *Rape and Sexual Power in Early America* (Chapel Hill, 2012); Jenny Shaw, "In the Name of the Mother: The Story of Susannah Mingo, a Woman of Color in the Early English Atlantic," *The William and Mary Quarterly* 77, no. 2 (2020): 177–210; Trevor Burnard, *Mastery, Tyranny, and Desire: Thomas Thistlewood and His Slaves in the Anglo-Jamaican World* (Chapel Hill, 2009).

16. For VOC Asia, see: Barbara Watson Andaya, "From Temporary Wife to Prostitute: Sexuality and Economic Change in Early Modern Southeast Asia," *Journal of Women's History* 9, no. 4 (2010): 11–34; Baay, *De njai*; Reggie Baay, *Daar werd wat gruwelijks verricht: slavernij in Nederlands-Indië* (Amsterdam, 2015); Bosma and Raben, *Being "Dutch" in the Indies*; Matthias van Rossum, *Kleurrijke tragiek: De geschiedenis van slavernij in Azië onder de VOC* (Hilversum, 2015); Taylor, *The Social World of Batavia*; Van Wamelen, *Family life onder de VOC*. With regards to the Atlantic context, some notable exceptions include Marjoleine Kars, "Dodging Rebellion: Politics and Gender in the Berbice Slave Uprising of 1763," *The American Historical Review* 121, no. 1 (2016): 39–69; Natalie Zemon Davis, "Judges, Masters, Diviners: Slaves Experience of Criminal Justice in Colonial Suriname," *Law and History Review* 29, no. 4 (2011): 925–84; Aviva Ben-Ur and Jessica V. Roitman, "Adultery Here and There: Crossing Sexual Boundaries in the Dutch Jewish Atlantic," in *Dutch Atlantic Connections, 1680-1800*, ed. Gert Oostindie and Jessica V. Roitman (Leiden, 2014), 183–223.

17. Francisco Bethencourt, *Racisms: From the Crusades to the Twentieth Century* (Princeton and Oxford, 2013); Stoler, *Carnal Knowledge and Imperial Power*.

18. Scholars of the early modern Dutch empire have shown the value of connecting and contrasting the Indian Ocean and the Atlantic World as spaces of analysis particularly in the study of the various forms unfree labor. Matthias van Rossum, *Kleurrijke tragiek*; Pepijn Brandon, Niklas Frykman, and Pernille Røge, "Free and Unfree Labor in Atlantic and Indian Ocean Port Cities (Seventeenth–Nineteenth Centuries)," *International Review of Social History* 64, no. S27 (2019): 1–18.

19. This is illustrated by the fact that, after the Reformation, it became legal in the Dutch Republic for the injured party to remarry, since the act of adultery was considered to have already dissolved the first marriage.

20. Van Leeuwen lists rape (*vrouwe-kragt*) as one of the "crimes against honor and good name," along with adultery and defloration. Simon van Leeuwen, *Het Rooms-Hollands-Regt* (Leiden, 1664), 428.

21. Manon van der Heijden describes a case in which a woman in the Netherlands, married to an absent VOC servant, was raped by a neighbor while she was working as a cleaner, and sentenced to 50 years of banishment for adultery while the perpetrator was banished for 10 years. Manon van der Heijden, "Women as Victims of Sexual and Domestic Violence in Seventeenth-Century Holland: Criminal Cases of Rape, Incest,

and Maltreatment in Rotterdam and Delft,” *Journal of Social History* 33, no. 3 (2000): 623–44.

22. As Hartman explains in her discussion of the topic in the context of nineteenth-century American slavery, the rape of enslaved women was “unimaginable,” both because black female sexuality was construed in such a way that enslaved women were presumed to be always willing, and because their legal status as property rendered the question of consent entirely meaningless. Saidiya Hartman, *Scenes of Subjection: Terror, Slavery, and Self-Making in Nineteenth-Century America* (New York and Oxford, 1997), 79–81.

23. The indexation of court cases is part of an ongoing effort to produce an inventory of Dutch Early Modern colonial juridical sources available at the National Archives of the Netherlands, as part of the NWO project *Resilient Diversity*. The inventory contains 2,887 cases for Batavia between 1637 and 1790, 219 cases for Ceylon between 1740 and 1795, 632 cases from Cochin between 1681 and 1792, 536 cases for Elmina between 1699 and 1798, 453 cases for Suriname between 1718 and 1799. Nationaal Archief [hereafter NL-HaNa] 1.04.02 Verenigde Oost-Indische Compagnie [hereafter VOC], 1602–1795, Kopie-criminele sententiën van de Raad van Justitie in Batavia 1637–1753; NL-HaNa, 1.11.06.11 Nederlandse bezittingen in India: Digitale Duplicaten van Archieven aanwezig in de Tamil Nadu Archives te Chennai, criminele processtukken 1681–1792; NL-HaNa 1.05.14, Nederlandse Bezittingen ter Kuste van Guinea [hereafter NBKG] Minuut-sententiën met bijbehorende processtukken 1699–1798; NL-HaNa 1.05.10.02 Oud Archief Suriname: Raad van Politie 1669–1828. We thank Karwan Fatah-Black for providing exploratory statistics for Suriname’s criminal cases. Court cases from the criminal court in Cochin have been indexed in Matthias van Rossum, Alexander Geelen, Bram van den Hout and Merve Tosun, *VOC Court Records Cochin, 1681–1792*, International Institute of Social History (Amsterdam 2018). Supplementary sources used for this article come from the Resolution books kept in the Society of Suriname and Berbice archives, the Colonial Office records in the British National Archives, and the India Office Records in the British Library: NL-HaNa 1.05.03 Sociëteit van Suriname, “Resoluties van Gouverneur en Raden”; NL-HaNa 1.05.05 Sociëteit van Berbice 1681–1800, Resolutieboeken der Directie; The National Archives, Records of the Colonial Office [hereafter CO], CO 116.68, “Berbice: Ordinances, instructions, etc.”

24. “Ordonnantie vande Policien binnen Holland, in date den eersen Aprilis 1580,” in Cornelis Cau, *Groot plaacet-boeck, vervattende de placaten, ordonnantien ende edicten van de Staten Generael der Vereenighde Nederlanden, ende van de Staten van Hollandt en West-Vrieslandt, mitsgaders van de Staten van Zeelandt*, vol. 1 (The Hague, 1658), 329–42.

25. The other major legal text provided to Coen was the *Ordonnantie op de vordering van de Justitie*, setting standards for legal procedure in civil cases. Carla van Wamelen, *Family life onder de VOC: een handelscompagnie in huwelijks- en gezinszaken* (Hilversum, 2014), 76.

26. Van der Heijden, *Huwelijk in Holland*, 45.

27. Van der Heijden, *Huwelijk in Holland*, 45.

28. *Ordonnantie van de Polityen*, arts 14–17.

29. “Echt-Reglement, Over de Steden, ende ten platten Lande, in de Heerlijckheden, ende Dorpen, staende onder de Generaliteyt. In date den 18 Martij 1656,” in Cornelis Cau, *Groot-placaetboek, vervattende de placaten, ordonnantien ende edicten van de Staten Generaal der Verenigde Nederlanden*, vol. 2 (Den Haag, 1664), cols 2429–48.

30. Ironically, it was only in the predominantly Catholic Generality Lands that the Church got its way, much to many Catholics’ chagrin, in Van Wamelen, *Family life onder de VOC*, 213.

31. "Echt-Reglement," art. 72.

32. Van der Heijden, *Huwelijk in Holland*, 54.

33. Van Wamelen, *Family life onder de VOC*, 213; J. A. Schiltkamp, *Bestuur en rechtspraak in de Nederlandse Antillen ten tijde van de West-Indische Compagnie* (Willemstad, 1972), 66.

34. Suriname was administered by the Society of Suriname (co-owned by the WIC, the city of Amsterdam, and the van Sommelsdijck family) and Berbice by the privately-owned Society of Berbice.

35. This norm is also known as the "concordance principle" in Van Wamelen, *Family life onder de VOC*, 75–76. It was articulated in the earliest instructions for both the various Directors in the Atlantic and the Governor-Generals in the Indies, e.g., "Instruktie voor Jacob Pietersz: Tolck, Directeur van Curaçao," in Schiltkamp, *Bestuur en rechtspraak in de Nederlandse Antillen ten tijde van de West-Indische Compagnie*, 3–8. For the West Indies, which had no central High Court, the States General also served as an appeals court.

36. Van Wamelen, *Family life onder de VOC*, 74. The *Statuten van Batavia* are published in J. A. van der Chijs, *Nederlandsch-Indisch plakaatboek, 1602-1811* [hereafter *NIP*] (Batavia; Den Haag, 1885) vols. 1 (1642 version) and 9 (1766 version).

37. "Ordre van Regieringe, soo in Policie als Justitie, inde Plaetsen verover, ende te veroveren in West-Indien," in Schiltkamp, "Legislation, Government, Jurisprudence, and Law," 321.

38. Schiltkamp, "Ordre van Regieringe," 328.

39. Dutch authorities followed Dutch magistrates' practice of issuing on-the-spot legislation variously referred to as "ordinances," "publications" or, as has since come to be the generic term due to their nineteenth and twentieth-century compilation in so-called *plakaatboeken*, "placards." Additionally, in Africa and Asia some indigenous legal codes and practices were compiled and used by Dutch officials, although recent research suggests that these codifications were rarely mentioned in the courts where they might be expected to be used, such as the Schepenbank in Batavia and the landraden in Ceylon. NL-HaNa, NBKG 394: "Compendium van inlandse wetten en gebruiken" 1851 May-20 in Jacob A. Schiltkamp, *Reglement, Resoluties, Plakaten En Andere Regelingen van Juridische Aard Voor de Kust van Guinea 1597-1872* [hereafter *PK*], vol. IIA (Unpublished, n.d.), 920. We would like to thank Henk Jan van Dapperen for sharing this work. Dries Lyna and Alicia Schrikker, "Threads of the Legal Web: Dutch Law and Everyday Colonialism in Eighteenth Century Asia," in *The Uses of Justice in Global Perspective, 1600–1900*, ed. Griet Vermeesch, Manon van der Heijden, and Jaco Zuijderduijn (London and New York, 2019), 47; Merve Tosun, "(Im)Practical Pluralism: Legal Pluralism in Batavia and Its Environs: From Codification to Practice (c.1750–1800)" (Master's thesis, Leiden University, 2018).

40. Van Wamelen, *Family life onder de VOC*, 80; Han Jordaan, "Free Blacks and Coloreds and the Administration of Justice in Eighteenth-Century Curaçao," *New West Indian Guide / Nieuwe West-Indische Gids* 84, no. 1–2 (2010): 77.

41. *NIP*, vol. I, 46–47; Jacob Adriaan Schiltkamp and J. Th. de Smidt, *West Indisch plakaatboek. Publicaties en Andere Wetten alsmede de Oudste Resoluties Betrekkende Hebbende op Curaçao, Aruba, Bonaire* [hereafter *PCu*] (Amsterdam, 1978) Vol I: 6; 196–97 and L. Hovy, ed., *Ceylonees plakaatboek: plakaten en andere wetten, uitgevaardigd door het Nederlandse bestuur op Ceylon, 1638-1796* [hereafter *CP*] (Hilversum, 1991), vol. I, 3–4.

42. *NIP*, vol. I, 542. This language requirement was later abandoned when it proved to be impossible to enforce in practice.

43. Schiltkamp, *Bestuur en rechtspraak in de Nederlandse Antillen ten tijde van de West-Indische Compagnie*, 66; Jordaan, "Free Blacks and Coloreds and the Administration of Justice," 82–83.

44. Cynthia McLeod, *Elisabeth Samson: Een Vrije, Zwarte Vrouw in Het Achttiende-Eeuwse Suriname* (Schoorl, 1997), 94–95.

45. *NIP*, vol. I, 100: "(...) metten swaerden, datter de doot naevolge, en met confiscatie van goederen."

46. *NIP*, vol I., 101–02: "(...) ende bemerckende, dat dagelycx veel groote schandaleuse en den Christelycke name onwaardige dissolutien geschieden in vuyle by een compsten, oneerlycke versamelingen, gehaete concubinagien en Godt verdrietende overspel, welcke niet alleen van de Christenen met Christenen, Mooren met Mooren ofte Heydenen met Heydenen, maer oock selffs sonder aensien ofte wtnemen van persoonen, religie ofte secten confuselyck onder Christenen, Mooren, Heydenen als toegelaten en wettige houwelycken gepleecht werden."

47. Van Wamelen, *Family life onder de VOC*, 358–59.

48. *NIP*, vol I (*Statuten van Batavia*), 1642, 586, "Van Verscheijde Misdaden ende eerst van Hoererye ende Overspel."

49. *NIP*, vol. I (*Statuten van Batavia*), 1642, 576-7, "Vrouwetuchthuys."

50. *NIP*, vol. I, 586.

51. *NIP*, vol. I, 586–87.

52. IOR/R/9/16/2, "Judicial minutes of the Council of Justice Malacca," August 7–20, 1748.

53. *NIP*, vol. I, 586–87.

54. *NIP*, vol. IX, 186.

55. *NIP*, vol. IV, 338 in 1733.

56. *NIP*, vol. XV, 145: "1808 Augustus 25, Legimatie van onwettige kinderen: Requeste van den president van de administratie der houtboschen op het eiland Javan, houdende verzoek tot legitimatie door gunst der hoog overheid van zijn tien kinderen, allen buiten huwelijk verwerkt bij verschillende Maleidsche vrouwen."

57. *NIP*, vol. IX (*Nieuwe Statuten*), 401.

58. NL-HaNa 1.04.02 inv. 9337-9518, Verenigde Oost-Indische Compagnie (VOC), 1602-1795, Kopie-criminele sententiën van de Raad van Justitie in Batavia 1637–1753.

59. NL-HaNa 1.04.02 inv. 9470, 467-505; NL-HaNa 1.04.02 inv. 9323, 62.

60. *NIP*, vol. IX (*Nieuwe Statuten*), 187.

61. Metta Christina Woordenberg, wife of junior merchant Elso Sterrenberg, was sentenced to fifty years in the women's workhouse plus a fine of 100 reals in 1740. Maria Geersen, wife of map maker's aide Gijsbert Halling, was sentenced to fifty years in 1756. Notably, in an early adultery case—from 1636, before the Batavia Statutes or the Marriage Regulations were issued—the female defendant was not banished for fifty years but sentenced to five years of chain labor. NL-HaNa 1.04.02 inv. 9391 (1740), 9451 (1756), 9338 (1636).

62. The juridical archive of this court is partly in the National Archives of the Republic of Indonesia (Arsip Nasional) in Jakarta.

63. NL-HaNa 1.04.02 inv. 9375, 349–416.

64. NL-HaNa 1.04.02 inv. 9375, 349–52. Indeed, in a case that he prosecuted that same year, concerning the wife of a Dutch *burgher* and a VOC assistant, Bergsma recommended the punishment of 50 years banishment and a fine for both parties see NL-HaNa 1.04.02 inv. 9375, 697.

65. Unfortunately, there is a gap in the Council of Justice records in the Dutch national archive in The Hague for the period of 1665–1729, so this case from 1724 cannot be consulted.

66. NL-HaNa 1.04.02 inv. 9375, 351. Article 7 stipulated slaves should be put to death if they had sex with a Dutch woman in *NIP*, Vol. I, 586–587. Anna Maria and Alexander were given a slightly milder sentence than the prosecutor had asked for: Anna Maria was not whipped but she was sentenced to fifty years in the women's workhouse, plus a fine; Alexander was not sentenced to death but branded and sentenced to chain labor for life. NL-HaNa 1.04.02 inv 9300, 222–223.

67. NL-HaNa 1.04.02 inv. 5974, 90; inv. 5247, 96.

68. Anjana Singh, *Fort Cochin in Kerala, 1750-1830: The Social Condition of a Dutch Community in an Indian Milieu* (Leiden, 2010), 40. An exception was the “old” St. Thomas Christians (or Syrian Christians).

69. *NIP*, vol I, 304.

70. NL-HaNa, 1.11.06.11, inv. 485, 48.

71. *CP*, vol. I, 3–4: “Ordonnantie verbiedende het garnizoen van Galle in concubinaat te leven” 1641 May 30/ June 3; 34–35: “Ende om de concubinagie voor de comen, tot noch onder eenighe opentlijck gepleecht, sullen alle de soodanige haer met hun concubijnen in den staet des houwelijcx moeten begeven ofte deselve verlaeten, met de pene daertoe staende STOPPED.” 1658 November 19.

72. *CP*, vol. I, 3–4: “dat meestendeel derselver, soowel officieren, soldaten, matrosen als andere, in openbare hoerdom ende concubinagie sijn levende, ja soo publijck ende onbeschaemt met malcanderen huyshoudende alsof wettelijcke getrouwde waren” 1641 May 30/ June 3.

73. *CP*, vol. I, 3–4: “Edoch om degene die de gaven der onthoudinge niet en hebben in haer swackheyt tegemoet te komen, sal een yder wie sulcx versoect met ymandt der inlantsche vrouwen sich in den echten staet toegestaan werden te begeven, onder soodanige conditie, gelijk van ons bij d'edele Compagnie altijd is gebruyckt geweest, dat soolange sijn huysvrouwe in 't leven blijftm, gehouden is in India ten dienste van de Compagnie te continueren” 1641 May 30/ June 3.

74. *CP*, vol. I, 48–49: “Dat wanneer een inlandtse mesticie ofte swaarte vrouw die met een Hollander getrouwt is, haar comt in onecht te vergripen ende alsoo de waardicheyt haes houwljx en 't respect der natie door overspel ende onkuysheyt te verbreecken, sich vleeslijk met een inlander, slaaft ofte enich ander swart ende haes gelijcke, dat deselve vrouwe [. . .] doot sal gestraft werden” 1659 November 14/21.

75. *CP*, vol. I, 34: “een vileynen swart” “tot een honorable voortteelinghe onser eygen natie geraacken” 1658 November 19.

76. *CP*, vol. I, 34–35.

77. *CP*, vol. I, 127: “te vreezen ende grootlijks te dugten is dat de moeders van zulke kinderen (de vaders overleeden zijnde) te landwaarts haer begeven ende weder tot 't heydendom vervallen zouden” 1666 January 2.

78. Jacob Adriaan Schiltkamp and J. Th. de Smidt, *West Indisch plakaatboek. Plakaten, ordonnantiën en andere wetten uitgevaardigd in Suriname, 1667-1816* 1 1 [Hereafter: WIP Suriname] (Amsterdam, 1973), vol. I, 34–35.

79. J. Th. de Smidt, T. van der Lee and H.J.M. van Dapperen, *Plakaatboek Guyana, 1670-1816* [hereafter PG] (The Hague, 2014): “Instructie Betreffende Relaties Met Zwarte of Amerindiaanse Vrouwen Voor Allen Die in Dienst Zijn van Abraham van Pere” May 20, 1681. The plakaatboek for Guyana is accessible online at <http://resources.huysens.knaw.nl/retroboeken/guyana/> last consulted May 26, 2020.

80. PCu, Vol. I, 3–8: “De placaten voor desen daer afgecundicht, dat [nie]mant van het volck de naturellen van ’t landt of oock andere in haere persoonen, vrouwen ofte goet geen overlast noch vercorting sal aendoen, de zwartinnen ende wilde vrouwe niet oneerlijck [be]handelen, veelin oncuisschelijk met deselve [con]verseren”; PCu, Vol. I, 12–17: “Resolutie 10/12 maart 1643: Haer [oick] der indiaenen thuynen niet spolieren, de indiaenen ende dienstbaere swarten aen vee, thuynen, lijf ende goet ongequelt ende beschadigt laeten, veel min met haare vrouwen ofte dochteren eenige oneerlicke conversatie ofte leven leyden.”

81. PCu, Vol I: 52–59.

82. PG (online) “Instructie betreffende relaties met zwarte of Amerindiaanse vrouwen voor allen die in dienst zijn van Abraham van Pere,” 1681-05-20.

83. PG (online) “Straf op omgang met Amerindiaanse vrouwen”, 1700-09-04; PG (online) “Reglement voor ambachtslieden en plantagebedienden,” 1741-12-05.

84. PG (online) “Reglement op de krijgstucht,” 1750-09-02.

85. CO 116.68, “Berbice: Ordinances, instructions, etc.” 1712, 24.

86. PG (online) 1741-12-05: “ten negende werd [...] aan alle inwoonders en bediendens van een plantagie als mede vrije ambagslieden scherpelijk verboden haar met de negerinne of indiainne, veel min met de vrije indiainnen gemeen te maaken en vleeschelijke conversatie met dezelve te pleegen.”

87. The first legislation regarding sexual relations between Company servants and non-European women appear in 1678 when relationships with non-Christians or slaves were banned and three years later a *plakaat* forbade company servants from meeting slave women in the VOC lodges. In the last ban on the keeping of a concubine found in the Cape in 1718, the *plakaat* does not mention VOC officials and focused on “soldiers and sailors as well as burgers.” *Kaapse plakkaatboek* [hereafter KP] (Cape Town, 1944–51), Vol. I, 151–52: “Verbod teen die hou van bysitte en teen omvang met nie-kristelike of slave-vrouens”, 1678-11-30/12-9; KP, Vol. I, 179-180: “Verbod teen byeenkomste van Kompanijesdaenaars en slavinne”, 1681-11-26. The ban was issued a third time in 1687: KP, vol. I, 226–30: “generaal plakaat: Geen vrijman off ’s Compagnies dienaar sal een bij-sit houden op peene om volgens de statuijtenvan India gehandelt te werden,” 1687-01-02.

88. Hamer, “Marriage and the Construction of Colonial Order,” 626.

89. Sharon Block observes a similar gap between “the personal coercion of sex and the public classification of rape” for sexually coercive encounters between British traders and Native American women in eighteenth-century North America which were likewise not classified or prosecuted as rape. Block, *Rape and Sexual Power in Early America*, 2-3.

90. NL-HaNa 1.05.05, inv 14 (Sociëteit van Berbice 1681-1800, Resolutieboeken der Directie, 1737 januari 4 - 1741 december 11), 26-262.

91. Jan Willem Kals, *Klagte over de Bedorvene Zeden Der Voorgangeren, Zoo in't Kerk- Als Burger-Bestuur in Eene Zeer Vrughtbare Ende Eerst Opluikende Colonie, Voorgesteld in Eene Behandeling, Gepleegt Aan Een Predikant, Aan 't Eerwaarde Classis van Amsterdam* (n.p., 1733), 22-23.
92. NL-HaNA 1.05.05 invnr. 219, 72-73.
93. The full name of the council was *Raad van Politie en Criminele Justitie*. Karwan Fatah-Black, *White Lies and Black Markets: Evading Metropolitan Authority in Colonial Suriname, 1650-1800* (Leiden, 2015), 8.
94. NL-HaNA 1.05.10.02, inv. 7, Oud Archief Suriname: Raad van Politie 1669-1828, "Minuut-Notulen van der vergaderingen van het Hof van Politie en Criminele Justitie," 404.
95. NL-HaNA 1.05.10.02, inv. 7, 430.
96. NL-HaNA 1.05.03 inv. 129 Sociëteit van Suriname, "Resoluties van Gouverneur en Raden," January 30, 1711.
97. NL-HaNA, 1.05.10.02 inv. 7, 404, November 17, 1710.
98. NL-HaNA 1.05.03 inv. 129, January 30, 1711.
99. NL-HaNA, 1.05.10.02 inv. 7, 449-50. The *plakaat* that was issued is available in *WIP Suriname* Vol. I, 277.
100. Carl H. Nightingale, "Before Race Mattered: Geographies of the Color Line in Early Colonial Madras and New York," *The American Historical Review* 113, no. 1 (2008): 48-71.
101. Aviva Ben-Ur and Jessica V. Roitman, "Adultery Here and There," 183-223.
102. PK vol. IIA: 535; 539; 541.
103. For more on information on "calecharen" and the social structure in Elmina see Natalie Everts, "Cherchez La Femme: Gender-Related Issues in Eighteenth-Century Elmina," *Itinerario* 20, no. 1 (1996): 45-57; Natalie Everts, "Huwelijk naar 'lands wijze': Relaties tussen Afrikaanse Vrouwen en European aan de Goudkust (West Afrika) 1700-1781; Een aanpassing aan beeldvorming," *Tijdschrift voor Geshiedenis*, no. 111 (1998): 598-616.
104. The use of the Portuguese "*muliere*" is somewhat ambiguous, because it can be translated to "wife", but probably does not imply a Christian marriage, or the Dutch *huisvrouw* would have been used. What is clear, however, is that both May and the unnamed mother of Wilhelmina were in relationships that enjoyed at least some degree of formal recognition by the Dutch authorities.
105. NL-HaNA 1.05.14, inv. 276, NBKG Minuut-sententiën met bijbehorende processtukken 1699-1798, 210.
106. "Akte van Callecharen" in PK, Vol. IIA, 742.
107. Everts, "Huwelijk naar Lands Wijze," 612.
108. Everts, "Huwelijk," 610.
109. IOR/9/16/2, 5.