

***The capacity and incapacity of married female traders in the  
Northern Netherlands: an exploration of the legal status of female  
public vendor\****

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*Introduction*

In recent years, many historians have become increasingly interested in the extraordinary position of the Dutch Republic. A central issue in the debate on the exceptionality of the early modern Northern Netherlands is the economic independence of women in Dutch early modern society. As opposed to women in other European countries, Dutch women were extremely independent and capable of managing affairs on their own. Anne Laurence suggested that the amount of freedom available depended on the existence of a legal framework favourable to women. According to Laurence, in the Dutch Republic the legal status of *openbaar koopvrouw* (female public vendor) generated the independence of women.<sup>1</sup>

Earlier, several studies concerning women in the Northern Netherlands discussed the status of female public vendor, but the image that derives from these studies is rather impressionistic; no specific information on the daily practice, on geographical differences or on developments over time are given by the authors. Moreover, the exact implications of the status for women's economic freedom are not properly tested.<sup>2</sup>

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<sup>1</sup> Anne Laurence, 'How free were English women in the seventeenth century?' in: Els Kloek, Nicole Teeuwen and Mirjam de Baar (eds.) *Women of the Golden Age. An international debate on women in the seventeenth-century Holland, England and Italy* (Hilversum 1994) 127-135, esp. 133.

<sup>2</sup> For example: Els Kloek, 'De vrouw', in: H.M. Beliën, A. Th. Van Deursen and G.J. van Setten (eds.), *Gestalten van de Gouden Eeuw. Een Hollands groepsportret* (Amsterdam 1995) 241-279, For example: D. Meulmeester-Jacobs, 'Op saaken van houlijken'. *Het wereldlijk recht inzake verloving en huwelijk* in: P. van Boheemen etc. (eds.), 'Kent, en versint, Eer dat je mint' *Vrijen en trouwen 1500-1800* (Zwolle 1989) 121-137, esp. 136-137,

In this paper, the functioning of this specific legal status for married female traders is the subject of research. By examining writings of contemporary lawyers, urban ordinances, jurisdictional advices and contemporary overviews of practiced law, I hope to come to a better understanding of this particular legal status. Moreover, these sources will be used to see if, and if so in what way, the existence of the status of female public vendor increased the freedom and leeway of female inhabitants of the Dutch Republic.

Before I can present the results, it is necessary go into the legal status of women living in the Northern Netherlands in general. After that, I will successively address questions on the applicability of the status of the female public vendor, the possible interference of the husband and the practical consequences of this particular legal status. In the end, I will come up with some first conclusions on daily practice, local differences and developments in this particular judicial status.

### *Women's legal status*<sup>3</sup>

Women's position in early modern Dutch society was largely based on their judicial status. It was their legal status that for the larger part determined what activities women were entitled to. In early modern Dutch law women were subdued to men. The assumption that lies beneath this subordination was that women were supposed to be physically or mentally weaker than men, and therefore needed male support and protection.<sup>4</sup>

The amount of freedom and leeway based on the judicial status was not the same for every woman; their marital status was decisive. Early modern Dutch jurisdiction treated married women different from unmarried women and widows as was the case elsewhere in Europe. Although it seemed perfectly natural to have a husband patronise his wife, a woman without a man should have the opportunity to operate independently. According to contemporary lawyers the permanent guardianship over single or widowed females would be in conflict with the freedom-loving nature of the Dutch people. Hence, widows and unmarried women older than 25 were considered capable of performing legal acts. In general this meant that they were allowed to administer their own property, to carry out legal transactions, and that they could enter into contracts and appear before a

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Anne Laurence, 'How free were English women in the seventeenth century?' in: Els Kloek, Nicole Teeuwen and Mirjam de Baar (eds.) *Women of the Golden Age. An international debate on women in the seventeenth-century Holland, England and Italy* (Hilversum 1994) 127-135, esp. 133 and Ariadne Schmidt, *Overleven na de dood. Weduwen in Leiden in de gouden eeuw* (Amsterdam 2001) 53, 60. Marlou Schrover however, elaborates on the subject in an article on widows taking over their husbands' business. Unfortunately, this article concerns businesswomen and their legal status in the nineteenth century. Marlou Schrover, 'De affaire wordt gecontinueerd door een weduwe' in: *Geld en goed. Jaarboek voor vrouwengeschiedenis* (1997) 55-74.

<sup>3</sup> This paragraph is mainly based on an article from Ariadne Schmidt. Ariadne Schmidt, 'Vrouwen en het recht. De juridische status van vrouwen in Holland in de vroegmoderne tijd' in: *Jaarboek van het Centraal Bureau voor Genealogie* (Den Haag 2004) 26-44. Although the article by Schmidt is on the judicial status of women in the province of Holland more general aspects (for example the consequences of the marital status) are applicable for the Dutch Republic as a whole.

<sup>4</sup> This argumentation has a long tradition: the assumptions were already present in Germanic law (physical weakness) and in Roman law (mental weakness).

court.

Married women on the other hand, had to be represented by their husbands in public life. He had to protect his wife and he had to speak for her and to take care of all legal matters concerning her. For that reason, married women were not able to act independently. Contracts drawn up without the husbands' consent could be cancelled if he did not approve, civil verdicts of which he did not know were not legitimate and married women could not be guarantors for someone else. The only matter in which a married woman was free of making decisions independent of her husband, was the household: for expenses concerning the household she did not need his approval. However as several lawsuits show, difference of opinion on household expenses could lead to problems within the marriage. For example, in 1621 a man had to appear before court because he was not willing to pay the expenses for cloth his wife had bought. The court however decided that the man had to pay the textile merchant because the cloth was indeed bought for the benefit of the household.<sup>5</sup>

Even though in general married women and unmarried women under the age of 25 were not capable of performing legal acts, the legal system created possibilities in certain circumstances. For instance, young unmarried women could have declared themselves of age, by letters of 'venia aetatis' to be acquired at the Hof van Holland.<sup>6</sup> By doing so, several young women got the opportunity to start their own business and were able to maintain themselves. Another example of enlarging the legal possibilities of women was the willingness of city authorities to temporarily suspend the husbands' guardianship over his wife under certain circumstances. We see this happening when males were absent, for instance due to seafaring, and their wives needed legal authority to handle certain (business-) affairs. In most cases these *onbestorven weduwen*, or grass widows, were authorised to settle the dealings they asked for in court.<sup>7</sup>

Both the 'venia aetatis' and the status of *onbestorven weduwe* can be considered as pragmatic solutions to problems occurring in everyday life. It is still debated whether the status of female public vendor can be regarded in an equal way.<sup>8</sup> More research on the exact origin of this special status can help to come to a solution. In the following paragraphs I will however argue that the legal status was at least open to a pragmatic interpretation.

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<sup>5</sup> Consultatien, Advyzen en Advertissementen. Gegeven ende geschreven by verscheyden treffelijcke rechtsgeleerden in hollandt, Vierde deel (Rotterdam 1645) 434. Supposedly, in the seventeenth century these lawsuits took place on a regular basis. Schmidt, *Overleven*, 60.

<sup>6</sup> Boys could also ask for the letters of 'venia aetatis' at the Hof van Holland. As opposed to other legal possibilities mentioned in this paper, this measure was not reserved for women only.

<sup>7</sup> Schmidt, *Overleven*, 75 and Danielle van den Heuvel, 'Bij uijtlandigheijt van haar man'. *Echtgenotes van VOC-zeelieden aangemonsterd voor de kamer Enkhuizen (1700-1750)* (Amsterdam 2005) 76.

<sup>8</sup> For instance: Els Kloek, 'The case of Judith Leyster: exception or paradigm?' in: Judith Leyster. *A Dutch master and her world* (Haarlem and New Haven 1993), 55-68, esp. 58-60, Danielle van den Heuvel, 'Women and work in the early modern Netherlands: women's work in trade. Paper presented at the fifth ESSHC, Berlin 2004' (url: <http://www.iisg.nl/womeswork.html>) 6. And even after the EHLC: Laura van Aert, 'Tussen norm en praktijk. Een terreinverkenning over het juridische statuut van vrouwen in het zestiende-eeuwse Antwerpen', *Tijdschrift voor Sociale en Economische Geschiedenis* (2005) 22-42, esp. 30-31.

*Who was defined as a female public vendor? Local differences and developments over time.*

In the introduction I have already stated that the concept of female public vendor leaves us with several questions. One of the questions that remain to be answered is to whom this particular legal status applied. At the moment several different opinions exist on this topic, because of differences in legal practice and in the interpretation of judicial treatises.

First, let me introduce the different opinions on who were able to operate as female public vendors. Most scholars seem to agree on one aspect: the female public vendors were married. The differences in opinion mainly focus on the general applicability of the status. Historians who have written on this particular legal status seem to be confused on this matter and do not exactly know to whom the status applied; on the one hand they write that the status of female public vendor applied only to female traders in certain specific trades (brewing, baking and cloth selling), while on the other hand they refer to the wide-ranging applicability of the status and suggest that the status referred to saleswomen in general.<sup>9</sup> The reason for this confusion probably lies in the sources used. Most of the authors refer to contemporary lawyers as Hugo de Groot (1583-1645) and Simon van Leeuwen (c. 1625-1682). However, both De Groot and Van Leeuwen are not specifically clear on the concept and their overview can lead to various interpretations on the status of female public vendor.<sup>10</sup>

In his chapter on marriage law, Hugo de Groot states that traditionally married women were only allowed to make debts concerning household expenses up to a maximum of 4 pennies. Only female brewers, bakers and women who sold woollen thread or linen were, as female public vendors, permitted to make small debts concerning their trade, without their husbands interfering. The next passage in this chapter suggests that because of the growth in trades and the rising of the nation's wealth the possibilities of married women were enlarged. De Groot wrote that in 1620 'a married woman, having a public trade, is allowed to take care of all things concerning the trade she is involved with (...) All other women were only allowed to make expenses for household affairs.'<sup>11</sup> This passage seems to suggest that the status of female public vendor was extended in some way or another, however from this specific passage we cannot be positively sure if the extension considered the applicability of the status or just the size of the debts a female public vendor was allowed make.

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<sup>9</sup> See for example Meulmeester-Jacobs, 136-137 and Kloek, 271, 272.

<sup>10</sup> Hugo de Groot, *Inleidinge tot de Hollandse Rechtsgeleerdheid. Met de te Lund teruggevonden verbeteringen, aanvullingen en opmerkingen van den schrijver en met verwijzingen naar zijn andere geschriften uitgegeven en van aantekeningen en bijlagen voorzien door F. Doving, H.F.W.D. Fischer, E.M. Meijers (Leiden 1965), 21-22; Simon van Leeuwen, *Het Rooms-Hollands regt waar in de Roomse wetten met het huydendaags Neerlands regt, in alles dat tot de dagelijkse onderhouding kan dienen, met een bysondere korthet... overeen gebracht werden (1698) 26.* Another source often used is A.S. de Blecourt's *Kort begrip van het Oud-Vaderlands recht (1922)*, which is also not very clear on the subject.*

<sup>11</sup> De Groot, *Inleidinge tot de Hollandse Rechtsgeleerdheid*, 21-22.

Simon van Leeuwen is not clear on the extension of the status either; this is not surprising if we bear in mind that his work, *Het Rooms-Hollands regt*, was for a large part based on the work of De Groot. However, another work of Van Leeuwen does shed some more light on the origin of the status; in his *Costumen, keuren and ordonnantien* he refers to medieval urban ordinances from among others Utrecht, Leiden and Delft.<sup>12</sup> To find out more on the applicability of the status I have looked up urban ordinances in different time periods and in different cities of the Northern Netherlands. These ordinances can help us to interpret Hugo de Groot's writings on the subject. From each ordinance I have taken down how each separate bye-laws dealt with married female traders. A categorized overview can be found in Table 1 in the appendix.

The first three columns in Table 1 give us more insight in the applicability of the status of female public vendor. In the first place, we can see that in the first half of the thirteenth century the special judicial status for married female traders appeared in urban regulation of towns as Haarlem, Alkmaar and Delft. In later periods, the status can also be found outside the province of Holland: for example in 's-Hertogenbosch, in Zutphen and in Friesland.<sup>13</sup> We can assume that the special status for married female entrepreneurs did not only exist in these specific localities. Earlier, W.F. Lichtenauer suggested that the status originated in Burgundy law, and the existence of identical separate legal statuses for married female traders in other western European countries as the Southern Netherlands, England and Germany points also in the direction of a rather widespread phenomenon.<sup>14</sup>

Secondly, it is clear that one can indeed distinct two different types of female traders who could be acknowledged as female public vendors: on the one hand the status only applied to women who worked as brewers, bakers, cloth sellers, and sometimes innkeepers, and on the other hand it referred to women who were selling in general as no specification of trades is found in the ordinances.

If we take a closer look at Table 1, a third aspect becomes clear. The developments in the legal status for married female traders as Hugo de Groot sketched in 1620, are reflected in the urban ordinances. At least from 1542, in Friesland the status was no longer exclusively reserved for women in a certain trade (i.e. beer, cloth and sometimes bread) but it was extended to female traders in general. We can see the same in the 1583 bye-law of Leiden, where the trade of a female public vendor was not specified either.

A fourth intriguing aspect is that together with the extension of types of trades,

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<sup>12</sup> Simon van Leeuwen, *Costumen, keuren ende ordonnantien van het baljuschap ende lande van Rijnland* (1667) 357-358.

<sup>13</sup> The bye-law considering the status of female public vendor is only to be found in city ordinances, in ordinances from polders as for instance De Zijpe or Beemster a bye-law on female public vendors is not present.

<sup>14</sup> W.F. Lichtenauer, *Geschiedenis van de wetenschap van het handelsrecht in Nederland tot 1809* (Amsterdam 1956) 15-16, 156-157. Schmidt, *Overleven*, 60. England: Laurence, *How free*, Germany: Susanne Schötz, 'Handelsfrauen im neuzeitlichen Leipzig : Gewerberecht und Lebenssituationen (16. bis 19. Jahrhundert)' in : Ute Gerhard (ed.), *Frauen in der Geschichte des Rechts. Von der Frühen Neuzeit bis zur Gegenwart* (München 1997) 151-174, the Southern Netherlands: Van Aert, 'Tussen norm en praktijk'.

the amount of debts a female public vendor was allowed to make was enlarged as well. So at least from 1542, the debts married female traders were allowed to make were not specified the way it was done before, when female public vendors were only allowed to make small debts (i.e. an oven of bread, one brew, or one 'stone'<sup>15</sup> thread). This is also reflected in the overview of De Groot as he states that from 1620 on, a married female trader was allowed to handle all the affairs considering her trade, and to 'alienate and burden goods involved in her trade'.<sup>16</sup> So the city ordinances show that the comments Hugo de Groot made on the extension of the status, applied to the types of trade involved, as well as to the amount of debts.

A fifth and final striking element in Table 1 is the case of Amsterdam. Based on an ordinance from 1492 (repeated by Hermanus Noordkerk in his eighteenth-century summary of Amsterdam city regulation *Handvesten*<sup>17</sup>) it is argued that in the Low Countries, Amsterdam had a somewhat deviant position. In this city the status of female public vendor would only have applied to innkeepers and drapers, while in other towns in the Northern and Southern Netherlands at that time, married female traders in general could be considered female public vendors.<sup>18</sup> The Amsterdam ordinance of 1492 forbids any woman to take up a trade, excluding the earlier mentioned innkeepers and drapers. Nevertheless, it is most likely that the historians that argued that Amsterdam had a somewhat deviant position, had been put on the wrong track. If one takes a closer look on the exact formulation of the ordinance one can conclude that this specific ordinance was more or less a blind. According to the ordinance, problems existed with payments involved in trading activities of foreign merchants with female traders. It is most likely that these foreign merchants complained about this matter to the city council. To please them, the city council decided that from that time on, no woman was allowed to operate as a trader, except for female innkeepers and drapers. However, they added one thing that invalidated the complete ordinance. In the last two sentences they warn people who in the future do involve in trading activities with a female trader. It is made clear that when in that case problems occurred, one could not appeal for justice.<sup>19</sup> We can deduct from this that their position was equal to that of female public vendors in other cities. In the end, the 1492 ordinance might not have changed much about women's economic position in Amsterdam. This suggestion has been put forward by Leonie van Nierop in an article on Amsterdam' retailers. Based on indications from guild regulation on female membership of the *kramersgild*, she suggested that the ordinance of 1492 did not mean

<sup>15</sup> A 'stone' is a unit of weight. In Dutch: 'stien'.

<sup>16</sup> De Groot, *Inleidinge tot de Hollandse Rechtsgeleerdheid*, 21-22.

<sup>17</sup> H. Noordkerk, *Handvesten ofte privilegien der stad Amstelredam* (Amsterdam 1748).

<sup>18</sup> B.H.D. Hemersdorf, *De herberg in de Nederlanden. Een blik in de beschavingsgeschiedenis* (Assen 1957) 29, Laura van Aert, 'Van appelen tot zeemleer': koopvrouwen in Antwerpen in de 16<sup>de</sup> eeuw' (Unpublished MA-thesis Free University of Brussels, 2002) 22-23.

<sup>19</sup> In Dutch: 'Waerschuwende mits desen van 't gunt dat voorsz. Is igelijcken/ dat hij hem zelve beware/ als hij met eenige vrouwen koopmanschap doet. Want men zale in toekomstige tijden daer geen recht af doen en sal.'

any difference for female vendors in daily practice.<sup>20</sup> The ordinance from 1644, which at first might have looked as a sudden and dramatic change in women's legal possibilities in Amsterdam, then only seems to be a legal confirmation of long existing daily practice.

We can conclude that the city ordinances from the thirteenth century onwards make clear that in the course of time in most Dutch towns the legal possibilities of married women were extended. In medieval ordinances only four types of trade were accessible for married women who wanted to operate independent from their husbands: the brewery, the bakery, innkeeping and the (wool and linen) cloth and yarn trade. Next to the limitations on types of trade, also the amounts of debts female public vendors were allowed to make were limited. From the sixteenth century onwards however, generally the applicability of the status of female public vendor is extended to female traders in general *and* the amounts of debts were broadened as well. According to Hugo de Groot, all this is to be explained by the nations' economic growth. Although Amsterdam was always seen as an exception, research on bye-laws makes clear that even in Amsterdam equal developments in the status of female public vendor took place. Moreover, the Amsterdam case shows that the legislation was sometimes pragmatic and was open to more than one interpretation.

#### *The capacity and incapacity of female public vendors*

Another aspect of the particular legal status of female public vendor that is not yet clear is the daily practice. When female public vendors are discussed, the practical consequences for married female traders often remain implicit. Besides from their financial responsibility as discussed in the paragraph above, there are more issues that until today have remained vague: we still do not know what role the husband had and there are questions on the exact legal capabilities and responsibilities of female public vendors. In this paragraph I will go into these problems and try to come to a better understanding of the practical consequences of the legal status discussed in this paper.

The first issue in the functioning of female public vendors to be discussed here is the role of the husband. As we have seen, normally married women were dependent on their husbands in all legal actions. As for female public vendors, the male guardianship in legal matters was partly abolished, but in urban ordinances as well as in legal treatises the husbands' influence still gets a prominent position. Based on remarks in these sources, historians have concluded that the husband was decisive in a woman's possibilities to act as an independent trader. According to Els Kloek for example, a married woman needed her husbands' (implicit) consent to have a trade of her own, and

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<sup>20</sup> Leonie van Nierop, 'De handeldrijvende middenstand te Amsterdam in 1742' in: *Vijfenvestigste jaarboek van het genootschap Amstelodamum* (1953) 193- 230, esp. 195-196.

he could put a stop to it by an (explicit) veto.<sup>21</sup> In the past, it is even suggested that the consent as well as the explicit veto had to take place in court, where a husband could have his wife's actions as a trader either confirmed or prohibited.<sup>22</sup>

Again, we arrive at the difficulty of interpreting the writings of contemporary lawyers. Based on an edition of medieval sources on urban law in Dordrecht by J.A. Fruin, Dianne Meulmeester-Jacobs assumed that, at least in this city, a husband's approval before court was needed to grant a married woman the status of female public vendor.<sup>23</sup> However, the proof consists of the case of Jan die Raet who in 1406 appeared before court to authorize his wife to be a 'merchant of *his* goods and debts'.<sup>24</sup> Fruin interpreted this as an authorisation for female public vendorship, and here we get to a second problem concerning the capacities of female public vendors. Did the trade of a female public vendor had to be in her own name, or did it apply to a trade in which she took part, for instance within her marriage?

If we take a look at the urban ordinances in Table 1, we see that most of those refer to *her* trade when they speak of the conditions of the female public vendorship.<sup>25</sup> Only in the bye-law from Friesland of 1542 (which is repeated in 1602), one of the conditions is that the wife was involved in trade *together* with her husband. In his work on the history of the Dutch commercial law, Lichtenauer suggests that a distinction should be made between the wife of a merchant who is involved in the business of her husband and the female public vendor who is a married woman with a trade of her own.<sup>26</sup> Based on this remark and the majority of the ordinances examined, I am willing to believe that Fruin's interpretation might have been wrong.<sup>27</sup> The Friesland bye-laws can thus most likely be considered deviant and moreover one might suggest that the case of Jan die Raet can be considered as a common request for legal authorisation as often occurred when a man needed his wife to handle certain affairs.<sup>28</sup>

A third problematic matter is the 'explicit veto', or the fact that a husband could put a stop to his wife's trade by going to court. Although it is not questionable that that was indeed a possibility, to view this as a part of the conditions to the status of female public vendor might be incorrect. In his passage on female public vendors, Hugo de Groot mentions the fact that a husband could ask for a restriction of his wife's legal capacities in court.<sup>29</sup> However, at that moment he is not discussing women's legal

<sup>21</sup> Kloek, 'De vrouw', 271.

<sup>22</sup> On the consent: Meulmeester- Jacobs, 'Op saaken', 136, on the veto: Schmidt, *Overleven*, 60.

<sup>23</sup> Meulmeester- Jacobs, 'Op saaken', 136.

<sup>24</sup> J.A. Fruin (ed), *De oudste rechten der stad Dordrecht en van het baljuwschap van Zuidholland, Tweede deel* ('s-Gravenhage 1882) 6. In Dutch: 'coepwif te wesen van sinen gueden ende sculden (...)'.  
<sup>25</sup> In Dutch: 'haar koopmanschap'.

<sup>26</sup> Lichtenauer, *Geschiedenis*, 156-157.

<sup>27</sup> This thought is furthermore strengthened by a late nineteenth-century dissertation on the status of female public vendor, which also considered the status as applicable only to married women that have a trade separate from the husband. See: G.S.P. Scheltema, *De getrouwde vrouw als koopvrouw. Aanteekening op art. 168 B.W.* (Leiden 1876) 9.

<sup>28</sup> See Schmidt, *Overleven*, 69 and Van den Heuvel, 'Bij uijtlandigheid', 76.

<sup>29</sup> The exact phrase in Dutch is: '(..) ofte hy most sijn vrouw oock dat bewint rechtelick verbieden'.



capabilities as public vendors, but as wives managing the household.<sup>30</sup> This presumption is confirmed by the different urban ordinances on married female traders. The fourth column in Table 1 shows the husbands role and in only one case, Amsterdam 1644, we see that a condition to the status of female public vendor was that a husband had to know of his wife's trade and had to authorize it.

A fourth conclusion on the legal capacities of married saleswomen, is the fact that all ordinances, except for the Amsterdam 1644 bye-law, state that female public vendors were only allowed to handle affairs involved in her trade. As a female public vendor a woman did not acquire *full* legal capacity. This fact is illustrated by a case in eighteenth century Enkhuizen. There, on February the 12<sup>th</sup> in 1717 a female trader called Harmpjes Barends went to court. In absence of her husband she had bought a house, but in contrast to what she had thought, she was not able to close the deal. As a trader Harmpjes expected to be fully authorised to settle the required administration, though this did not appear to be the case. To complete the transaction, she needed legal authorisation and because of that she needed to apply to her status of grass widow.<sup>31</sup> Harmpjes' case furthermore illustrates the fact that even the female public vendors *themselves* were not completely aware of the exact implications of the status.

A final observation considers the conditions to the status of female public vendor. The daily practice for female public vendors probably differed from town to town as conditions to the status were different in every town, which becomes clear in the fifth column of Table 1. As opposed to Leiden, and for instance Vlissingen in 1763, in seventeenth century Amsterdam more conditions to the status of female public vendor existed. The city government demanded that next to the awareness and approval of the husband, the trade had to take place on a daily basis and that it had to be in the woman's name. Moreover it was stated that a woman was able to trade 'in absence or presence of her husband'.<sup>32</sup> In a way this corresponds with something Lichtenauer refers to; according to Lichtenauer a female public vendor could not escape her responsibilities when her husband did not confirm his wife's commitments after his return.<sup>33</sup> Here, we arrive at a crucial matter: what were the exact implications for women who were considered female public vendors?

One of the most important implications for a woman who was considered a public vendor was the fact that she was considered 'capable of actions' – meaning she was fully responsible for debts concerning her trade. So, as illustrated above, even if she had made commitments in absence of here husband, at his return he could not invalidate this by expressing his disapproval. This financial responsibility also concerned the financial situation of the household. Normally, a widow had the right to what in Dutch is called

<sup>30</sup> In the paragraph above, the case of the cloth merchant is an example of a conflict on household expenses that was taken to court.

<sup>31</sup> Archiefdienst Westfriese Gemeenten, Oud-rechterlijke archieven, Requesten en appointementen, 4847, 12 februari 1717.

<sup>32</sup> In Dutch: 'soo wel in absentie als praesentie'.

<sup>33</sup> Lichtenauer, *Geschiedenis*, 156-157.

'voor de baar uitgaan': to renounce her claims on the common property, which, of course, also included household debts. This means that in this way she could dodge paying of debts her husband was responsible for. This possibility was created to protect the legal incapability of women during their marriage.<sup>34</sup> As a public vendor however, a woman was considered fully capable and was held responsible for her own actions. Therefore she could not apply to this particular measure.<sup>35</sup> This idea of (financial) responsibility of female public vendors is also reflected in a case on the payment of a dowry. In Amsterdam in 1634 five people appeared before court because of a conflict on the payment of a dowry. The conflict can be reduced to the fact that the mother of the bride promised the bridegroom's parents a dowry. Apparently she rejected to pay for it when the wedding was there and ordered her husband to pay for the dowry, who in his part rejected as well. The court, however, decided that because she was the one who promised a dowry, and of more importance here, she had a trade of her own, the girl's mother was responsible for paying the dowry.<sup>36</sup> This last case shows that the status of female public vendor brought married women responsibilities they otherwise did not have. Female public vendors were considered responsible for financial matters, and in these cases they were seen as legal subjects.<sup>37</sup>

### Conclusion

In the early modern Northern Netherlands married women were considered incapable of performing legal acts. One of the consequences of this incapability was that they could not administer their own goods and could not enter into contracts. Running a business apart from their husband would not have been a possibility for married women if the separate legal status of female public vendor had not existed. Until today, the meaning and the implications of this particular status was not clear. In this paper I have tried to come to a better understanding of the status by looking at urban ordinances, legal treatises and jurisdictional advises.

In the past, the status of female public vendor was often presented as a static phenomenon. However, urban ordinances show that, at least from the 16<sup>th</sup> century onwards, an expansion of married women's legal possibilities in trade took place. Before 1542, in most urban ordinances it is stated that only female brewers, bakers, cloth sellers and innkeepers were able to operate as traders independent of their husbands. The maximum risk they could take, without their husbands interfering, was a small amount of goods or the equal amount of money (i.e. an oven of bread, one brew, or one

<sup>34</sup> Schmidt, 'Vrouwen en het recht', 12.

<sup>35</sup> De Groot, *Inleidinge tot de Hollandse Rechtsgeleerdheid*, 80 and Schmidt, *Overleven*, 61.

<sup>36</sup> *Consultatien, Advyzen en Advertissementen, Tweede deel* (Rotterdam 1645) 635.

<sup>37</sup> Whether this 'full' responsibility of female public vendors had more implications for the women involved than the ones discussed here, needs to be examined.

stone thread). In 1542, in ordinances from the province of Friesland we can see a first expansion of the status. From that time on, the status - and the privileges attached to it - applied to female traders in general. We see this expansion reflected in other urban ordinances from other towns in the provinces in Holland, Zeeland, Utrecht, Guelders and Brabant. In general, in the early modern Northern Netherlands the status of female public vendor applied to married female traders who had a business of their own - independent from their husband. The status ensured them legal capacities necessary for running a business, capacities that married women normally had to do without. These legal capacities however, only considered matters involved in their trade: female public vendors did not acquire *full* legal capacity. Although in general the same pattern of expanding the status and its implications can be distinguished, every town had its own set of conditions attached to the status of female public vendor. The status and, in a way, its practical consequences, differed from town to town. The ordinance from Amsterdam (1492) is the most extraordinary example in this case.

One of the aspects of the status of female public vendor that was very unclear, was the role of the husband. In judicial treatises as well as urban ordinances the husband plays an important role. It was often assumed that to become a female public vendor, a woman needed her husbands' approval. Although it is not improbable that a husband's opinion on his wife's activities would have influenced her doings, it cannot be seen as a necessary condition to the status of female public vendor, as it is only present in one of the urban ordinances. Furthermore, the thought that a husband could put a stop to his wife's enterprise by going to court should not be seen as a necessary condition to the status either. No ordinance speaks of this measure and when Hugo de Groot discusses husbands taking up a lawsuit against their wives to limit their capabilities to act, he speaks of affairs concerning the household. Of course, this does not mean that lawsuits to prevent wives from trading have not occurred.

For a married woman the status did not only imply that they gained more freedom to operate independently. Together with the freedom came responsibilities; as female public vendors, married women were considered legally capable. Therefore measures created for the protection of the incapability of married women in general, were not applicable to them. The most important example in this case is that - as opposed to other married women - female public vendors were not allowed to renounce her claims on the common property, to escape paying of household debts. As a female public vendor, a woman was considered completely responsible for debts occurring in the household or in her company.

With this paper I hope to contribute to a better understanding of the capacity of married female traders in the Northern Netherlands. Although some things have become clear, a lot of work remains to be done. Research on the origination of the status can give some insight in the different forms existing throughout Western Europe, while the daily practice and the practical consequences of this status in the different countries still

needs to be examined. More insight on the daily practice in the Northern Netherlands can be gained by looking at petitions to the city government submitted by female traders. What were their needs? In what way were they bothered in their trading activities? Answers to these questions can lead to a better understanding of the practical consequences of the status of female public vendor. On the interaction between husband and wife more information can probably be found in civil law suits, or for instance in notary archives. All of this remains to be done.

## Appendix

**Table 1. Overview of several (urban) ordinances on married female traders**

<b>Competences/ Place and year</b>	<b>Type of trade</b>	<b>Allowed debts</b>	<b>Role of husband</b>	<b>Extra remarks of importance</b>
<i>Haarlem 1245<sup>38</sup></i>	Baking, brewing, woolen cloth, linen cloth, yarn.  <i>(Backen, Brouwen, Wollen laken, Linnen laken, Garen)</i>	An oven of bread, one brew or one stone yarn.  <i>(Backte broods, Broute biers, Stien gaerns)</i>	The husband cannot undo the loss of the allowed debts.	<ul style="list-style-type: none"> <li>When a woman is not involved in a trade, she can only make debts up to four pennies.</li> </ul>
<i>'s-Hertogenbosch 1330</i>	Baking and brewing.  <i>(Bakken en Brouwen)</i>	One unit of bread or one brew.  <i>(Ghebeck broets of ghebruut biers)</i>	The husband cannot undo the loss of the allowed debts.	<ul style="list-style-type: none"> <li>The practiced trade has to be in public.</li> <li>When a woman is not involved in a trade, she can only make debts up to four pennies.</li> </ul>
<i>Zutphen 1356</i>	Selling beer, bread or other goods.  <i>(Ommegaan met bier, brood of ander coopmanschap)</i>		The husband cannot undo the loss of the allowed debts.	<ul style="list-style-type: none"> <li>Repeated in 1392.</li> <li>The wife is also responsible for her spouses' debts.</li> </ul>
<i>Den Briel c.1400</i>	(-)		A husband needs to authorize his wife before court; the husband can put a stop to his wife's trading activities by going to court.	<ul style="list-style-type: none"> <li>It has to be publicly known that the woman is a trader.</li> <li>The wife is also financially responsible for her husband.</li> </ul>
<i>Amsterdam 1495</i>	Drapery, innkeepers.  <i>(Draperie Waardinnen van herbergen)</i>	Board.  <i>(Mondkosten)</i>	(-)	<ul style="list-style-type: none"> <li>Cause: problems with payments to foreign merchants.</li> <li>This bye-law does not mention the woman's marital status.</li> <li>When men do decide to do business with a woman, it is at their own risk.</li> </ul>
<i>Friesland 1542</i>	Public trade.  <i>(Openbare neeringe ende coopmanschappen)</i>	(-)	Trade has to be conducted in cooperation with spouse.	<ul style="list-style-type: none"> <li>Only when the trade is conducted together with their husband, women are allowed to handle affairs concerning that specific trade.</li> </ul>
<i>Leiden 1583</i>	Trade.  <i>(Koopmanschappe)</i>	(-)	A married woman can both commit	<ul style="list-style-type: none"> <li>A married woman can only commit herself to</li> </ul>

<sup>38</sup> The medieval urban ordinances of Delft and Alkmaar have an equal keur on the status of the female public vendor. With special thanks to Jessica Dijkman. According to Simon van Leeuwen an identical text was present in the keuren of Monnikendam in 1228. Van Leeuwen, *Costumen*, 357-358.

			herself as her husband.	affairs involved in her business.
<i>Friesland 1602</i>	Public trade. <i>(Openbare neeringe ende coopmanschappen)</i>	(-)	Trade has to be conducted in cooperation with spouse.	<ul style="list-style-type: none"> <li>Only when the trade is conducted together with their husband, women are allowed to handle affairs concerning that specific trade.</li> </ul>
<i>'s-Hertogenbosch 1607</i>	Trade. <i>(Coopmanschap en neeringe)</i>	(-)	Husband needs to be aware and needs to agree on commercial activities of the wife.	<ul style="list-style-type: none"> <li>Applies to both the trade conducted by husband and wife together, as to a separate enterprise of the wife.</li> </ul>
<i>Amsterdam 1644</i>	Trade. <i>(Coopmanschap)</i>	(-)	Husband needs to be aware and needs to agree on commercial activities of the wife; a married woman can both commit herself and her husband.	<ul style="list-style-type: none"> <li>The wife can do business in both the presence and absence of her spouse.</li> <li>The trade (purchase and sale) needs to be undertaken on a daily basis.</li> <li>The trade has to be registered on the wife's name.</li> </ul>
<i>Leiden 1658</i>	(public) Trade. <i>(Openbaer met) Koopmanschappen)</i>	(-)	A married woman can both commit herself and her husband.	<ul style="list-style-type: none"> <li>A married woman can only commit herself to affairs involved in her business.</li> </ul>
<i>Culemborg 1746</i>	(her) Trade. <i>((haar) Koophandel)</i>			<ul style="list-style-type: none"> <li>Married women cannot enter into contracts, negotiations nor administrations, receive money, give out receipts, act in court, whether or not they have children, business or household affairs excluded.</li> </ul>
<i>Vlissingen 1763</i>	Saleswoman, inn- or tavernkeeper. <i>(Coopvrouwe, herbergiere ofte taverne houdende)</i>	As far as it concerns the woman's trade, inn- or tavernkeeping.		<ul style="list-style-type: none"> <li>A married woman is not responsible for debts made by her husband.</li> </ul>