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Frictions in Sex Crimes
The Peculiarities of Guilt-attribution Practices, The Hague (1911-1960)

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This paper investigates the ways in which notions of femininity and masculinity informed the interpretation of sex as sexual *transgressions* in the perception of professional agents involved in the prosecutions of sex crimes.* The analysis is based on a collection of data on sex crimes retrieved from the district court of The Hague in the Netherlands between 1911 and 1957. Before turning to the practice of investigating and prosecuting sex crimes in the Dutch court district mentioned, we need to explore two themes. First, the dramatic paradigmatic shift changing the practice of prosecuting (sex) crime in the first half of the twentieth century needs to be addressed. Secondly, we need to understand the strictly legal sexual prohibitions. After all, since the Enlightenment, the legal history of sexuality has revolved around three basic themes throughout the Western world. Age, consent and compensation have moulded the borders between appropriate and inappropriate sexual behaviour. Still, these basics have been worked out quite differently in varying Penal Codes (hereafter PC) across time and place.

Professional interventions. Police and parole officers and psychiatrists

Between 1911 and 1957, changes in legal thought deeply affected the practice of criminal prosecutions in the court district of The Hague. Along the course of time, a *modern* school of legal thought challenged existing *classical* principles that took 'retaliation' as a point of departure. Increasingly, re-socialisation and re-education took the place of vengeance. After all, high rates of recidivism showed that the existing penalties were ineffective in protecting society. This paradigmatic shift was not a Dutch phenomenon, however. Throughout Europe, uniform systems of punishment gave way to punishments made to measure the convicts at hand, in order to prevent recidivism. Similarly, solitary confinement was discredited. Considered to be inhumane, imprisonment had no educational value moreover.¹

Tailor-made sentences were enabled by the introduction of several laws in the Netherlands. In 1901, the Dutch Children's Act introduced separate legal procedures for juveniles. From 1915 onwards, moreover, probationary sentences became a possibility. Beforehand, sentences automatically resulted in imprisonment. The police court was introduced in 1921 assigned to sentence relatively simple cases in which the defendant was clearly guilty.² From the turn of the century, Dutch lawyers and medical experts found it problematic that

* I would like to thank two historians for their contributions to my work: Rebecca Young and Geertje Mak. In analysing my research materials, I have greatly benefited from Young's inspiring presentation of her paper *Sorting "Pedophiles" from "Normal" Child Rapists: Diagnostic Technology and the Sexual Hierarchy in Forensic Sexology* at the sixth European Social Sciences and History Conference in Amsterdam, 2006. I would also like to thank Geertje Mak for her inspirational comments upon my PhD project in general and for taking me on as her assistant in preparing for a research project on the history of incest. They both gave me the tools that I needed to work with the richness of the research materials at my disposal.

¹ See for instance: Martin J. Wiener, *Reconstructing the criminal. Culture, law and policy in England, 1830-1914* (Cambridge: Cambridge University Press, 1990).

² P. van Heijnsbergen, *De politierechter. Lezing gehouden voor de Vereeniging van Recherchers te Amsterdam, 6 februari 1923* (Alphen aan de Rijn: Samson, 1923).

convicts were held either fully responsible or wholly irresponsible for the crimes committed. This led to a situation in which fully irresponsible defendants ended up in medical facilities where in the end the chief of staff decided whether or not the defendant returned to society. After lengthy debates, the category of diminished responsibility was created with the Psychopath Act of 1928 which ensured the possibility of combined sentences (imprisonment and treatment), but also ensured the court's authority concerning the return of a defendant to society.³ From the turn of the century, the uniform penal system gradually caved in to a tailor-made system of combinational sentences of imprisonment, rehabilitation, medical and psychiatric treatments and probationary periods.⁴ These transitions affected the prosecution of homosexuality as well. Generally, homosexuals came to be seen as psychopaths, as the new intermediary category. Doctors who thought that homosexuals needed to be both punished and cured welcomed the Psychopath Act.⁵

These modern measures and acts influenced the legal practices. Along the course of time, the involvement of social workers, parole officers and expert witnesses became increasingly important.⁶ Examining judges called upon parole officers and medical experts to gather background information in preparing trials for sex crimes. Their reports show the preoccupations of these professional bodies and reveal the framework with which sexual crimes were approached. Parole officers investigated the defendants' networks (schools, work, neighbourhoods and family) in order to establish the defendants' characters. Additionally, they had to take their cloths of when medical experts investigated their level of responsibility. As we will see, the investigations into the character and personality of defendants of (alleged) heterosexual crimes differed significantly from those of (alleged) homosexual crimes, especially as psychodynamic personality theories became fashionable.⁷ Before turning to these investigatory practices, it is important to see how the age of consent for homosexual sex acts changed in 1911.

Adolescents - innocent boys and unruly women

At the turn of the century, the sexual agency of Dutch adolescents was reinterpreted rather drastically. Until 1911, sex with children under the age of 16 years had been prohibited (article 247 PC). From 1911 onwards, article 248bis of the Dutch Penal Code criminalised *same-sexed* sex with adolescents under the age of 21 years for both women and men. The Catholic Minister Regout, supervising the introduction of the new sex laws in 1911, prided himself as moderately liberal. After all, he followed the Swiss proposals concerning homosexuality and not the German paragraph 175 that prohibited all male homosexuality.⁸ 'Real' homosexuals, the Minister stated, were adult men seducing boys and adolescents. Regout denied the latter their sexual *agency*. Homosexuality was never a choice for these young boys and male adolescents. They were without exception victims of seduction:

'The practice is not, that two persons, who are both in their adolescent years, choose each other. The fact is, that the adult, usually a very mature adult, picks himself a παῖς [i.e. pais, AT].'⁹

This Greek choice of words was by no means a slip of the tongue. Regout meant to appeal to the classical practices of pederasty. His goal was to ban boy-love. Regout's article 248bis was heavily contested by all sorts of politicians. It took the Dutch parliament three of the eight days they debated the new sex laws to come to terms with article 248bis PC.¹⁰ The socialist Member of Parliament Troelstra fiercely opposed the alteration of

³ W. P. J. Pompe, *Klinisch-psychiatrisch onderzoek naar delinquenten* (Assen: Van Gorcum, 1962); Karel Haffmans, *Terbeschikking gesteld. Geschiedenis, oplegging en executie van een strafrechtelijke maatregel* (Arnhem: Gouda Quint, 1984); Ebe Hofstee, *TBR en TBS. De TBR in rechtshistorisch perspectief* (Arnhem: Gouda Quint, 1987); Ingrid Lammers, "De TBR in de Tweede Wereldoorlog. Een onderzoek naar klinieken en hun patiënten" (M.A. Thesis, Utrecht University, 2001 (unpublished)).

⁴ DNA, 3.03.15.03 and 3.03.15.06: Registers of sentences.

⁵ Dr F. S. van Bouwdijk Bastiaanse (1925) *Psychopathen en het ontwerp Psychopathenwet* (Amsterdam), 2.

⁶ Albert Eggens, *Van daad tot vonnis. Door Drenten gepleegde criminaliteit voor en tijdens de Eerste Wereldoorlog* (Assen: Van Gorcum, 2005); Jean-Paul Heinrich, *Particuliere reclassering en overheid in Nederland sinds 1823* (Arnhem: Gouda Quint, 1995).

⁷ Heyman and Wiersma introduced personality types in 1918. Heyman also introduced 'Heyman's cube' 'revealing' all possible personality types. In 1942, the American William Sheldon introduced body build types of personalities. In 1947, Hans Eysenck introduced his personality theory and in 1953, Carl Jung introduced his. See for the history of psychological theories: Fred Zimbardo et al., *Psychology. A European text* (London: Harper Collins, 1995), 453.

⁸ Minutes of the Dutch Lower House of the States General (i.e. the Dutch Parliament), 53rd Meeting (28.02.1911) 1540. See for a detailed analysis of the parliamentary debates on the Swiss Criminal Code: Natalia Gerodetti (2004) *Modernising sexualities. Towards a socio-historical understanding of sexualities in the Swiss nation* (Bern).

⁹ Minutes of the Dutch Lower House of the States General, 53rd Meeting (28.02.1911) 1541.

¹⁰ Theo van der Meer, *Jonkheer mr. Jacob Anton Schorer (1866-1957). Een biografie van homoseksualiteit* (Amsterdam: Schorer Boeken, 2007), 164-166 (forthcoming).

248bis under the auspices of Regout. Initially, this article had been written as an article against seduction in general terms.¹¹ It was unclear to Troelstra why the article had become a specific anti-homosexual article. After all, he had not noticed a dramatic increase in homosexuality. Furthermore, he thought it was a fiction to believe that all adolescent boys were seduced against their will.¹² Troelstra thought the ‘gentlemen with means’ were a greater danger to women than to young men, at least numerically.¹³ The Minister of Justice thought there was a qualitative difference between these vices. Using a rather Catholic moral scale, the Minister of Justice replied that homosexual seduction was a far ‘greater evil’ than heterosexual seduction:

‘the evil of homosexual acts with under aged persons is a greater evil, an evil, which brings with it a much more devastating effect on the lives and futures of its victims, that cannot be compared with the evil, afflicted by someone upon the female sex by committing heterosexual lewd acts with her.’¹⁴

Regout was clearly unfamiliar with or unsympathetic towards the unmarried mothers of the early twentieth century. What is more, in Regout’s view it never or at least almost never happened that a *decent woman* could be seduced with material gain.¹⁵ In other words, the old fashioned ‘volenti non fit injuria’ – to the willing, no harm is done – applied to adolescent girls. It could also mean that Regout held decent boys vulnerable to seduction. Or he might have thought that seducing indecent boys was more grave than the seduction of indecent girls. Here the significant distinction Regout made between possible victims of homosexual and heterosexual sex crimes gives us a clue. He delineated *boys* and *women* when discussing the sexual seduction of adolescents. Male adolescents were innocent bait for homosexual predators. Female adolescents had nothing but their own characters to fear. Regout’s article 248bis was characterised as a cuckoo’s egg by his contemporaries, in other words as an idiosyncrasy of the Minister.¹⁶ Still, Regout’s perception of homosexuality would be followed by police officers and expert witnesses in the decades to come. The German occupation changed this perception of male adolescents as innocent prey with the introduction of a decree prohibiting all male homosexuality with a new German Decree.¹⁷ Up till now I have found no evidence that adolescents were prosecuted as criminals in homosexual sex cases.¹⁸ Over all, the prosecution of homosexuality dropped during the occupation. After the occupation, the German Decree was revoked.

Sex crimes in The Hague’s district

The sex crime files analysed below are part of a larger research project on legal practices of prosecuting sex crimes. I retrieved cases between 1911 and 1957 for the whole of the five years of occupation and for four years per decennium in the pre-war and post-war periods. This resulted in ten reference years for the pre-war period (1911-1940), five reference years corresponding with the years of occupation (1940-1945) and six reference years for post-war years (1945-1957). For these nineteen reference years, I retrieved 142 sex crime dossiers of which 21 cases are left out of the analysis in this paper (three cases in the pre-war period, one case during the occupation and seventeen cases in the post-war years). The latter cases dealt with sex crimes that are of no concern here, i.e. prostitution (250bis PC), indecent exposure (239 PC) and abortion (251bis PC). Thus, this paper is based on the analysis of 121 sex crime dossiers. Of these dossiers, seventeen cases were handled before the occupation, ten during the occupation and 94 after the occupation. Because the years of occupation altered the legal possibilities for prosecuting and sentencing male homosexual sex crimes, I have decided to categorise the sex files according to the dates of the final verdicts. This is in line with common practices of working with crimes statistically. This means that e.g. the crimes that took place in the occupational years and got sentenced after the liberation end up in the statistics of the post-war years.

Dutch privacy regulations stipulate that the files of cases in which less than one year imprisonment was both requested by the public prosecutor and sentenced by the court have to be destroyed. The only paper traces left by these cases are the mutations in the district attorney’s registers. The seventeen cases of the pre-war

¹¹ Amendments of the sex laws had been a political debate from 1897 onwards. Regout implemented the sex laws as envisioned by his predecessor, the Catholic Minister of Justice Nelissen, but changed both the direction of 248bis PC and its penalty. Instead of one year of imprisonment as a maximum penalty, Regout installed four years of imprisonment as the maximum penalty, enabling officers of the law to place suspects under preliminary detention: [Koenders, PROCITE] 139-166; Van der Meer (2007), 141.

¹² Minutes of the Dutch Lower House of the States General, 52nd Meeting (24.02.1911), 1526.

¹³ Ibidem, 1527.

¹⁴ Ibidem, 1538.

¹⁵ Ibid.

¹⁶ Pieter Koenders, *Tussen christelijk réveil en seksuele revolutie bestrijding van zedeloosheid in Nederland, met nadruk op de repressie van homoseksualiteit* (Amsterdam: Stichting Beheer IISG, 1996), 157.

¹⁷ Decree 81/1940, July 1940.

¹⁸ DNA, 3.03.15.03, films 1, 2, 11, 117, 118, 120, 121. Many thanks to my interns Marjan Fiechter and Vera van Dijk for their valuable work on these archives.

period, for instance, are part of 1.418 registered sex crimes in those inventories between 1911 and 1940.¹⁹ They provide little information about these 1.401 cases of which the dossiers were destroyed. The registers usually merely state the names of the offender, the character of the offences and usually both the district attorney's punishment request and the court's sentence.

One aspect of the 121 rich dossiers, which convey detailed information, should be highlighted here. In the majority of files, the age gap between the defendant and – in all cases – *his* sex partner (f/m) was significant. In both the heterosexual and homosexual cases most under aged sex partners were younger than sixteen years. This means that in both types of cases the adult sex partners could have been tried based upon article 247 PC prohibiting sexual acts with persons younger than sixteen years of age. Indeed, the data shows that 73% of all pre-war cases prosecuted illicit sexuality with persons under the age of sixteen years. For homosexual cases this was 83%. For the years of occupation, 100% of the heterosexual cases had been committed against girls younger than sixteen years and 75% against boys in homosexual cases. All homosexual cases, just as in the two other periods, dealt with male homosexuality. In the post-war years, this amounted to 85% of the heterosexual cases and 75% of the homosexual cases. In short, the homosexual sex dossiers studied between 1911 and 1957 76% of the cases would be understood as pedosexual nowadays. All homosexual cases were about male perpetrators of homosexuality.²⁰ Let us turn to the close reading of six dossiers and start with the heterosexual files. It is intriguing to see how significantly differently heterosexual and homosexual sex crimes were interpreted. Heterosexual sex crimes were approached far more apologetically than homosexual crimes. To illustrate this general remark, I will closely read six sex crime cases and start with the three heterosexual cases. What is relevant here, is to be sensitive to the metaphors used to describe the offence at hand, and the ways in which notions of femininity and masculinity informed the medical experts in their evaluations of the defendants.

Situations

Scrutinising the ways in which professionals approached heterosexual sex crimes, it becomes obvious that professionals were far more inclined to investigate the circumstances under which they occurred than the personalities of the perpetrators who had indulged in incest with their daughters, sex with their students or with girls in their neighbourhoods. What is more, the social surroundings of these suspects were inclined to blame the situations rather than the defendants.

In 1931, for instance, a stepson reported his stepfather for having had sex with both his under aged daughter and stepdaughter. The police and district attorney took the situation quite seriously. The 51-year-old suspect was placed into preliminary custody at the detention centre of The Hague. The district attorney read the police report and requested an imprisonment sentence of eighteen months based upon the article prohibiting sex within hierarchical relationships (article 249 PC). The court would agree with this request, but sentenced to the requested term of imprisonment on the grounds of the prohibition of having sex with persons under the age of 16 years (article 247 PC). Both the defendant and his daughters told the police significantly different stories. For one thing, they told different stories about the ages of the girls when the abuse had started. The daughters stated that it had begun when they were 8 and 12 years old. The defendant insisted that they had been 13 and 14. Secondly, the daughters declared that their father had brought his penis (or 'masculinity' in their terms) between their legs, in the proximities of their vagina's (or 'femininities' as they called it). Bronkaars denied having ever done so. Finally, the defended denied that he had ever forced the girls. He had never threatened them. Still, the older sister stated that the defendant had threatened her with a knife. Now that she was refusing to masturbate her stepfather, he would punch her and say: 'As long as you are refusing me, you will not be sure of your life, you will not be happy.'²¹ The two expert witnesses involved followed the defendant's perspective. Bronkaars sketched himself as perfectly moral and incriminated his family members. He called his wife promiscuous, his stepdaughter Nanni insurgent, his stepson Lennard a thief and his stepson Weerd an unsuccessful worker who got sent away by four different employers. Still, he confessed to his crime, told the doctors that he had 'committed fraud' and that if he ever fondled the children again the magistrate would have to sentence him to

¹⁹ DNA, 3.03.15.03 and 3.03.15.06, district attorney's inventories for the reference years mentioned.

²⁰ This of course did not mean that female homosexuality was non-existent. The information on lesbian women is scarce, however. The data on lesbians in my files is based on statements made by witnesses or suspects in sex crime cases. In 1926 a 25-year old woman received a probationary sentence of one month of imprisonment for having had sex with a woman younger than 21 years of age. This sentence would become effective if she committed the same crime again in her three year probation period. (See: DNA, 3.03.15.03, 64, District attorney's registers: 3022/707/274 (12.03.1926)). In 1948, the police investigated an infamous male brothel or 'rendezvous-house' where couples could hire a room together. When the police heard witnesses, they learned that women hired rooms together as well. The police did not follow up on this lead however. No lesbians were heard. (See: DNA, 3.03.15.03, 79, Dossier Cees Harteveld: Police report 380/1947 (12.09.1947)). In the same year, the defendant Johan Leverkens talked about his sexual preferences. He preferred young men from both the upper and lower classes, and attended gay parties hosted by a married baron in The Hague to meet the former men. The baron's wife did not object to these parties, since she was lesbian herself, according to the defendant. (See: DNA, 3.03.15.03, 94, Dossier Johan Leverkens: Dr Beverkens' report on the defendant (24.03.1948)).

²¹ DNA, 3.03.15.03, file 88: Dossier Bennard Bronkaars: Police report (24.03.1931).

imprisonment for life. The only reason why his stepson had reported him to the police was to get back at his stepfather for forbidding the relationship between his stepson and daughter:

‘As a good father, who is supposed to guard his daughter’s honour and who would have to bear the consequences if she were to be impregnated by a boy with no shirt on his back [i.e. who is poor, AT] , and a housefather who wanted to prevent his house becoming a pigsty, would not be intimidated, and even though Schroers [his stepson, AT] said the next morning that nothing had happened and that he had only sat on Maasje’s [his daughter, AT] bedside, he would take care of getting Maasje a shift for night and day to get her out of the house. Then he could do no good in Schroers’s eyes and by reporting the father to the police he has managed to get the father out of the house.’²²

While the police officers had approached the daughters as victims and the mother as a witness, the psychiatrists were inclined to believe that they had their own immoral parts in the tragedy. What the police shared with the psychiatrists, however, was the assumption that dissatisfying marital lives caused child abuse. After all, the mother had declared to the police that she did not understand why her husband would do such things ‘since my marital life with him is well and he did not have to seek it with other *women*’.²³ The defendant saw things differently, as derived from his ‘sexual biography’ in the psychiatrists’ report. His life story seemed to be one of successful restraint.²⁴ About the abuse of his daughters, he said that it had started two years ago in 1929. He had himself ‘helped’ by his 14-year-old stepdaughter Nanni: ‘It was not hard to persuade her and everything happened mindlessly.’²⁵ When she turned 15, she did not want to ‘help’ him any longer, so her younger sister Danneke took over ‘and she did not mind either’. The doctors concluded:

‘This masturbation was nothing else than a surrogate for customary coitus: if he was sexually excited because of longer periods of abstinence – longer meaning longer than a week or so – and the condition was there while being alone with the child than it happened and everything went simply, domestically so to say: “Nanni, do you want to jerk me off? Yes, come on then.”’²⁶

The doctors focussed upon situational factors primarily (being alone with the girls and having to use little to no persuasion). They also concluded that the fondling of the girls had no *significant* meaning, i.e. since the fondling was only meant to heighten his pleasure it did not indicate any personality disorder.

‘That he touched the child, *durante actum* [during this act, AT], had no other meaning than heightening his pleasure. Nanni and Danneke did not object to this, by the way. Further nothing ever happened. And what the children have told the police – that they had to lay down on the ground and that he had brought his masculinity into their naked femininities – is not true; he may have confirmed that while being questioned by the police, but he did so because he thought he would get to go home if only he signed the police report.’²⁷

The testimony of the girls was both misunderstood and discredited. After all, they had not testified that the father had penetrated them; he had brought his penis in the proximity of their vaginas. Following Annemarie Mol, the interesting thing about the work of medical experts is the ways in which they differentiate ‘normal’ from ‘pathological’ behaviour and personality structures. In this report, the psychiatrists distinguished ‘normal’ from ‘abnormal’ sexual behaviour quantitatively, as a degree rather than a kind.²⁸ The defendant’s behaviour might have been immoral and egoistic; he had not leapt from any normal sexual continuum:

‘If we believe his story, it is possible that the extraordinary willingness had a stimulating influence in changing his sexual feelings into the criminal acts at hand, but these are derived from egoistic inclinations and an insufficient

²² Ibidem, Psychiatrists’ evaluation (28.04.1931).

²³ Ibidem, Police report (24.03.1931) (italics, AT).

²⁴ Ibidem, Psychiatrists’ evaluation (28.04.1931): Bronkaars swore that his first sexual experience was with his first wife. Before marrying, he had never ‘given off with women’. After his first wife died, he abstained from having sex, even with himself. Because he feared illnesses, he avoided penetrating women. His sexual life took a leap again from 1921 onwards. The first five years of his second marriage, he and his wife had sex three times a week, sometimes more. But the frequency had dropped during the last five years. His wife suffered from a sagged womb that made intercourse painful. To spare his wife, he had started masturbating. In between marriages, he had never masturbated. During his attendance at a correctional institution for boys, he had never masturbated either. In the experts’ view, this was somewhat unlikely, given the question mark attributed in the report.

²⁵ Ibidem.

²⁶ Ibidem.

²⁷ Ibidem.

²⁸ Annemarie Mol’s inspiring work on medical practices shows how doctors differentiated these oppositions in quantitative or qualitative terms, respectively as a degree or as a kind. See: Annemarie Mol, *The Body Multiple: Ontology in Medical Practice* (Durham/London: Duke University Press, 2005), 121-123.

supervising of the immoral character of his acts. There was no question of a causal pathological psychic situation here.’²⁹

In another case of incest in 1955, the medical doctor interpreted the sex acts as sudden interruptions of the defendant’s normal behaviour. Again, the focus lay on the circumstances under which they had taken place. Throughout his life he had never given trouble and had been good to his family. The defendant’s character was described as non-alcoholic, church-going and family-loving.³⁰ When the wife had refused him in bed, the incest had started. Difficult child bearings had made his wife weary of pregnancies. She also got sloppy around the house, the doctor analysed, setting marital sex in the realm of ‘domestic chores’. Fortunately, Dr Gerritsen concluded that the wife was getting older. Soon she would be infertile, having no reason to reject her husband. Apparently, abstinence was the only means of birth control. To a large extent, the doctor attributed the guilt to the wife:

‘The wife, who also makes a stupid impression, turns away from her husband at some point and a serious gap develops between the two of them, with as a result, that the man cannot satisfy his sexual needs sufficiently and then he turns to his young daughters and not to someone outside the family.’³¹

She understood the incest as her fault as well: ‘I understand that I have been wrong. I do not hold it against him.’³² The housing conditions were another explanatory factor. With their seven children, the parents shared a house in which the kitchen serviced as both the bath- and living room. There was one master bedroom and an attic where both the boys and girls slept. The girls had to wash up and get dressed in the kitchen ‘leading to unwelcome situations’ as the defendant’s sister testified. Why else would a decent family man who did not drink fondle his children? Interestingly, the psychiatrist explicitly asked himself whether the defendant was a paedophile. Based upon the police report, the tests he did with the defendant and the brief visits he paid the family, the doctor concluded that the whole family was rather stupid. Though the incest was infantile, there was no disturbance of the father’s sexual development. The circumstances explained his behaviour, grave as it was:

‘The explanation of this crime has to be sought entirely in the circumstances which drove the defendant to it. There is no reason to determine the defendant as diminished responsible for his deeds. Obviously, this does not mean that the situation in which these crimes were committed, should be seen as mitigating.’³³

The risk of repetition was almost non-existent: ‘especially, now she [the wife, AT] has understood, that her rejecting attitude, is a partial explanation of her husband’s behaviour.’³⁴ Tellingly, the father’s solicitor did not take any chances with his client. He wrote the examining judge that the daughters would be relocated before the father was released from prison ‘because their presence is unwelcome in their parents’ house in the future’.³⁵ Organising the future family life took the father’s libido as a point of departure. Exercising self-control was not an option.

These heterosexual cases show that male sexuality was seen as an uncontrollable force hitting whatever came on its way when it was not satisfied properly. If the wife was unavailable for sex, the libido would be certain to find gratification elsewhere. In general, the ‘abstaining wives’ were attributed as much guilt as the sex offenders. Even police officers had internalised poor sexual relations within marriages as grounds for child abuse. What is more, the victims were not above suspicion themselves. The defendant’s character was questioned in only seven of 69 heterosexual dossiers between 1911 and 1957. In these cases, either the victims or the defendant were young, respectively younger than twelve years old (four cases) or younger than twenty-five (three cases).³⁶ In the latter cases, ‘hypersexuality’ caused by tuberculosis and diabetes, suspicious genes, in the case of the defendant whose grandmother was a prostitute, or excessive masturbation caused the illegitimate sexual acts.³⁷ Over all, the illegitimate heterosexual sexuality was approached rather apologetically. Did the professionals approach homosexual sex crimes as apologetically as well?

Innocent victims

²⁹ DNA, 3.03.15.03, 88, Dossier Bennard Bronkaars: Psychiatrists’ evaluation (28.04.1931).

³⁰ DNA, 3.03.15.06, 127: Dossier Cobus Hijmans: Medical expert’s report (31.07.1955).

³¹ Ibidem.

³² Ibidem.

³³ Ibidem.

³⁴ Ibidem.

³⁵ Ibidem, Letter solicitor L. Heijningen ~ examining judge (01.07.1955).

³⁶ DNA, 3.03.15.03.03, 118, Dossier Johan Meekeren; 3.03.15.03, 99, Dossier Cees van Eindhoven; 3.03.15.06, 31, Dossier Paul Hijboer; 3.03.15.06, 50, Dossier Jizte Kleveld.

³⁷ DNA, 3.03.15.03, 92, Dossier Leo de Brabander; 3.03.15.03, 100, Dossier Anton Leuven; 3.03.15.06, 31, Dossier Lodewijk Kamp.

Actually, in quite a number of cases the expert witnesses doubted whether they were dealing with a 'real', or inborn homosexual or not. Inborn homosexuals were rare, in the experts' view. There are a number of cases in which the circumstances rather than the suspect were blamed for illegitimate homosexuality, moreover. After the occupation, the war was sketched as traumatising, temporarily influencing the defendants' sexual behaviour.³⁸ The significant difference between the heterosexual and homosexual cases is that the victims were seldomly blamed in the latter. Police officers, especially, moulded the testimonies of the younger sex partners in homosexual cases as innocently as possible. I have retrieved only one case in which the character of the youngest sex partner was questioned. On June 19, 1947, the expert witness and psychiatrist Van der Weijden typed up his report characterising the 34-year-old defendant as a typical homosexual who did not even fight his inclinations. Still, the expert witness did not consider him guilty of the sex with a 15-year-old boy:

'Pascal Bijts is not a victim, but an ordinary catamite, who was well aware of what was happening in those two instances. The 'pour le plaisir du vice' is quite explicit with Pascal Bijts. It is this deliberation which would be a clue in determining the sentence.'³⁹

As said, such a conclusion was quite extraordinary, since in by far the most cases the younger sex partners were portrayed as innocent victims who were seduced by adult homosexual men. Even in the case of the 62-year-old Jannes Thijssen, who had been having sex with three brothers – the 15-year-old Jack, the 12-year-old Ge and the 10-year-old Fred Hansen – for over several years.⁴⁰ During the police questioning, the three boys Johan, Gijs and Fred, underscored that they had been receiving respectively 25 cents, chocolate bars and cookies; ten cents; and some pennies for their sexual intercourse with Jannes Thijssen. The oldest brother had been having sex for over three years, the middle and youngest brother for over two years.

The boys would take the initiative to visit the defendant's house themselves. During the court hearing, one of the boys also mentioned that he rather went to Thijssen's house when he was sent away from school. He was afraid to go home and therefore went to Thijssen's. The boys even risked awkward situations by feeling so free to drop by at Thijssen's. A year ago, the oldest brother rang his doorbell when his youngest brother Fred was already with Thijssen. Although both testified not to have discussed any of the things they were doing with Jannes Thijssen, they agreed not to talk to anyone about it ever, both fearing to be sent to correctional facilities. That is what would happen, Thijssen had told them. Jannes Thijssen had started fondling the boys in the newspaper's kiosk on the Nassauplein in The Hague. The kiosk where he worked was on the route to the brothers' school. Soon Thijssen started inviting them into his house and started penetrating the oldest brother and rubbing his penis between the legs and upon the buttocks of the younger boys. All of the boys had to undress completely. The oldest son, Jack, testified that he had started masturbating himself after having masturbated Jannes Thijssen and told the police: 'From then onwards, I went with Thijssen to his house on a regular weekly basis and went to bed with Thijssen in the same way.'⁴¹

Of course, historians cannot reconstruct whether the boys were really terrified of being sent to correctional facilities or consented to the sex. What is of interest here, is the way in which the police officers construed their report against Jannes Thijssen. The language they used to write down the boys' testimonies was as innocently as possible. Sperm was 'filthiness'. Anuses were 'buttocks'. In the heterosexual cases, the genitals had been described as femininities and masculinities. These were decent words with which people talked about these body parts in those days. Still, these terms were clearly associated with sexuality and procreation. In the homosexual case the masculinities of the boys suddenly became 'pissers' ('pieser' in Dutch). The sexualised terminology was abolished for more innocent terms to underscore that the boys themselves had been using their penises to urinate only. The sexual acts were described as childishly as possible as well. Though the oldest boy had been having sex with Thijssen for over two years on a weekly basis, none of the boys were asked whether they had enjoyed the sexual acts, which was custom in most heterosexual cases. Thijssen was sentenced to two years imprisonment.

In December 1945, Dr J.L. van Laer examined the 38-year-old shopkeeper, husband and father of three children Jitze Zandt.⁴² Zandt, also known as 'Betje' (his feminine nickname), was suspected of having had sex with three (other) brothers as well. During the occupation, Zandt had already served a sentence of ten months imprisonment for indecency with under aged boys. He was prohibited of ever working as a chiropodist (foot-specialist) and masseur again. He went back to selling shoes. Two years after his conviction, in 1945, he had

³⁸ DNA, 3.03.15.03, 72, Dossier Karel Lindmans; 3.03.15.03, 54, Dossier Dirk Havermans; 3.03.15.03, 67, Dossier Joop Zijdeveld.

³⁹ DNA, 3.03.15.03, 74, Dossier Paul Boven: report expert witness (19.06.1947).

⁴⁰ DNA, 3.03.15.01, 110, Dossier Jannes Thijssen: Police reports, (June 1936). Note: the under aged boys were all younger than 16 years. Still, the police officers wrote their report on the basis of 248bis PC, the explicit homosexual article 248bis which prohibited adults from having same-sexed sex with persons from 16 until 21 years.

⁴¹ DNA, 3.03.15.01, 110, Dossier Jannes Thijssen: Police reports, (June 1936).

⁴² DNA, 3.03.15.03, 37, Dossier Jitze Zandt, report expert witness (24.12.1945).

fallen back into 'his old ailment' – much to the surprise of his wife. Heard by the police, Zandt incriminated the boys. They masturbated him willingly and had wanted to be masturbated themselves. Asked by the police how he saw his indecencies, he described them as a sick defect he could not control. Only the middle brother described the sex dramatically, he had not resisted him and that he 'had felt as if he was under hypnosis.'⁴³ The matter-of-fact-styled testimonies of the youngest and oldest brother merely described what had happened.

The doctor noted: 'He confesses to the charges and says to be very sorry for what happened. He feels now that he is changing and longs for his wife now.'⁴⁴ Zandt did not strike Van Laer as an obvious homosexual. He was firmly built, looked healthy and his testicles showed no peculiarities. Zandt explained himself by stating that the sexual relations with his wife did not satisfy him entirely 'leading to indecency with under aged boys'. The doctor reported: 'Although he knew, that he would be in danger, he could not withstand the inclination of being derailed sexually again and committed the charges brought against him.'⁴⁵ Apparently, the flesh was stronger than the spirit. The doctor did not question this line of reasoning. But still, this case differed from the heterosexual cases since the guilt was not attributed to the wife even though she did not satisfy her husband. In contrast to the heterosexual cases, the doctor described the defendant's behaviour with metaphors such as 'being derailed' and 'having an inclination'. Although the doctor did not get round to question let alone answer the origins of Zandt's sexual derailment, he concluded that Zandt was very sorry about what had happened again. 'He sees now, that his attitude towards his wife, especially where sexuality is concerned, was faulty and that what he has sought in others, he should have sought in his wife.'⁴⁶ Here the dissatisfying wife was not approached as the causal explanation for the indecencies. Because of his remorse, Dr Van Laer concluded that he was fully responsible for his actions and advised the court to have him monitored by the *Roman Catholic Society for Rehabilitation* to prevent recidivism.

Conclusions

Indeed, women had their own characters to fear as far as sexuality was concerned. The analysis of the sex crime files shows how notions of femininity and masculinity informed the ways in which the sexual transgressions were perceived. Men had uncontrollable libido's and as long as the object of their gratification was female, their crimes were seen as 'circumstantial'. When it was young men with whom they had sex, the focus shifted and their own characters became suspicious. Even in the most unlikely situations, the younger sex partners in homosexual cases were portrayed as innocent victims of seduction.

These differences between homosexual and heterosexual sex crimes come to the fore on several levels. First, there are some clear metaphorical differences between the two types of cases. In homosexual cases, metaphors for the indecent conduct are medical and moral, whereas metaphors were only seldom used to describe the heterosexual sex acts. These were described matter-of-fact-like by the victims, witnesses and defendants. The sex acts in the homosexual cases are described as illnesses, derailments and vices. Heterosexual sex offenders seem to have been 'immune' to both the sexual effects of hereditary or physical anomalies and psychodynamic personality disorders where expert evaluations are concerned.

Secondly, the experts sympathy with the under aged sex partners differed considerably. Although the age differences between the sex partners in both the heterosexual and homosexual cases are significant and similar, the medical expert witnesses did not interpret the sex acts as particularly disturbing for the girls in the heterosexual cases. The girls were 'beggars' and liars. They were 'suspiciously sexually aware', 'easy', 'stupid' or 'hysterical', whilst 'unwilling wives' were brought to bear as mitigating circumstances under which the sexual offences had taken place. Heterosexual males, moreover, were expected to seek sexual gratification somewhere if their wives did not cooperate or were not satisfactory in sexual terms. Usually, the advice given by experts to prevent repetition of the crime, usually involved the transforming of the defendant's surroundings. Apparently, the doctors envisioned incest as the logical outcome of combinations of external conditions under which the defendants had to live. Ergo, the sexual needs of heterosexual men were the point of departure for the organisation of the family and the social life. The seeking of sexual gratification was not acceptable, if males sought this with other males, however. Psychiatrists explained homosexual indecencies with combinations of personality characteristics and extraordinary circumstances. Depending upon dealing with a real (born) homosexuals or derailed heterosexuals, their remedies would respectively lead to transformations of the defendant (psychiatric treatment, in rare circumstances surgical measures) or transformations of the defendant's surroundings. If measures involving transformations of the surroundings were involved, these would be directed at the offender (e.g. monitoring, prohibitions of joining all-male institutions).

How does such juxtaposing approaches of heterosexual and homosexual defendants inform us on the societal position of homosexuality? Apparently, the medical experts tried to present the heterosexual cases as

⁴³ Ibidem, police report municipal police in Lisse (16.10.1945).

⁴⁴ Ibidem, report expert witness (24.12.1945).

⁴⁵ Ibidem.

⁴⁶ Ibidem.

recognisable as possible. If a healthy male person had no lawfully wedded manner to satisfy his sexual needs, he would seek gratification elsewhere. This relatively new line of reasoning, introducing 'mitigating circumstances' based on 'psycho-medical' logics, was called upon in heterosexual cases. But the doctors did not want the court to easily sympathise with homosexual acts, even if unwilling wives were to 'blame'. Expert witnesses placed homosexual acts outside the realm of possibilities.

Reference List

- Bouwdijk Bastiaanse, F. S. van. *Psychopathen en het ontwerp Psychopathenwet*. Amsterdam: F. van Rossen, 1925.
- Eggens, Albert. *Van daad tot vonnis. Door Drenten gepleegde criminaliteit voor en tijdens de Eerste Wereldoorlog*. Assen: Van Gorcum, 2005.
- Gerodetti, Natalia. *Modernising sexualities. Towards a socio-historical understanding of sexualities in the Swiss nation*. Bern: Peter Lang, 2004.
- Haffmans, Karel. *Terbeschikking gesteld. Geschiedenis, oplegging en executie van een strafrechtelijke maatregel*. Arnhem: Gouda Quint, 1984.
- Heijnsbergen, P. van. *De politierechter. Lezing gehouden voor de Vereniging van Rechercheurs te Amsterdam, 6 februari 1923*. Alphen aan de Rijn: Samson, 1923.
- Heinrich, Jean-Paul. *Particuliere reclassering en overheid in Nederland sinds 1823*. Arnhem: Gouda Quint, 1995.
- Hofstee, Ebe. *TBR en TBS. De TBR in rechtshistorisch perspectief*. Arnhem: Gouda Quint, 1987.
- Koenders, Pieter. *Tussen christelijk réveil en seksuele revolutie bestrijding van zedeloosheid in Nederland, met nadruk op de repressie van homoseksualiteit*. Amsterdam: Stichting beheer IISG, 1996.
- Lammers, Ingrid. 'De TBR in de Tweede Wereldoorlog. Een onderzoek naar klinieken en hun patiënten'. M.A. Thesis, University of Utrecht, 2001.
- Meer, Theo van der. *Jonkheer mr. Jacob Anton Schorer (1866-1957). Een biografie van homoseksualiteit*. Amsterdam: Schorer Boeken, 2007 (forthcoming).
- Mol, Annemarie. *The Body Multiple: Ontology in Medical Practice*. Durham/Londen: Duke University Press, 2005.
- Pompe, W. P. J. *Klinisch-psychiatrisch onderzoek naar delinquenten*. Assen: Van Gorcum, 1962.
- Wiener, Martin J. *Reconstructing the criminal. Culture, law and policy in England, 1830-1914*. Cambridge: Cambridge University Press, 1990.