

# Leniency versus Toughening? The prosecution of male and female violence in 19<sup>th</sup> century Holland

Manon van der Heijden and Marion Pluskota

## The criminalization of men

“Destructive aggression is a male affair” summarizes Robert Muchembled in his book on the history of violence, and this may well reflect the general opinion about violence among criminal justice historians.<sup>1</sup> The link between violence and masculinity may be a biological given, but at the same time notions of manliness and the acceptance or disapproval of male violence are social and cultural constructions. Most criminal justice historians agree that from the end of the eighteenth century onward, there was a growing social disapproval of male violent behaviour in Western Europe. At the same time, women came to be seen as more vulnerable and in need of protection.<sup>2</sup>

Martin Wiener has shown for Victorian England that such constructions had a significant impact on the treatment of male violence by prosecutors and the courts. In the course of the nineteenth century, the courts increasingly focused on men, and less so on women. According to Wiener, this change also entailed a different attitude toward men’s violence against women. Wiener claims that in the early modern period, women who were maltreated by their husband, could seldom count on the protection from the local authorities, but this attitude changed in the nineteenth century. Women who could prove their good character began to receive more support from the authorities. Besides, while homicidal women tended to be treated with more leniency, homicidal men faced harsher treatment over the century.<sup>3</sup>

Wiener’s emphasis on male violence was a respond to feminist theories, which stressed the impact of nineteenth-century notions of domesticity, patriarchy and separate private and public spheres on women’s lives, while largely neglecting the change of attitudes toward men.<sup>4</sup> Lucia Zedner argued that up to mid-nineteenth century, women were increasingly prosecuted because their criminal acts were viewed as acts of deviance from the

---

<sup>1</sup> Robert Muchembled, *A History of Violence. From the end of the Middle Ages to the Present* (Cambridge 2012) 13.

<sup>2</sup> See for the general decline in violence: Manuel Eisner, “Long-term historical trends in violent crime”, *Crime and Justice. A Review of Research*, 30, 2003, pp. 83-142; See for the decline in violence in relation to gender: Clive Emsley, *Crime and Society in England, 1750-1900* (London and New York, 1987, 4<sup>th</sup> edition 2010), 96-18; Idem, *Hard Men: Violence in England since 1750* (London, 2000); Robert Shoemaker, “Reforming male manners: public insults and the decline of violence in London, 1660-1740” in: Tim Hitchcock and Michèle Cohen (eds), *English masculinities 1660-1800* (London, 1999); Elizabeth Foyster “Boys will be boys? Manhood and aggression, 1660-1800”, in: Tim Hitchcock and Michèle Cohen (eds), *English masculinities 1660-1800* (London, 1999); Robert Shoemaker, “Male honour and the decline of public violence in eighteenth-century London”, *Journal of Social History* 26 (2001) 190-208.

<sup>3</sup> Martin Wiener, *Men of Blood: Violence, Manliness, and Criminal Justice in Victorian England* (Oxford 2004); Martin J. Wiener, “The Victorian Criminalization of Men”, in: Pieter Spierenburg (ed.), *Men and violence. Gender, Honor, and Rituals in Modern Europe and America* (Ohio, 1998) 197-212; John Carter Wood, *Violence and Crime in Nineteenth-Century England: The Shadow of Our Refinement* (London, 2004).

<sup>4</sup> Shani D’Cruze, *Crime of Outrage. Sex, violence and Victorian working women* (London and New York, 1998); Shani D’Cruze, “Sex, Violence and Local Courts. Working-class Respectability in a Mid-Nineteenth-Century Lancashire Town”, *British Journal of Criminology* 39:1 (1999) 39-55; See also: John Carter Wood, “Review of Men of Blood”, *Journal of Social History* 39:1 (2005) 266-268

female behaviour's norms.<sup>5</sup> Furthermore, feminist studies assumed that in the nineteenth century violence was less often brought to court because women's lives became more confined to the domestic sphere and consequently, domestic violence became less visible. In the early modern period, cases of domestic violence were often seen as public issues that were discussed and solved by local intermediaries and institutions. Julie Hardwick, for instance, found that in early modern France, women received as much, and sometimes greater, protection against violence than in the nineteenth century. Evidence from early modern Germany, Switzerland, and Holland reveal similar attitudes towards domestic violence.<sup>6</sup>

In his work about criminal justice in eighteenth and nineteenth century England, Peter King provided data that partly solved the debate on the criminalization of men. Both at the Old Bailey and during the Home Circuit Assizes between 1720 and 1820, women were less likely to be convicted and more likely to be given more lenient sentences than men. King concludes that the favourable treatment given to women in London and in the Assizes was not a local phenomenon, but represented a national pattern.<sup>7</sup>

The strong evidence of growing differences in the treatment of male and female violence in England in the late eighteenth and early nineteenth centuries led most criminal justice historians to believe that such a change took place in the rest of Western Europe. Muchembled concludes that, like in England, the French courts became increasingly severe towards male criminals, while at the same time women were treated with greater leniency.<sup>8</sup> According to Pieter Spierenburg, in the Netherlands, by the eighteenth century, the honour of men became increasingly linked to their roles as husbands and breadwinners.<sup>9</sup> While for England, Wiener observes the first signs of a change in the attitudes towards masculine behaviour in the sixteenth century, Spierenburg notices that in the Netherlands the crucial turn took place in the eighteenth century. There may also have been differences between regions regarding the impact of the new ideal. Clive Emsley notes that, in comparison to other countries, the English people were particularly eager to obtain self-control.<sup>10</sup>

Several scholars have also been critical about the idea of a general decline in the acceptability of male violence. Criminologist Barry Godfrey raises doubts about two important assumptions about the decline in violent crime in the nineteenth century. First, he questions the fact that the decline in violent crime - as apparent in the judicial records - actually mirror a real decline from 1870 to 1914. Secondly, he is uncertain whether these figures are indicative of a shift in the attitudes towards violence in this period. Godfrey recognizes that most scholars are aware of the limitations of crime statistics, and that most researchers see them rather as indicators of a combination of factors (prosecution policy; socio-economic circumstances; public anxieties; jurisdictional changes; police practice, etc.). However, he also thinks that criminal justice historians should move beyond the criminal statistics, and search for alternative sources, such as oral histories that may reveal common voices about violence. Godfrey's alternative sources certainly uncover acts of violence that remained unprosecuted, and they can improve our understanding of the popular attitudes to violence. But so far, this has not resulted in fundamentally new insights about the decline of

---

<sup>5</sup> Lucia Zedner, *Women and custody...*

<sup>6</sup> Julie Hardwick, *Family business: litigation and the political economies of daily life in early modern France* (Oxford 2009); Rublack, U. (ed.), *Gender in Early Modern German History*, Cambridge, Cambridge University Press, 2002; Manon van der Heijden, "Women, Violence and Urban Justice in Holland, c. 1600-1838", *Crime, History & Societies* 17:2 (2013) 71-100.

<sup>7</sup> King, *Crime and law*, 175, 180.

<sup>8</sup> Muchembled, *A History of Violence*, 204-204.

<sup>9</sup> Pieter Spierenburg, *Violence and punishment*, 7.

<sup>10</sup> Emsley, *Hard men*, 13. See also: John Carter Wood, "Review of Hard Men", *Journal of Social History* 40:3 (2007) 766-768.

violence and the treatment of violent men and women in the nineteenth and twentieth centuries.<sup>11</sup>

Finally, some scholars are critical about the assumption that in the eighteenth and nineteenth centuries, violence became a working class phenomenon that needed to be controlled by the upper and middle classes. Both late nineteenth-century Germany and France experienced a upsurge of duel, notably among students. In their introduction to a special issue on interpersonal violence, Richard Mc Mahon, Joachim Eibach and Randolph Roth warn us against neat narratives of decline, as the evidence tends to support a trend of fluctuations and variations across time and space.<sup>12</sup>

The fact is that there is much less evidence for the “criminalization of men” thesis outside England and France. Although important work has been done on Dutch violence in the early modern period by Spierenburg, there is little information about the period after 1811 (when the French penal code was introduced in the Netherlands). In this paper we want to contribute to the debate about the criminalization of men by looking at the prosecution of violence committed by men and women in nineteenth century Holland (1811-1886). This paper presents archival evidence from various regional courts (*arrondissementsrechtbank*) in Holland between 1750 and 1886.

We will start with an overview of the most important judicial changes after 1811, because that may explain some differences in the statistical evidence between the early modern period and the nineteenth century. Secondly, we will present the evidence from various courts in Holland between 1811 and 1886 with regard to the prosecution of male and female violence, and compare some basic characteristics of violence committed by men and women. Factors such as the severity of the case, the proportion of verbal and physical violence, and the role of sexual and domestic violence, will be analysed to show their impact on the courts’ treatment of violent offenders. In doing so, we want to draw the profile of the violent men and women who came before the courts. Finally, this article pays attention to the question of leniency in sentencing versus hardening. Did the courts treat women who were prosecuted for violence with more leniency, or did men increasingly face harsher treatment? In this article we will try to find answers to these questions based on Dutch criminal cases in the nineteenth century.

### **Jurisdictional changes**

Comparing early modern crime sources with nineteenth century criminal records and national statistics is highly problematic. Before 1811, male and female offenders were prosecuted by local (often urban) courts and the numbers and types of crimes represented to a large extent the specific social, economic and demographic circumstances experienced by urban populations. These particular circumstances are the most plausible explanation for high female crime rates in the towns of Holland between 1750 and 1811. The figures after 1811 however include offenders coming from both urban and rural environments.

In 1811, the Code Pénal – the French criminal law – was introduced, which transformed the judicial system of the Netherlands from a fragmented system with primarily local courts that handled almost all criminal cases into a centralized system with fewer courts that dealt with specific types of offences and crimes. The Code Pénal distinguished between various types of crimes: felony cases (*crimes*), offences (*délits*), and less serious offences

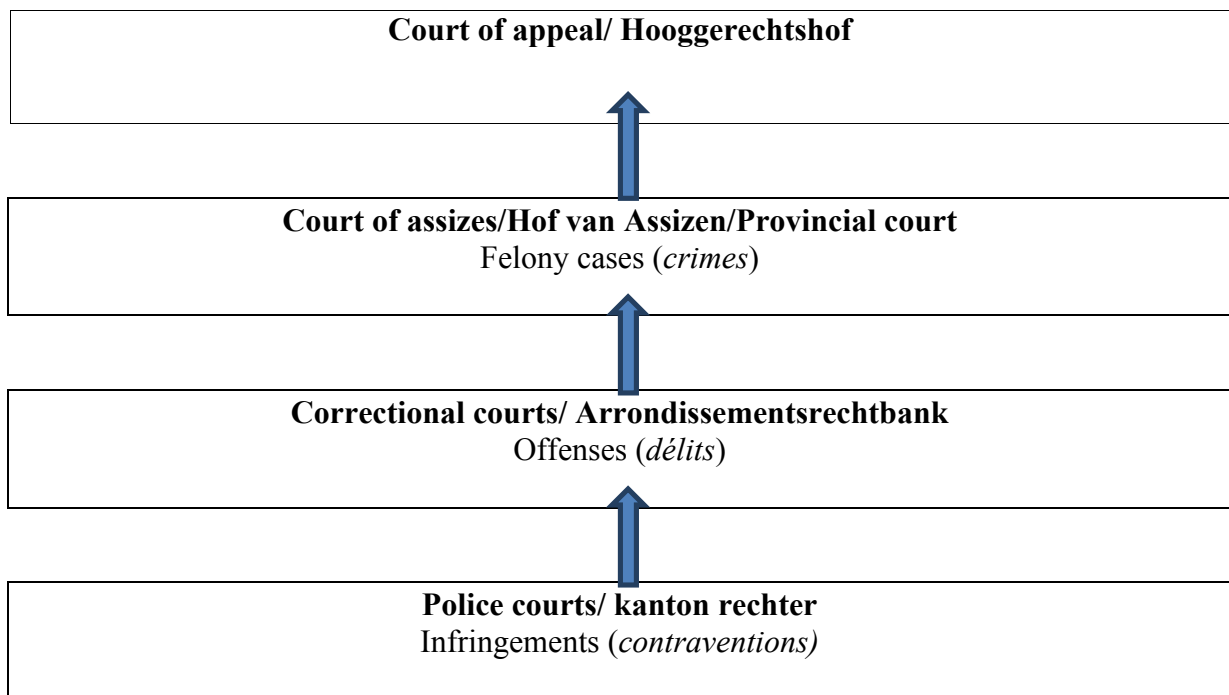
---

<sup>11</sup> Barry Godfrey, “Counting and accounting for the decline in non-lethal violence in England, Australia, and New Zealand, 1880-1920”, *British Journal of Criminology* 43:2 (2003) 340-353.

<sup>12</sup> Richard Mc Mahon, Joachim Eibach, Randolph Roth, “Introduction. Making Sense of Violence? Reflections on the History of Interpersonal Violence in Europe”, *Crime, History & Societies* 17:2 (2013) 5-26.

(contraventions). Before 1811, 200 local courts dealt with felony cases; after 1811 the number of courts was reduced to only two (*Cours d'Assises*). Regional correctional courts (*Tribunaux de première instance*) dealt with offences, and violations were handled by local police courts (*Juge de Police*). In 1838 the judicial system changed again, and the former courts were replaced by district courts for violations, district courts for offences, and provincial courts for felony cases. Since 1886 there are nineteen district courts that handle felony cases, offences and violations, and two higher courts of appeal.

### Jurisdictional organization, 1811-1886



Our investigation includes the data of the early modern courts before 1811 and the new correctional courts that were established between 1811 and 1886. The data from the correctional courts of Amsterdam, Rotterdam and Leiden are to some extent comparable to the pre-1811 criminal courts. Firstly, in most important towns in Holland – such as Amsterdam, Rotterdam, Leiden and Den Hague – criminal courts (now correctional courts) remained in existence. Secondly, the criminal courts before 1811, though urban courts, did in practice they hold jurisdiction over crimes committed within the proximity of their city. Besides the correctional courts after 1811 had a regional seat but, they were assigned to the main towns and they primarily tried criminals living in the city. Thirdly, records of the correctional courts after 1811 held sometimes felony cases (*crimes*) as well as misdemeanours (*délits*), just like the old criminal courts before 1811. In order to provide a representation of the prosecution of men’s and women’s violence as accurate as possible, we collected additional data about violence tried before the court of assizes of South Holland, that dealt with felony cases only, and the police courts of The Hague and Delft that dealt with minor offences.

## **The prosecution of violence in Holland 1750-1886**

Wiener showed for England that after the second half of the eighteenth century the stigmatization and criminalization of violence resulted in a growing interest in prosecution of assault. In the eighteenth century most cases of personal violence did not seem to have reached the courts, and if they did, they were generally perceived as essentially private matters. The legal tolerance of interpersonal violence began to change after 1800, resulting in increasing prosecution rates for assault cases and a harsher treatment of offenders by the courts.<sup>13</sup>

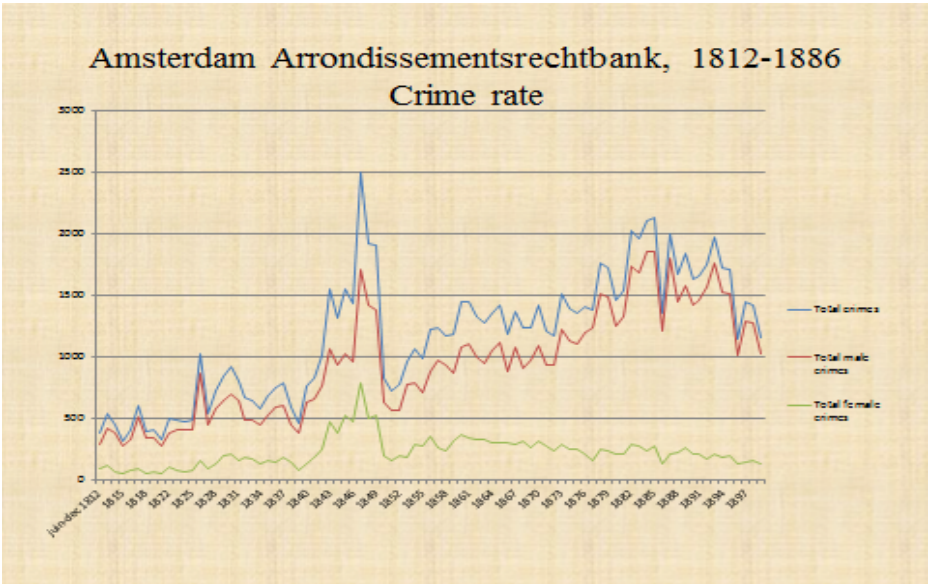
Is there evidence for rising prosecution rates for violence in the Netherlands in the nineteenth century? This seems to have been the case. In the course of the nineteenth century the capacity of the police and the courts increased considerably, and as a result there was a sharp rise in the number of cases dealt with by the court. At the beginning of the nineteenth century the Amsterdam correctional court handled ca. 600 trials per year and from the 1840s onward, this number rose to more than 1000 cases. The growth of the number of criminals coming before the courts included all types of crimes, though there were important shifts regarding the proportion of certain types of crime. Property crime had been, and generally remained, the type of crime that was most often prosecuted by the courts. However, the growing disapproval of violence resulted in increasing prosecution rates for violence in the course nineteenth century. Or at least, violence became proportionally more often prosecuted.

In the first two decades of the nineteenth century, violence made up only 16 percent of the total cases that came before the Amsterdam correctional court, but between 1820 and 1886 the figure rose to an average rate of 36.5 per cent (of a total of 5895 criminal cases). The correctional court clearly focused on trying cases of violence: between 1850 and 1886 in Amsterdam, the ratio was on average forty-six thefts for 100 violence cases. The Leiden correctional court shows a similar shift, as from 1815 onward there was a significant rise in the proportion of violence among the trials. A sample of the prosecutions dealt with by the correctional court in Leiden between 1815 and 1835 reveals that in 1815 only ten percent of the prosecutions that were handed by the Leiden court pertained to violence. That figure rose to 30-40 per cent in the sample years of 1820 and 1825, and up to 50-60 per cent in the sample years of 1830 and 1835. Apparently, the magistrates of Leiden and Amsterdam increasingly tried violence. Unfortunately, there is no available data on the prosecution rates of the Rotterdam correctional court for a longer period of time, though the violence rate between 1811 and 1820 is similar to that of Amsterdam in the same period: only 16 per cent of the criminal cases (a total of 4.116) pertained to violence. More data on the Rotterdam court would show whether the prosecution of violence rose here as well after the 1820s.

---

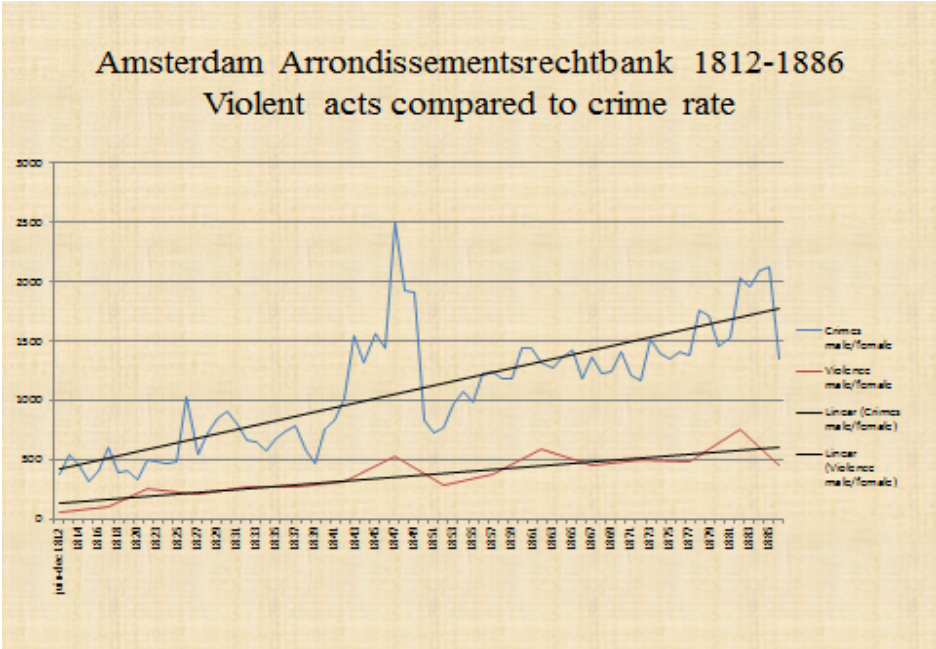
<sup>13</sup> Wiener, "The Victorian Criminalization of Men", 202-203, 209; Gatraal and Hadden (1972), 392-93; Zedner (1991) 316-23.

**Graph 1 Correctional court of Amsterdam, crime rate 1812-1886**



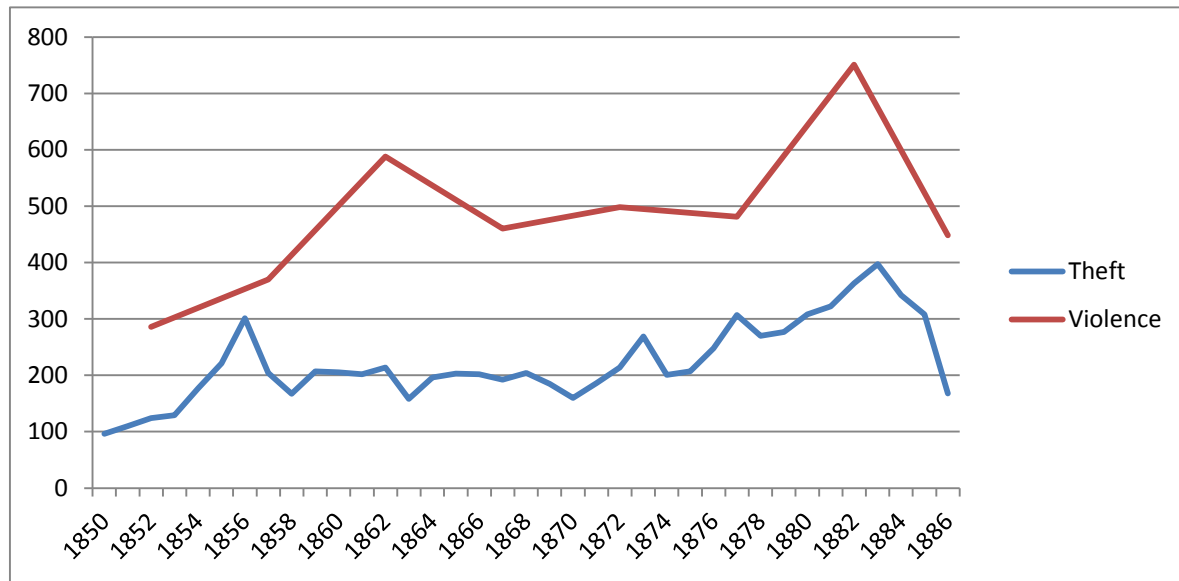
Source: Noord-Holland Archief, Haarlem, Amsterdam Eerste Aanleg, 1812-1886

**Graph 2 Correctional Court of Amsterdam, Violent acts compared to crime rate 1812-1886**



Source: Noord-Holland Archief, Haarlem, Amsterdam Eerste Aanleg, 1812-1886

**Graph 3 Prosecution rates for theft and violence in Amsterdam Correctional Court, 1850-1886**



Source: DANS, Amsterdam Criminaliteit database by Dr A. Alloza.  
<https://easy.dans.knaw.nl/ui/datasets/id/easy-dataset:30707>

Was the growing prosecution rate accompanied by a proportional growth of prosecution of male violent crime? Did the courts increasingly focus on male assault, and less on aggressive women? In England, prosecution and conviction disproportionately began to concentrate on men: between 1805 and 1842 the total prosecutions of women at the assizes and quarter session courts rose four times and at the same time, the prosecution of men rose eight times.<sup>14</sup> The gender difference continued, and as a consequence the proportion of men prosecuted at the Old Bailey (London criminal court) rose to almost 90 per cent of the total suspects at the end of the century.<sup>15</sup>

In order to verify whether there was also a shift in the prosecution of male violent crime from the end of the eighteenth century onward in the Netherlands, long term data is needed.<sup>16</sup> The low rates of female crime seem to reflect a long term characteristic. In his work on early modern violence in Amsterdam, Spierenburg has argued that women were in general not violent and data on other cities in Holland seem to confirm this trend. The violence treated by the criminal courts of Holland – primarily homicide, rape, assault, fighting with knives, and violations of property – predominantly involved men. In the period between 1650 and 1750, approximately 6 to 16 percent of the assault cases handled by the criminal courts of Amsterdam, Leiden and Rotterdam – the three most important cities in

<sup>14</sup> Wiener, “The Victorian Criminalization of Men”, 202-203, 209; V.A.C. Gatrell and T.B. Hadden, “Nineteenth-century criminal statistics and their interpretation”, in: E.A. Wrigley, *Nineteenth-century society: Essays in the use of quantitative methods for the study of social data* (Cambridge 1972) 336-396, 392-93; Lucia Zedner, *Women, crime and custody in Victorian England* (Oxford 1991) 316-23.

<sup>15</sup> Wiener, “The Victorian Criminalization of Men”, 209; Malcolm Feeley and Deborah L. Little, “The vanishing female: The decline of women in the criminal process, 1687-1912”, *Law and Society Review* 24:4 (1991) 719-757.

<sup>16</sup> According to the European Sourcebook European Sourcebook of Criminal Justice Statistics (edition 2010) in the year of 2006 only a very small proportion of those who were prosecuted were women (ca. 12 %), and women made up an even much smaller proportion where it concerned violence. Around 5 to 9 percent of those convicted for assault and homicide were women.

Holland – involved women. The table relating to the proportion of female defendants in assault cases in the towns of Holland (table 1) shows that the highest figures were found in Amsterdam: between 1651 and 1716, women’s share in violence reached 13 to 16 per cent. The data on Leiden and Rotterdam in the seventeenth and eighteenth centuries show figures of women’s violence around 12 percent or lower.<sup>17</sup>

**Table 1**  
**The proportion of female defendants in assault cases in the towns of Holland, ca. 1650-1750<sup>18</sup>**

Period	Amsterdam <sup>19</sup>	Leiden	Rotterdam
1651-1683	13%		
1684-1716	16%		
1678-1794		12%	
1717- 1749	6%		
1700-1800			6%

Sources: Kloek (1990, p. 146); Spierenburg (1997, p.17); Oude Rechterlijke Archieven Rotterdam, Sentences and Examinations of the Criminal Court (Sententieboeken en Examenboeken) 1700-1800.

Although the process of registration of in the different courts sometimes affected the proportion of women tried for violence, this survey focuses on the findings of the regular Dutch criminal courts only.<sup>20</sup> As argued above, the most accurate approach to reveal long term trends in the prosecution of violence in the eighteenth and nineteenth centuries is to compare the data of the local criminal courts before 1811 with the regional correctional courts after 1811.

In contrast to England, the data from the correctional courts of Amsterdam, Rotterdam and Leiden indicate that there was no decline in the prosecution of female violent crime in the nineteenth century. Or to put it differently, there was no rise in the prosecution of male violence. On the contrary, there seems to have been a slight rise in the proportion of women who came before the courts because they had committed violence. Data is available for Amsterdam between 1812 and 1886, and data on Rotterdam and Leiden courts for the first 10 to 25 years after the introduction of the new correctional courts (table 2). In Amsterdam in the nineteenth century the prosecution rates for violence began to rise after the 1820’s and remained stable during the period under scrutiny (until 1886). This rise included violence committed by men as well as women: on average 22 per cent of the defendants in assault

<sup>17</sup> Van der Heijden, “Women, violence and urban justice”, 77.

<sup>18</sup> These figures represent the prosecutions in the regular criminal courts that existed in all Dutch towns, and not the lower courts (such as the correctional court of so-called fightbook registrations) which had different procedures and registrations and that existed only in some towns.

<sup>19</sup> The court cases of Amsterdam (a sample of 3 periods in the period of 1650-1750) did not include homicide; only 8% of the prosecuted killers were women : Spierenburg (1997, pp. 9-28, 17).

<sup>20</sup> The proportion of women in lower courts (so-called fightbooks) between 1700 and 1800 was significantly higher than the proportion of violent women tried before the regular criminal records: women were responsible for 30 to 44 percent of the cases registered in the fightbooks. Not all cases concerned violence. Almost a quarter of the violence involved women (including fighting with another person and the destruction of property and belongings). Furthermore, women were responsible for 42 of the fighting. See for this: Manon van der Heijden, “Criminaliteit en sekse in 18e eeuw Rotterdam. De verschillen tussen vrouwen- en manncriminaliteit tussen 1700 en 1750”, *Tijdschrift voor Sociale Geschiedenis* 21:1 (1995) 1-36, 14-15; Van der Heijden, “Women, Violence and Urban Justice”, 71-100.



cases were female. In Leiden data on the period between 1813 and 1838 produced a similar figure (20 per cent), in Rotterdam between 1811 and 1820 the proportion was slightly lower: ca. 14 per cent. These figures may seem low, but compared to the early modern period, violent crime rates of women were quite high ( table 1).

**Table 2**

**The proportion of female defendants in assault cases before the correctional courts in Holland, 1811-1838**

Period	Amsterdam	Rotterdam	Leiden
1812-1886	22%		
1813-1838			20%
1811-1820		14%	

Sources: National Archive The Hague, Amsterdam Correctional Court 1812-1886; Rotterdam Correctional Court 1811-1820; Leiden Correctional Court 183-1838; Westerhout, *Een krimpende groep?*<sup>17</sup>.

The fact that the new correctional courts produced somewhat higher female violence rates than the old criminal courts, might be related to jurisdictional changes: the correctional courts had no jurisdiction over felonies (homicide is primarily a male crime) while the old criminal courts did. However, this is not very likely, because the court of assizes of South Holland – which dealt with homicide and serious assault – shows a similar proportion of female violent crime. A sample of the court of assizes between 1815 and 1838 (the sample included the years of 1815, 1823, 1830 and 1837) reveals that 19 percent of the persons who were prosecuted for committing a felony (brutal theft, assault and homicide/manslaughter) were female.<sup>21</sup> The figures indicate that women’s felonies were not taken less seriously by the public prosecutors in the nineteenth century than men’s crimes.

To conclude briefly, the criminalization of violence – which Wiener and others found in England – was noticeable in the Netherlands too. There was a growing disapproval of violence that resulted in increasing prosecution rates regarding assault after ca. 1820, both in numbers and proportionally. However, growing attention to violence did not exclude women, and as a consequence, higher prosecution rates for violence are revealed for both sexes.

**The profile of male and female violence**

What type of violence was prosecuted by the correctional courts in the nineteenth century? According to the code penal (1811-1886) correctional courts had jurisdiction over offences, and serious violence against persons was sent to the court of assizes (see figure on jurisdictional organization). The latter handled assault with the use of weapons, homicide and manslaughter, infanticide, poisoning and rape. The correctional courts typically acted against all other assault, such as maltreatment, beating, and domestic violence, but violence also included cases of insults, threats and slander which were typically tried by the (lower) police

<sup>21</sup> Sibbo van Ruller, “De rechtspraak van het Zuid-Hollandse Hof van Assisen (1811-1838)”, in: S. Faber (ed.), *Criminaliteit in de negentiende eeuw* (Hilversum 1989).

courts.<sup>22</sup> Particularly in the first period after the code penal, it seems that judges had to get used to the new system, as they sometimes tried violence outside their jurisdiction. For instance, between 1811 and 1820 nineteen cases of murder and manslaughter (wrongful death) were brought to the correctional court of Rotterdam (including five women). Judges could decide to handle such cases themselves and they sometimes did give verdicts, but usually they referred manslaughter to the court of assizes. In 1819 Anna Maria Hartman had been accused of poisoning and her case was brought before the court of Rotterdam, but the judges sent it to the higher court.<sup>23</sup> It appears that prosecutors followed the strict codes of the new criminal law rather precisely.<sup>24</sup>

Both men and women coming before the correctional courts were primarily accused of physical violence, though the proportions were slightly different in each court. Female assault tried by the correctional court of Rotterdam between 1811 and 1820 involved physical violence in 94 per cent of the cases. For men the proportion was 87 per cent. Only 6 per cent of the aggressive women risked prosecution because they had been verbally violent, and 13 per cent of violent males were accused of verbal violence. The trials before the correctional court of Amsterdam between 1812 and 1886 produced almost the same figures for men's violence, which in 86 per cent of the cases (total of 4596) involved physical violence. The rates for women were slightly lower, as 71 per cent of the women (total of 1299) were found to have committed physical violence.

These results may not be surprising considering the instructions of the code penal. Verbal violence tried by the correctional courts usually involved serious threats or resistance and insults against police officers or other authorities committed by both men and women. Data on the police courts of Delft and The Hague between 1811 and 1838 show that verbal violence – such as insult and slander or noise, nuisance and quarrels within neighbourhoods – was the business of lower courts. In contrast to the correctional courts, women played a much larger role in insult trials coming before police courts: in both towns women were responsible for 40 to 42 per cent of legal actions against insults.<sup>25</sup> There is no indication that correctional courts or police courts increasingly concentrated on men's violent crimes.

The prosecution of domestic violence and sexual violence might be a good indicator for the growing attention of lawmakers and judges to male violence. Wiener found that in England after 1800, a rise in trials involving rape and domestic violence occurred. Growing opportunities for women to start legal actions against abusive husbands served two purposes: to better protect women and to reform men. As a consequence, battered wives came to form a large group within the cases dealt with by the courts, at every judicial level. The trend to criminalize violence continued throughout the nineteenth century, resulting in higher prosecution rates for sexual assaults on women.<sup>26</sup>

Did a similar trend occur in the Dutch correctional courts after 1800? The code penal of 1811 made rape and violation of honour punishable by law, but between 1811 and 1900

---

<sup>22</sup> Sjoerd Faber e.a., *Criminaliteit in de negentiende eeuw* (Hilversum 1989); Sibon van Ruller, "De rechtspraak van het Zuidhollandse Hof van Assisen", in: Faber, *Criminaliteit*, 13-23; W.A. Bongers, "Development of the Penal Law in the Netherlands", *Journal of Criminal Law and Criminology* 24:1 (1933) 260-270.

<sup>23</sup> Nationaal Archief, Rechtbank Eerste Aanleg (correctionele rechtbank) Rotterdam, 1811-1838, 19 mei 1819.

<sup>24</sup> C.M. Pelsers, 'Criminal Legislation in the 19<sup>th</sup> century: the historical roots of criminal laws and non-intervention in the Netherlands', in P. Alldridge and C. Brants (eds), *Personal Autonomy, the Private Sphere and Criminal Law: A Comparative Study* (Oxford 2001), 181-203, 185; ; S. Faber, 'Straffen in Nederland sedert 1811', in A. Berkens *et al*, *Het Franse Nederland: de inlijving 1810-1813: de juridische en bestuurlijke gevolgen van de "Réunion" met Frankrijk* (Hilversum 2012), 161-175, 165.

<sup>25</sup> Post, "Is dat nu buurschap", 23.

<sup>26</sup> Wiener, "The Victorian Criminalization of Men", 206-207. See also: Ginger Frost, "'He Could Not Hold His Passions': Domestic Violence and Cohabitation in England (1850-1905)", *Crime, History & Societies* 12:1 (2008)...

only a fraction of the trials of the court of assizes of North Holland involved legal action against sexual violence (191 cases of rape, sexual assault and incest). Furthermore, 16 per cent of the defendants in the cases of sexual violence obtained a non-guilty verdict, against an average rate of 9 per cent. Apparently, rapists were treated with more leniency than the other criminals tried by the court of assizes.<sup>27</sup> Rapists were rarely tried by the correctional courts as well: between 1812 and 1838 five men only were accused of rape (it seems that the accusation of “serious injuries” could be used to cover an attempt of rape) by the Amsterdam court, and two cases were sent to the court of assizes but only one men out of five was sentenced to six years in jail.

The low prosecution rates regarding sexual violence may be explained by growing attention for the mental health of defendant and victims. In England as well as the Netherlands courts began to take mental inadequacy into account, sometimes labeling sexually assaulted women as hysterical and male rapists as not liable for their sexual acts. The growing focus on mental health may have resulted in lower conviction rates for sexual assault. Lucia Zedner has argued that in the English criminal process in the course of the nineteenth century women were increasingly perceived as mentally ill.<sup>28</sup> Although such shifts were also apparent in the Netherlands, the first signs of a change in the attitudes of judges took place later than in England. Willemijn Ruberg concludes that it was not earlier than the twentieth century that mental health became a matter of consideration in the verdicts by Dutch courts.<sup>29</sup>

Domestic violence rarely made it to the courts as well. Such cases were most likely tried by either correctional courts or police courts. In the period between 1812 and 1847 merely a fraction (2 per cent) of all men tried for violence by the correctional court of Amsterdam were accused of being violent at home. As there are no available figures on the second half of the nineteenth century, it is not clear whether the prosecution rates rose later in the century. The Rotterdam correctional court produced slightly higher figures of domestic violence; 33 trials in the first 10 years after the introduction of the penal code (6 per cent of all male violence).

In contrast to Wiener’s findings on England, there is no indication that wife beaters received harsh punishments by the courts. Some of the accused were acquitted or obtained a non-guilty verdict and those who were convicted, received minimal penalties. The typical penalty for domestic abuse (maltreatment or serious abuse) was one to three months confinement and a small fine. These sentences were not very different from what urban courts had imposed a century earlier in the pre-code penal period. Similar conclusions are drawn by Annemarie Hughes in her work on wife-beating in Scotland between 1800 and 1949. She found that, despite the growing social disapproval of violence, such moral aims were moderated by the Scottish legal system.<sup>30</sup>

There are no clear indications that the legal tolerance of domestic violence began to change during the first half of the nineteenth century, but in some respects the treatment of such cases did change. The first alteration involved the willingness of victims. Although legal recourse for victims of marital violence had been possible in the early modern period as well,

---

<sup>27</sup> Willemijn Ruberg, “Onzekere kennis. De rol van forensische geneeskunde en psychiatrie in Nederlandse verkrachtingszaken (1811-1920)”, *Tijdschrift voor Sociale en Economische Geschiedenis* 1 (2012) 87-110, 109; Van Ruller, “De rechtspraak van het Zuidhollandse Hof van assizen”, 17; Petra de Vries, *Kuisheid voor mannen, vrijheid voor vrouwen. De reglementering en bestrijding van prostitutie in Nederland, 1850-1911* (Hilversum, 1997) 37; Colpaert Lude, *Moedige slachtoffers. Aangifte van verkrachting in het verleden. Een positieve evoluties na de wetwijziging van 1989*, Master thesis Faculty of Law, Vrije Universiteit Brussel (2012), 4-5.

<sup>28</sup> Zedner, *Women, Crime and Custody*.

<sup>29</sup> Lucia Zedner, “Women, Crime and Penal Responses: A Historical Account”, *Crime and Justice* 14 (1991) 307-362.

<sup>30</sup> Annemarie Hughes, “The ‘ Non-Criminal’ Class: Wife-beating in Scotland (c. 1800-1949)”, *Crime, History & Societies* 14:2 (2010) 31-54.

women rarely brought their abusive husbands to court. Instead, neighbours took action and reported domestic violence to public prosecutors.<sup>31</sup> After the introduction of the penal code it became battered women themselves who informed the public prosecutor, and who provided the most important evidence. This shift did not mean that the neighbours were less willing to start legal actions against fellow citizens, as a considerable amount of the cases that came before the police courts involved complaints by the neighbours. Citizens undertook action to inform the police about nuisances in their district and they were still very much involved in each others' lives, but apparently, they considered domestic violence more and more a domestic matter.

This attitude might indicate that there was a second change in the period. The growing belief that households were private areas is also manifest in the response of Andreus Sieraal whose violence against his wife was reported to the police in 1819. A neighbour had heard his wife yelling "murder" and when he entered the house he had witnessed Andreus severely abusing his wife. After his arrest, wife beater Andreus argued that it was his neighbour who had been out of order when interfering with a personal quarrel between husband and wife that furthermore had taken place within the privacy of his home. Andreus was found guilty, though the low fine suggests that the police court's magistrates were rather reluctant to give harsh penalties.<sup>32</sup>

### **Lencency versus toughening?**

Codifying and unifying the legislation did have an impact on the judges' discretionary power which can also be seen in the harshness of the sentences given against violent behaviours, which were clearly codified.<sup>33</sup> Till 1886, the types of violence sentenced by the correctional court were classified by degrees of severity of the wounds and if it was committed by accident or with premeditation. Maltreatment and severe abuse, beating, injuries and violence (*zware* or *geringe mishandeling*, *toebrengen van slagen*, *verwonding* and *geweld*) were categories that deserved punishments, from a fine and a few days in jail to many years in detention. A fight leading to death, if this was proved accidental, could be tried by the correctional court but as shown above cases of murder or rape were most likely to be sent in front of the court of assizes, which could sentence to higher punishments than the correctional courts (maximum five years detention). But violence also included cases of insults, threats, defamation and slander which could lead to jail time, fines and a loss of burgher's rights for five years in serious cases of defamation (*laster*). If these offences were directed against an agent of the state (police, military, officials), the given sentences tended to be higher, notably the time spent in jail. In general, minor assault was punished with a fine and/or a shorter period of confinement, while severer violence would lead to the harsher penalty of imprisonment.

We will again start with a brief overview of the English evidence on gender differences in conviction rates and sentencing, and then compare these findings with our results. In his work about crime and law in England between 1780 and 1830, King observed that female offenders accused of crime in the major courts of the late eighteenth century and early nineteenth century frequently succeeded in obtaining more lenient treatment than their male equivalents. Women who were tried by the London Old Bailey court – which had jurisdiction over all capital offences and a considerable proportion of non-capital property

---

<sup>31</sup> 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* 33:3 (2000) 623-644. See also:

<sup>32</sup> Post, "*Is dat nu buurschap*", 29. Vincent Sleebe.....

<sup>33</sup> Cartuyvels, 'Eléments pour une approche généalogique du code pénal', 386.

crimes – had much better prospects than men. The majority of men were convicted (61 per cent), while the minority of women (44 per cent) were not. The Old Bailey primarily tried property offenders, but the same pattern was found in other major courts which were responsible for murder and manslaughter. Data on Surrey and Lancashire suggests that women accused of murder had a better chance of obtaining a lenient verdict than their male counterparts.<sup>34</sup>

The studies on the major courts in England clearly point to a gender bias in prosecuting violence, but the majority of the assault cases were brought to the lower courts. King argues that lower courts (petty and quarter sessions) are the key sources to look for gender differences in sentencing. There is much less information on assault cases that were tried by the lower courts in England, but the research available suggests that female defendants were also treated more leniently by the juries and judges of the quarters sessions.<sup>35</sup> King looked at the Essex quarter sessions in the period 1748-1821. Although he found very a small proportion of women committing violent crimes, the available data suggests that women did obtain a higher proportion of non-guilty verdicts than men, and as a result, were slightly less likely to be imprisoned.<sup>36</sup>

More recently, criminologist Godfrey undertook a similar exercise. He looked at minor violence in ten English petty session courts between 1880 and 1920 (10.000 prosecutions), and he also found a strong gender bias in the sentencing of assaults. Magistrates clearly deemed assaults committed by women less important, as women were more likely than men to be acquitted of assault. The findings from the English courts between 1880 and 1920 show that 62 per cent of men were convicted, as opposed to 49 per cent of women. The gender bias was even more evident in the proportion of acquitted charges or charges that were bound over: 38 per cent of males were acquitted or bound over, as opposed to 52 per cent of females.<sup>37</sup> The English evidence seems to be clear-cut. Whether it concerned the Old Bailey prosecuting felonies or (sometimes rural) quarter session and petty session courts dealing with common assault, the findings confirm King's statement that in England the favourable treatment of violent women represented a national pattern.

Was the more lenient treatment accorded to women in English courts also evident in the Dutch courts in the nineteenth century? On the contrary, there were no signs of gender bias in the assault cases coming before the correctional courts in Holland. The conviction rate for men and women committing violent acts were quite similar, and the evidence suggests that equal treatment continued throughout the nineteenth century. Between 1850 and 1886 ca. 87 per cent of men and 88 per cent of women arrested (for any type of offence) and sent to the correctional court of Amsterdam were then convicted.<sup>38</sup> In relation to violent cases only, we also see a very similar pattern for men and women: in the first decades (1812-1832) a considerably large part of the suspects obtained a non-guilty verdict: 37 percent females and 38 percent males (graph 4). There is not enough information to conclude that judges became

---

<sup>34</sup> King, *Crime and law*, 165-195. See also Zedner who finds that between 1857 and 1890 men were much more likely to be convicted than women: 83 to 66 % of the men who were put on trial, against 53 to 77 women: Zedner, *Women, Crime and Custody*, 308.

<sup>35</sup> Idem, 180; R. Schoemaker, *Prosecution and Punishment: Petty Crime and the Law in London and Rural Middlesex c. 1660-1725* (Cambridge 1991).

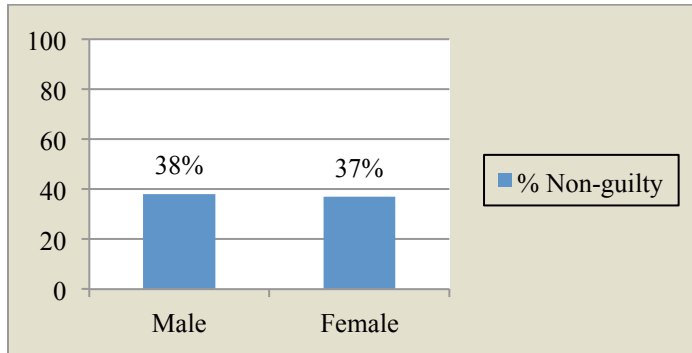
<sup>36</sup> King, *Crime and law*, 227-254.

<sup>37</sup> Godfrey, "Counting and accounting", 341; Barry Godfrey, Stephen Farall, and Susanne Karstedt, "Explaining gendered sentencing patterns for violent men and women in the late-Victorian and Edwardian period", *British Journal of Criminology* 45 (2005) 696-720, 702.

<sup>38</sup> DANS Database: <https://easy.dans.knaw.nl/ui/datasets/id/easy-dataset:30707> (March 2014).

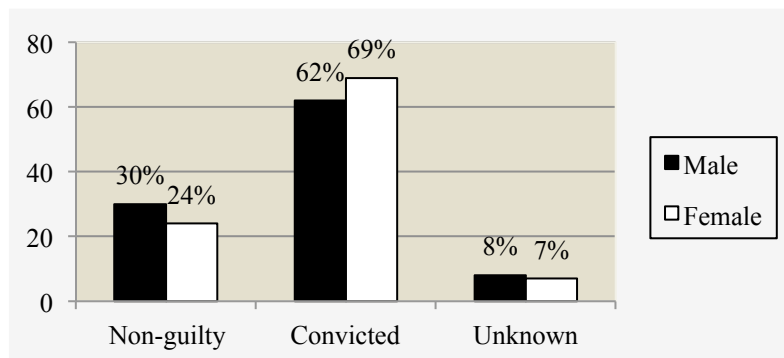
less reluctant in giving non-guilty verdicts in assault cases as a result of growing judicial intolerance of violence, but if so, the trend applied to both male and female assault.<sup>39</sup>

**Graph 4**  
**Findings of the correctional court of Amsterdam, assault defendants, 1812-1832**



Source: Noord-Holland Archief, Haarlem, , Rechtbank Eerste Aanleg Amsterdam (correctional court) 1811-1838, sample years: 1812, 1817, 1822, 1827, 1832.

**Graph 5**  
**Findings of the correctional court of Rotterdam, physical assault defendants, 1812-1820**



Source: Nationaal Archief Den Haag, Rechtbank Eerste Aanleg Rotterdam (correctional court) 1811-1838.

There was also no gender bias noticeable in the conviction rates of the Rotterdam correctional court in the first decade of the nineteenth century. The conviction proportions of men and women were quite similar: 62 per cent of men and 69 per cent of women who were arrested because they had committed assault were convicted by the court (Graph 5). In addition, relatively more men who were prosecuted for assault escaped a conviction and were released from prison: 30 per cent of men, against 24 per cent of females committing physical violence. Women were even treated with more severity in prosecutions for verbal violence by some courts. Women guilty of insult, slander or defamation could count on much less leniency than their male counterparts. The correctional court of Rotterdam released almost 30 per cent of

<sup>39</sup> Amsterdam Rechtbank Eerste Aanleg (correctional court) 1811-1886, sample years 1812, 1817, 1822, 1827 and 1832, number of male suspects: 251, number of female suspects: 236.

those men who were arrested because of verbal insults, while none of the women escaped conviction by the court. These numbers are a clear indication that at least two major correctional courts in Holland did not give women (accused of violence) a non-guilty verdict more easily than for men. Women committing physical violence were not less likely to be convicted once they had entered the court room. On the contrary, men were more likely to obtain non-guilty verdicts than their female counterparts.

In order to explain gendered sentencing patterns crime historians should also look at the impact of contextual factors on the decisions of judges. Both the context of the offence and life trajectories of offenders, rather than gender bias, might explain differences between sentences imposed on men and women. Godfrey found for England in the late nineteenth century that men received more serious penalties, because male violent conflicts were deemed by judges more severe confrontations which deserved harsher punishments than conflicts involving women.<sup>40</sup>

There is no data about the life course of those accused of violence in nineteenth century Holland, but there is some information about the context of violent crime and its impact on the sentencing of Dutch judges. We have looked at differences in the sentencing of men and women accused of severe assault (severe maltreatment, injuring and wounding, serious violence; murder and manslaughter are left out) by the correctional court of Rotterdam (1812-1820). A proportionally large part of females accused of severe assault received low levels of punishment: a fine (39 per cent of the cases), one to three months confinement without a fine (25 per cent) and one or three months confinement with fine (30 per cent). Their male counterparts received harsher punishments: 25 per cent of them got away with a fine, 38 per cent were confined less than three months, and 16 per cent was confined less than three months with a fine. Furthermore, none of the female attackers was sentenced to imprisonment of 4 to 12 months (including a fine), as opposed to 11 per cent of men committing severe assault. Although men who were accused of assault were more likely to escape a conviction than females, they did, in case of a conviction, receive slightly more serious penalties than female assailants.<sup>41</sup>

The gender differences in sentencing might indicate that males who were convicted for severe assault were treated less leniently than women who were convicted for the same crime. Godfrey found for nineteenth-century England that the highest proportion of offenders receiving the most severe punishments was men who attacked women.<sup>42</sup> This confirms Wiener's argument that the sentencing process aimed to protect women and to punish men who attacked them. However, the courts in Holland seemed to have been much less eager to impose harsher punishment on the physical abuse of women by men. As shown, domestic violence rarely led to prosecution, and when cases came before the court, offenders received mild penalties.

The fact that men's fights involved more severe or life-threatening violence seems to be a more convincing explanation for the proportionally severe punishments given to male assailants in the Rotterdam court. The prime targets of men who were arrested for severe assault were men (54 per cent) and to much lesser extent women (20 per cent), in ca. 26 per cent of the cases the courts did not register the gender of the attacked person. Women's aggression was targeted more often at women (41 per cent), though a considerable proportion of the female assailants also attacked male victims (32 per cent), the rest of the victims (27 per cent) are unknown. Most male disputes involved men only, and as a consequence, involved more serious violence which resulted in more severe punishments.

---

<sup>40</sup> Godfrey et al, "Explaining gendered sentencing", 712, 717.

<sup>41</sup> Nationaal Archief, Rechtsbank Eerste Aanleg Rotterdam (correctional court), 1811-1838.

<sup>42</sup> Idem, 711-712.

It is fairly safe to conclude that there were important differences between England and Holland in the prosecution of violence in the nineteenth century. Increasing prosecution rates of violence did not involve an increasing focus on men in the criminal process in the Netherlands. Men were more likely to obtain non-guilty verdicts than women. Men who were convicted did receive more serious penalties than women, but these differences were related to men's more physically damaging disputes.

## Conclusions

This article questioned the notion of "criminalization of men" in the nineteenth century, as highlighted by English criminal historians. Though Muchembled agrees with this theory when applied to French criminal courts, it appears that the criminalization of men did not occur in the Netherlands at the same time, if ever, than in England or France. Looking at the records of different types of courts (police tribunal, correctional and criminal courts) in various towns and cities of the Netherlands over the period 1750-1886, a growing interest in violence, from the local authorities, is noticeable; indeed the growing prosecution rates for violence from 1820s onwards (both in numbers and proportionally) in the different Dutch courts show a change of attitude towards violent behaviour and a will to reduce or moderate violent acts, as it was the case in England at the same period.

However, it is remarkable that the criminalization of violence and the increasing prosecution rates concerned assaults committed by both men and women: no gender bias could be found. This was confirmed by a study of the type of violence prosecuted in the correctional courts and the Assizes. Physical violence was the primary target of these courts and though rape and domestic violence were punishable by law, the prosecution rates for these crimes were really low. When compared with Delft and The Hague police courts, it appears that domestic violence was rarely prosecuted and the punishments for such violence remained mild. There was no emphasis on a possible role of the court to protect women and punish men; on the contrary, cases as such did not receive particular attention.

Thus, increasing prosecution rates for violence did not parallel with an increased focus on male violence in the Dutch judicial context. Interestingly, men were more likely (to a small extent) to obtain non-guilty verdicts than women in cases of physical or verbal violence, which again shows the absence of a clear gender bias in this judicial system. Men who were convicted did receive however more serious penalties than women. These differences were most likely linked with the severity of the wounds and presumably, regarding the fines applied, with the socio-economic situation of the convicted men.

The difference in conviction rates and sentences for male and female offenders that are found in English courts and Dutch courts may not necessarily represent different attitudes towards men's and women's violence in England and the Netherlands. The different outcome could also be related to the discretion of English magistrates and the two different judicial systems. The judges in the quarter sessions and petty session records had a larger *marge de manoeuvre* than the Dutch magistrates in the nineteenth century. They may have had more opportunity to be lenient than 19th-century Dutch magistrates following the penal code and sentencing according to specific criteria.