

Conference Proceedings – Thinking Gender – the NEXT Generation

UK Postgraduate Conference in Gender Studies
21-22 June 2006, University of Leeds, UK
e-paper no.4

Professional Intervention in Sex Crime Policing and Expert Witnessing Hetero- and Homosexual Sex Crimes

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Abstract:

This paper is part of a PhD project concerned with the history of homosexuality in the Netherlands in the twentieth century. Main question in the project is to which extent the occupation by Germany, from 1940 until 1945, influenced the societal position of homosexuals. An answer is sought by analysing the repression, legal prosecution and agency of homosexuals based upon court records and police archives. In this paper heterosexual and homosexual court files are closely read in order to determine the differences with which hetero- and homosexual transgressions were approached by the professionals involved in the court proceedings. As will become clear, expert witnesses focussed upon the *circumstances* in the case of heterosexual transgressions and upon the *perpetrator* in homosexual crimes.



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Introduction

Before turning to the main topic of this paper, as a historian and Dutch participant of the conference *Thinking gender - The next generation* I feel it is important to notice that a ‘global appreciation’ of gender analyses’ merits is still non-existent.¹ The historical departments and projects in the Dutch academic context are a case in point. History students come across ‘gender as a useful category of historical analysis’ only accidentally and despite continuous efforts by gender experts several major historical books in the Netherlands were not devised with gendered analyses in mind. Unintentionally, I have become somewhat of a reporter on this matter over the last four years.² In my field of work, concerned with the Second World War, gender analyses are not abundant in the Netherlands. Still, its merits are quite obvious. The Second World War influenced the gender order and several forms of sexual agency significantly. Other national histories have been served better in this respect, and especially on Britain and Germany a number of relevant studies has appeared.³ In this paper, Dutch history receives attention.

My PhD project analyses the ‘moral access to society’ for homosexuals before, during and after the Second World War. By researching the repression, prosecution and agency of homosexuals, I want to contribute to the history of Dutch morality. Ideas on femininity and masculinity have influenced the course of history to great extent. The history of (the prosecution of) sex crimes is informative in this regard.

To try and analyse the repression, prosecution and agency of homosexuals in the Netherlands as systematically as possible, I have chosen to select one Dutch court district and analyse all sex crimes prosecuted there, both heterosexual and homosexual, in order to discern the effects of the regime change on the treatment of sex and ‘moral’ crime. Within this court district I will analyse the police archives of two municipalities, Leiden and The Hague. The latter is known for its homosexual subculture in the pre-war years. Although the PhD will be based on both court records and police archives, this paper presents the preliminary results of the collection of the data on sex crimes retrieved from the district court of The Hague.

For now I want to answer the question what these court records can tell us about the way in which notions of femininity and masculinity informed the ways in which sexual transgressions were prosecuted. And – since homosexuality is the main topic in my work – how the *heterosexual* sex crimes can inform us about the ways in which *homosexual* cases were tried.

Do the differences between these trials tell us something about the specific situation for homosexuality? Since sex crime trials were ‘a site’ in which all sorts of professional and lay opinions were brought to bear, court cases inform us about what people thought they ought to say about sexual conduct under the pressure of the uncertainty of a judicial verdict. Such pressure does not distort the information relevant to this project. On the contrary, the uncertainty produced by the unknown outcome of a trial gives us an idea of what people thought they had to say to come across as innocent (in the case of suspects), to get people free (in the case of defence witnesses), to incriminate people (in prosecution witnesses’ cases) and what they had to say to protect society from sexual deviance (in the case of expert witnesses).

How did gendered notions inform the police officers typing up their reports and how did they influence expert witnesses’ evaluations of the defendants in sex crime cases?

Homosexuality in the Netherlands

Based upon statistical information, literature has already suggested that the regime change in May 1940 did not lead to an intensification of the prosecution of homosexuality in the Netherlands – much to the disappointment of Hans Albin Rauter, the highest SS-officer in the Netherlands.⁴

In July 1940, the Dutch Reich’s Commissioner Seyss-Inquart introduced a verdict criminalising all male homosexuality. Since 1911 the Dutch Penal Code (PC) had criminalised only some forms of male and female homosexuality. In 1911 article 248bis PC was introduced which forbade homosexual contacts between persons older and younger than 21 years of age. The age of consent for heterosexual sex lay at 16. Both women and men could be prosecuted for homosexuality, but only if they were adults having sex with under aged partners. Homosexual sex could not be prosecuted when two under aged persons or two adults had sex with each other. At least, if they did not violate public decency.

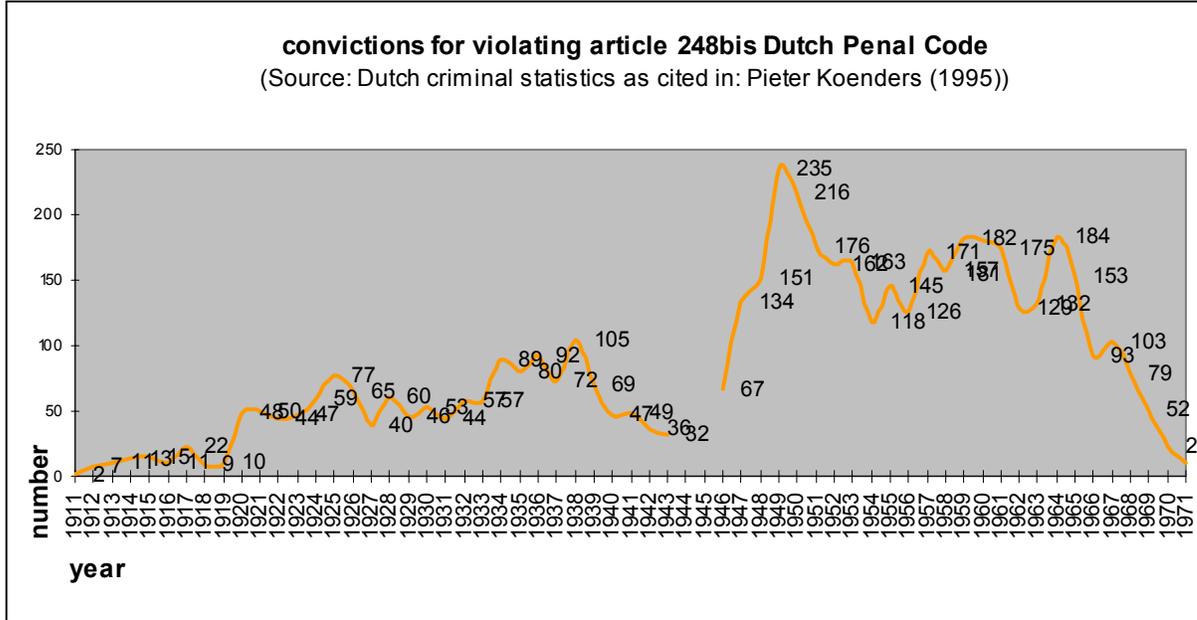


Chart 1. Annual number of convictions on the basis of the Dutch article criminalising homosexual contacts between adults and under aged persons.

According to the Dutch historian Pieter Koenders, during the occupation – which lasted from May 1940 until May 1945 – no less than 138 men were prosecuted on the basis of the German Decree 81/1940 which prohibited all forms of sex between men. Of these men, 90 were found guilty of which 54 were imprisoned and 10 were sent to psychiatric institutions. 60% of these cases involved under aged men. Unfortunately it is unclear on which sources he has based these claims.⁵ A systematic and qualitative analysis of the societal position of homosexuals in the Netherlands is non-existent. My archival work will have to show how many of the 138 81/1940-cases were tried in The Hague.

Sex crimes, legal responsibility and the Dutch psychopath laws

In addressing sexual crimes both police and legal bodies could choose from different articles of the Dutch Penal Code to pursue investigations and prosecutions. Article 239 PC criminalised public indecency. Article 247 PC criminalised both heterosexual and homosexual sex with

persons younger than 16 years. As mentioned, 248bis PC put the age of consent for homosexual sex at 21 years. Article 249 PC, furthermore, criminalised sexual contact between persons who were in unequal power-relationships, such as parents and children, teachers and students, priests and parishioners and employers and employees. As mentioned above, the occupation brought along the prohibition of all male homosexuality (Decree 81/1940). Article 55 PC stipulated that if multiple articles were applicable the article with the highest sanction should be chosen. Sometimes, though, the article applying most specifically to the indecency at hand had to be chosen even if other articles with tougher sanctions could have been applied (*lex specialis versus lex generalis*).

Before 1928, defendants could only be approached as either fully responsible or as wholly unaccountable for their (alleged) deeds. From 1928 onwards, the defendants of sex crimes could be tried in different ways. They could be held fully responsible, unaccountable or diminished responsible for their acts. Compared to other European countries, both the Dutch debates on ‘legal responsibility’ and the introduction of the psychopath laws in 1928 were rather late.⁶ Before the introduction of the possibility of trying a defendant as diminished responsible, effectively directors of mental institutions decided over the length of unaccountable convicts’ sentences. If they declared that patients had recovered, these convicts were set free. After a political, or even philosophical conflict of 26 years, the Dutch psychopath laws were finally introduced in 1928. A struggle between two ‘philosophical’ strands over the main question of the proper sanctioning strained the introduction of these laws.

The so-called classic school argued that crimes and felonies should be sanctioned uniformly. This school took retaliation as a point of departure. With the so-called modern school the protection of society became more important. This school argued that each convict should be sanctioned effectively. Sanctions should be ‘tailor-made’ therefore. The Children’s Act introduced in 1901 is a case in point. This ‘modern’ act presupposed that persons under 18 years of age should be tried differently than adults. Children got different sentences than adults from then on. Being ‘juvenile’ even became a fluid concept in court. The modern school also saw solitary confinement as contra-productive. Imprisonment could lead to insanity, depression and other illnesses in its view.

The outcome of the debates on the psychopath laws which started in 1902 was that the influence of the medical sphere changed tremendously, much to the approval of the modern

school. Due to the psychopath laws the district court decided over the length of the treatment of a convict, taking this responsibility away from the directors of psychiatric institutions. The psychopath laws enabled combined – tailor-made – sentences of psychiatric treatment and imprisonment.⁷ Every year the progress of rehabilitation of a convict would be evaluated by a court of law. Instead of influencing the length of the process, the medical experts now influenced the process of the trials. After all, they were called upon as expert witnesses to assess whether or not defendants were responsible for their actions. Over the years their job enlarged. They now also needed to assess a defendants' personality and to judge the chances of recidivism. This expansion was heavily influenced by the developments in the psychiatric fields in which from the late 1920s onwards, the introduction of psychodynamic personality theories increased dramatically.

The link between debates on accountability, recidivism and homosexuality are quite obvious. One of the brochures, written by the catholic psychiatrist Dr F.S. Van Bouwdijk Bastiaanse, even takes the homosexual problem as a case in point to propagate the importance of the introduction of the psychopath laws.⁸ To convince the reader that the category of 'diminished responsible' defendants was necessary he presented three examples, one of which is a criminal who had the compulsive idea that he needed to kill the Minister of Justice. Obviously, this rhetoric example would have convinced the Minister of Justice to change the Criminal Code hastily. Another example was an insatiable homosexual police inspector, who could not think of anything else than seducing young school boys. That the inspector could not restrain himself emphasised the pathological traits in the early twentieth century imagery of 'the homosexual'. Only from the 1970s onwards, paedophilia and homosexuality diverged both conceptually as in the public mindset, in The Netherlands. The urge to seduce boys overpowered the police inspectors' will. The author claimed that only a combination of psychiatric treatment and imprisonment would set this inspector straight: 'punishment and compulsory treatment, during which he should be under severe discipline and he should learn to work hard.'⁹

Significantly, in *Pijpelijntjes* – a famous 1904 homosexual novel – the concept of diminished responsibility popped up. Here 'diminished responsibility' was introduced as a possibility to escape imprisonment. As the main characters in this novel, Sam en Joop, travelled with their landlady Mrs Meks to pay her imprisoned husband a visit, they met Mrs Vos on the train, who wanted to visit her oldest son in the same facility. Both of her other children, a boy

and a girl, were convicted as well. Her daughter was sent to a correctional facility, but her other son was sent to the ‘mental institution’ (krankzinnigengesticht in Dutch) ‘Meeremberg’:

‘Yes, Piet [her younger son, AT] got a better deal than Johan [her older son, AT], he stabbed someone good with a knife, but his lawyer has done well for him, at first I was reluctant, because it is tough when one of your children is declared insane, but it was for his own well-being... He has been in there for eight months now, but at least you can bring something along for him, a baked fish or some shrimps... I visit him once a Sunday, every month.’¹⁰

In some of the court cases that I have retrieved, this same argument was brought to bear by defendants. They wanted to be sent to an asylum because prison was too hard for them.

Quantitative remarks on the sex files

Working through the files of the court district in The Hague in the years 1911-1960, 116 cases containing court files on illicit sexual and indecent behaviour were retrieved, i.e. cases in which at least one year of imprisonment was demanded or attributed. Contrastingly, 70 cases concern illicit heterosexual behaviour (60%); 46 cases revolve around illicit homosexual behaviour (40%). The pre-war years, 1911-1940, entail 15% of the cases. The years of occupation are good for 8% of the cases. Finally, the post-war era studied, 1945-1960, consist of 77% of the 116 cases. These results call for broaching themes such as comparing the chances of arrests in heterosexual and homosexual cases, the readiness of filing complaints and the followed legal procedures (e.g. whether public prosecutors decided to dismiss or pursue cases). But this data also evokes the question why there were so few cases against homosexuals in the pre-war period if The Hague was the Dutch pre-war ‘gay capital’. After all, a mere 18 cases (15%) took place before the occupation of which only one third (6 cases) concerned homosexuals. Since the decline in cases dealing with sex crimes in general during the years of occupation is in line with earlier publications based on criminal statistics, these developments are not surprising.¹¹ Still, the fact that the German occupation, the introduction of a German Decree criminalising all forms of male homosexuality and with it the broadened possibilities to prosecute homosexuality were not used. That is why a qualitative analysis of the years of occupation in the district court of The Hague might offer new perspectives on how the regime change affected homosexual life.

Interestingly, almost all the court cases retrieved entailed significant age differences between the ‘sex partners’, whether hetero- or homosexual. The average age difference in the heterosexual cases were 30,5 years in the pre-war period, 26,6 years in the occupational years and 27,4 years in the post-war years. The homosexual cases show a similar picture: 31,5 years age difference before the war, 21,5 during the war and 25,5 years of age difference between the sex partners after the war.

Police investigations, medical metaphors and self defence strategies

In preparing a case for a final verdict, the investigatory judges usually gathered background information on the defendant by summoning reports from different bodies. Both parole offices and medical doctors were called upon for their expertise.

These bodies invaded the defendants’ privacy at different levels. Whilst parole offices invaded their social surroundings by combing the defendants’ backgrounds through inquiring their employers and former employers; medical experts invaded their private and intimate lives up to a ‘bodily’ level.

At first, expert witnesses were formally called upon to estimate the level of the defendants’ legal responsibility for their crimes. Usually they examined these clients by talking to them once or twice, either in their offices or – when the suspects were preliminary confined – in the detention centre. They received their dossiers, studied the police reports and frequently talked to family members as well. They tested the mental capacities of the defendants and required the defendants to undress. The medical reports were inventories of mental skills, body builds and (medical) family histories.

Throughout the years 1911-1960, psychiatrists operated as expert witnesses in the court district of The Hague. Just like the parole offices, these experts took their turn along religious lines. The legal system was thoroughly ‘pillarised’, i.e. just like the rest of the Dutch society, the judicial chain was fully compartmentalised along the lines of religious denominations. The religious background of the suspects determined which medical doctor the investigatory judge would call upon. Significantly, most defendants were evaluated by the catholic medical doctors Dr Carp, Dr Van Laer and Dr Gerritsen in this court district.

Throughout these years of investigation the structure of these reports changed. In the 1930s most reports investigated the family history, the mental capacities and physical states of the defendants coming to a conclusion about the extent of the legal responsibility of the defendant. By the 1950s, medical experts investigated A) the defendants ‘personality’, B) whether or not the defendant is responsible for his crime and C) which punishments or measures would best suit the defendant in order to prevent recidivism. By and large, psychiatrists thought that homosexuality was a trait common to certain body builds, as becomes obvious in the reports in which the expert witnesses stated that the defendants did not come across as overt homosexuals and described their clients as firmly built and healthy looking without genital peculiarities. But through the upheaval in psychodynamic personality theories – all supposing that powerful inner forces shaped and motivated personality and behaviour – the description of personalities became fashionable.¹² Still, the descriptions of the personalities of the defendants usually did not lead to very sophisticated evaluations. Referring to their defendants’ personalities, doctors usually described their intellectual capacities, e.g. ‘the defendant is a mentally defective homosexual’ or ‘the defendant is crazy’.

There seems to have been quite a dramatic difference in the ways in which expert witnesses approached the defendants in heterosexual and homosexual cases. To illustrate this general remark, I will present a close-reading of three heterosexual and three homosexual cases. In all of the cases, I will analyse the metaphors used to describe the offence at hand, the guilt-attribution by the medical experts and the self-defence strategies by the suspects.

Heterosexual sex cases

‘As a good father, who is supposed to guard his daughter’s honor and who would have to bear the consequences if she were to be impregnated by a boy with no shirt on his body [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 [the poor youngman, 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.’¹³

They are conspiring against me

With the anacoluthon above, the expert witnesses Dr Gerritsen and Dr Scholtens described what had caused the 51 year old Bennard Bronkaars to end up in court in 1931. His stepson had reported him to the police because of incest. According to the defendant, only after he had forbidden Willem Schroers to get involved with his daughter Maasje Bronkaars.

To large extent, the medical experts followed the defendant's testimony about the indecencies he had committed with his stepdaughters. They ignored the girls' testimonies on the matter. Still, there were discrepancies between the 'facts' as mentioned by the girls in the police report and the 'facts' as mentioned by the defendant in both the police report and the evaluation by the psychiatrists.

The older stepdaughter Nanni declared that the sexual abuse had started when she was 8 and that it had continued up to her 14th. Bronkaars stated that he had abused Nanni when she was 15 years old. The younger stepdaughter Danneke testified that she had been 12 when her father forced her to masturbate him, Bronkaars told the police that she had been 13 years old. Both of the girls declared that he 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. He also denied that he had ever used force or threatened them. Still, both the girls declared that their stepfather had threatened them. The older sister even mentioned that he had threatened her with the 'promise' to use a knife against her. Nowadays, now she was refusing to put up with the indecencies, her stepfather would punch her in her side and that he said:

'As long as you are refusing me, you will not be sure of your life, you are not happy' (in Dutch: 'Zoolang je weigert, ben je je leven niet zeker, zoolang ben je nog niet gelukkig.')

Besides differences in the representations of 'facts', there are significant differences between the ways in which the police report and the psychiatrists' evaluation are construed.¹⁵ As mentioned the psychiatrists followed Bronkaars's story almost literally. The police officers, on the other hand, presented Nanni and Danneke as victims, their mother as a witness who could 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' and their stepfather as perpetrator, who was heard a second time after initial denial. In his second testimony he declared to have committed indecent

acts with his stepdaughters, although denying to have used violence or intimidation. As will become clear, the mother's testimony that her sex life with her husband was satisfactory is part and parcel of these heterosexual incest stories. The lack of a satisfying 'marital life' was often portrayed as the explanation for sexual abuse within the family. It is not unthinkable that the police officers had internalised 'a dissatisfying sex life' as the cause for sexual indecencies and asked the mother if there was a reason why her husband would seek satisfaction with 'other women'. After all, it seems queer that a mother would refer to her daughters as 'other women'. As we will see, Bronkaars viewed his 'marital life' quite differently. Interestingly enough, his view on the matter was not subject for discussion during the police interrogations. The police hearings focussed merely on confronting Bronkaars with the allegations his stepdaughters had made. Bronkaars complained about his marital life to the expert witnesses, Gerritsen and Scholtens, as well.

In turning to the psychiatrists' evaluation, it is interesting that Dr Gerritsen and Dr Scholtens turned to Bennard Bronkaars's history concerning his sexual life. Whilst swearing that he was not lying, Bronkaars told the doctors that he had had his first sexual experiences 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. He avoided penetrating women because he was afraid of illnesses. From 1921 onwards, his sexual life took a leap again. The first five years of his second marriage, he and his wife had sex three times a week, sometimes more. The last five years of their marriage the frequency of intercourse dropped. His wife's womb had sagged, making intercourse painful. To spare his wife, he had started masturbating. He mentioned how he never masturbated as a widower, not even as a boy at the correctional institution for boys he had had to attend. The question mark attributed here in the report, reveals the unlikelihood of these remarks in the experts' view.

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.' 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 declared:

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.”

The doctors underlined that no force was ever used. The girls cooperated rather easily. The doctors went on to state that the fondling of the girls had no significant meaning and declared that the girls had lied to the police. Without medically examining the children, the doctors declared that the defendant had not penetrated the girls:

‘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.’

Just like with the rest of the accusations, the doctors based their refuting the fact that he ever had used force on the girls solely on the *defendant’s* say so. Moreover, the fondling of two daughters was approached as a heightening of pleasure and not as a sexual crime.

In this article, it is of interest to see what the doctors thought was ‘normal’ and ‘abnormal’ regarding sexual matters. It is also noteworthy to see who they held responsible for the incest that had taken place. Finally, it is crucial to see what they thought (un-)convincing. Besides a closer examination of the doctors’ views on the matter, it is also revealing to see how the defendant explained himself and tried to defend himself under the pressure of the uncertain outcome of the court proceedings.

According to the report, a stepfather who fondled his children and had them masturbate him could still be an honourable man looking out for the welfare of his family and keeping up morale. After all, he wanted to prevent his household turning into a pigsty. Implicitly, the doctors thought it unlikely that men did not masturbate, especially if they had spent part of their adolescence in an all boys institutions and that the absolute minimum for coitus was once a week. Although the doctors Gerritsen and Scholtens held Bronkaars responsible for his actions, they underlined that the extraordinary willingness of the daughters had influenced the situation and that the defendant had fallen victim to the revengeful act of his stepson Weerd Schroers and

his daughter Maasje Bronkaars whom he refused to give permission to get involved with each other. They did not forget to mention that Bronkaars never had business with the police before and that the imprisonment was seriously distressing for him.

In his defence, Bronkaars started incriminating all of his relatives, calling his wife promiscuous, his stepdaughter Nanni insurgent, his stepson Lennard a thief and his stepson Weerd an unsuccessful employee 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 send him to a lifetime imprisonment (conveying his limited understanding of the legal system, since – firstly – magistrates dealt with offences (not crimes) and – secondly – could not sentence lifetime imprisonments.)

She wore a short skirt and a low cut décolleté

In 1951, Carel Geraarts was prosecuted for having forced one of his students to masturbate him.¹⁶ The girl’s mother pressed charges against Geraarts, resulting in a sentence of an imprisonment term of 10 months. Two of these months would be preliminary during a probationary period of three years. In these years Geraarts would be monitored by the Roman Catholic Institution for Rehabilitation.

All of the involved professional agents seem to have questioned the truthfulness of the girl. During the hearing of this witness in the judicial preliminary investigations, she had to explicitly state that she was telling the truth and nothing but the truth. She also had to declare that she understood that her accusations were very grave and could damage the defendant’s life seriously. Still, she persisted that her tutor had sexually abused her. Throughout the proceedings, Geraarts on his account persisted in denying that he had initiated the indecencies. The 15 year old Vera had started it all by laying her hand on his knee and after some fooling around, she laid her hand on his ‘masculinity’. According to him, his only vice was that he had indulged in it, because he was surprised by the girl’s initiative and had liked it moreover. What is more, it had not led to an ejaculation.

What is interesting in this case, is the stance of the expert witness. The Roman Catholic medical doctor J.L. van Laer concluded in his report full of intrinsic tensions, that Geraarts was diminished responsible. After all, he was burdened by financial worries, the relationship with his

wife was unsuccessful both intellectually and sexually and he got sexually excited by the almost 16 year old girl who stimulated him sexually by ‘wearing short skirts and a low cut décolleté’:

‘When one reconstructs in which mental state the defendant committed his acts, one notices how he was stressed out over financial worries for months by then. Moreover, there was little to no harmony between the suspect and his wife. They rarely had sex. If it turns out that the suspect got into contact with Justice because of public indecency in 1937, one may assume that his sexual life was somewhat insane. Therefore, it is not surprising that the defendant in this situation of psychic stress – because of an erotically fiercely stimulating girl – came to his deeds of which he could not appreciate the consequences at that moment. The undersigned is of the opinion that the suspect is responsible for his deeds in a diminished way. Moreover, he is visibly very remorseful for his misdeed and worries about the future of his family. The chance for recidivism seems unlikely in the undersigned’s view. If advice is allowed, the undersigned wants to have the court consider a partially preliminary sentence, enabling him to take care of his family again.’

In conclusion, the doctor thought him diminished responsible and advised a partial preliminary sentence, but no psychiatric treatment, nor monitoring by a Rehabilitation Association. The doctor explained that the defendant came to his misdeeds because of stress and that he was sexually insane given his earlier dealings with Justice over some form of public indecency, but did not expect recidivism.

What is more, Dr Van Laer thought it hard to imagine that Geraarts could have forced a 16 year old girl to do something against her will. Van der Laer underscored that the girl did not even call for help even though Geraarts’s wife was in the next room when the masturbation took place. Most revealing is the fact that the doctor was not worried about recidivism although he made it very clear that the defendant acted sexually inappropriately when worried about his financial circumstances. He advised the court to sentence him to a preliminary imprisonment term. Although Van Laer could not have known that the court would have him convicted for 10 months imprisonment, he could have foreseen that a possible imprisonment term would ruin his business as a private teacher and would thus create the basis for distress and sexual abuse in the future.

She understands now that her rejection has caused her husbands actions

In the following 1955-incest-case, the medical doctor involved felt compelled to explain the sudden sexual crimes of Cobus Hijmans by zooming in upon the circumstances under which

they had taken place. After all, throughout his life he had never given trouble and had been good to his family.¹⁷ The defendant's character was described as non-alcoholic, church-going and family-loving.

The beginning of this incest-story is situated at the moment when the wife started rejecting her husband sexually. After difficult child bearings, the wife wanted to prevent further pregnancies and therefore refused to have intercourse. She got sloppy and started to neglect her domestic chores. At the end of his report, Gerritsen mentioned that he did not fear for recidivism since the wife was getting older and therefore infertile. So, soon there would be no reason for her to reject her husband any longer. Apparently, as late as 1955, this medical doctor did not conceive of birth control as an effective means to enable the couple to have sex without risking difficult pregnancies. Furthermore, sexuality was perceived as a wife's duty and a husband's right.

To large extent, the guilt was attributed to the wife. After her sister-in-law intervened in her family and the police investigated the situation, the wife told the medical doctor: 'I understand that I have been wrong. I do not hold it against him.' Apparently, all – including the wife – attributed the guilt to her.

For another part, the housing conditions were regarded as an explanatory factor. This family consisting of two parents and seven children lived in a house with a kitchen servicing as bathroom and living room, 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?

What is telling, is how this family's life was organised around the defendant's apparently uncontrollable libido. According to a letter his solicitor wrote the examining judge, the daughters would be located elsewhere before the father is released from prison 'because there presence is unwelcome in their parents house in the future'.¹⁸ Not only the family's life was organised around the father's sexual wishes as a point of departure, but the doctor's explanation as well:

'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.’

In other words, not meeting the defendant’s needs is not an option in the expert view.

The main question the doctor tried to answer in his report was whether the defendant could be considered a paedophile. In his view, the father is not paedophilic since the incest stopped as soon as ‘his wife was sweet again’. The acts could be described as infantile, however, since both the girls and the father were rather stupid. The doctor underscored that both the father, mother and daughters were stupid several times in his reports. He based this conclusion upon the police reports and the tests he did with the defendant. He did not test the girls himself however. His thoughts on the mother were based on his brief impressions. Although the acts were infantile, the sexual development of the father could not be characterised as an ill disturbance in the defendant’s sexual development. The doctor concluded:

‘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.’ The chance that the defendant would fall into recidivism is seen as non-existent: ‘especially, now she [the wife, AT] has understood, that her rejecting attitude, is a partial explanation of her husband’s behaviour.’

These heterosexual cases show that sexuality was approached as an uncontrollable force in which body reigned over mind. If sex was unavailable at the wife’s, it would be certain to find gratification elsewhere. The ‘abstaining wives’ were attributed as much guilt as the sex offenders.

Homosexual sex cases

From then onwards, I went with Thijssen to his house on a weekly basis

By the time the 49 year old father Jacco Hansen had sent his sons to report the 62 year old coachman Jannes Thijssen to the police, he had been having second thoughts about the relationship between Thijssen and his oldest son Jack Hansen for over a year.¹⁹ Justifiably so. After all, Thijssen had been having sex with three of his sons – the 15 year old Jack, the 12 year old Ge and the 10 year old Fred Hansen – for over years by then. Although the case against

Johannes Thijssen does not include an evaluation by a medical doctor, this case is of interest in this article because of the police interference.

These three boys Johan, Gijs and Fred, had been receiving respectively 25 cents, chocolate bars and cookies; 10 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. Approximately one year ago, the youngest brother Fred was with Jannes Thijssen as his oldest brother rang the doorbell. 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 mentioned that they feared to be sent to a correctional facility if someone found out. That is what Jannes Thijssen had told them, according to these witnesses.

Jannes Thijssen had started fondling the boys in his wife's newspaper's kiosk on the Nassauplein in The Hague. The kiosk was on the route to their 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.'

The three boys had been coming to Jannes Thijssen's house on their own initiative (risking of coming at awkward times, such as described above). They underlined that they received money and sweets. 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.

Whether or not the boys really were terrified of being sent to correctional facilities if someone found out or engaged into sexual activities voluntarily cannot be known. What is of interest here, is the way in which the police officers construed their report against Jannes Thijssen. They were sure to write down the descriptions of what had happened between the boys and Jannes Thijssen as innocently as possible. They all described Thijssen's sperm as 'filthiness'. They referred to their penises as their 'pisser' ('pieser' in Dutch) (perhaps to underscore that the boys themselves had been using their penises to urinate only). They called their anuses 'bottoms'. And the acts Thijssen had performed were described as childishly as

possible. 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, like in the case of the rape-victim who was asked if she found gratification (being pushed into the grass on a silent road in the middle of the night after having reported to the police and shown her torn clothes). Although his father had asked him if anything was off in the moral sphere, he had kept on denying anything had happened.

The police heard the father as well. When the 49 year old father Jacco Jansen was questioned by the police, he had to explain why it had taken him so long to notify the police. Implicitly the father was asked why he had not meddled in more actively. He explained:

‘About a year ago, I saw my son Jack Hansen walking along accompanied by an elderly man on the Nassauplein [in the Hague]. I immediately got the impression: ‘That is unsound’, and I talked to my son about it and informed whether something was off in the moral sphere. My son denied that anything immoral had taken place between him and the older man at that time. I let it go therefore. But about nine months ago I was driving through the Parkstraat [in the Hague] with my wife and saw my son accompanied by that same elderly man again. I stopped the car and my son and the man abandoned each other as soon as they saw that I saw them. I approached the elderly man and asked him to come along with me, which he did. I intended to go to the police. On our way the old man said ‘But Sir, I have not done anything’ or similar words. Because I was unsure of my case and because I wanted to talk to my son first, I said: ‘If you promise to report to my house at 9 o’clock tomorrow morning, you may go’. This was settled and the next morning that man came to my house. In the mean time I had talked to my son, but because he had not told me anything about the acts with the older man and because the older man had kept his word, I was reassured and thought that I had made a mistake again, although my wife had discovered that he Jack Hansen had started masturbating.’²⁰

Although Thijssen’s solicitor requested a psychiatric evaluation – given the fact that the defendant’s father had died of insanity and his wife had died from a nervous breakdown – the files show no sign of such an evaluation. Thijssen was sentenced to two years imprisonment. Apparently the police reports and the court hearings which largely repeated the contents of the police reports sufficed.

She was not a worldly woman and did not know much about these matters

The 38 year old shopkeeper, husband and father of three children Jitze Zandt was evaluated by Dr. J.L. van Laer in December 1945.²¹ Zandt, also known by the female nickname ‘Betje’, was suspected of having had sex with three of Claas Meiaard’s under aged sons. During the occupation Zandt had served a sentence of ten months imprisonment for indecency with under aged boys. He had served those months in the House of Detention in The Hague in 1943. After his conviction, he was not allowed to work as a chiropodist (feet-specialist) and masseur again. So, he went back to selling shoes.

Now, two years later – much to the surprise of his wife – he had fallen back into ‘his old ailment’. At the police quarters, Zandt incriminated the boys. They masturbated him willingly and they wanted to be masturbated themselves. He thought of his acts as the result of a sick defect which he could not withstand. The testimonies of the youngest and oldest brother were written down in a matter-of-fact style. The middle brother of these three declared that he had let Zandt masturbate him, that he had not resisted him and that he ‘had felt as if he was under hypnosis.’

In 1945, 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.’

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’. ‘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.’

Apparently, the flesh was stronger than the spirit. The doctor did not question this line of reasoning. Why the defendant would seek to have sex with young boys instead of other women went unquestioned, however.

In contrast to the heterosexual cases, the doctor described the defendant’s behaviour with metaphors such as ‘being derailed’ and ‘having an inclination’. According to the doctor, his wife spoke of her husband’s ‘ailment’. Furthermore, the guilt was not attributed to the wife even though she did not satisfy her husband. In this case, the 31 year old wife is heard about her marital and sexual life. She told the doctor that she never noticed anything unusual about her husband during their engagement in 1936. Their sexual life was modest from the outset.

Although there were no signs of impotence, they did not have sex often and this lessened as the number of marital years progressed. Mrs A. Zandt was never satisfied herself. Whether her husband got satisfaction was unclear to her, but she suspected that he did not either: ‘She never noticed if her husband masturbated himself. She never paid attention, because she was not a worldly woman and did not know much about these matters.’

In contrast to the under aged girls in the heterosexual cases above, this 31 year old wife and mother of three children got depicted as sexually unaware. 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.’

Because of his remorse, Dr Van Laer concluded that he was fully responsible for his actions and advised to have him monitored by the Roman Catholic Society for Rehabilitation to prevent recidivism.

Once the breaks were off, things progressed

In July 1946, the 23 year old Diedrik Havermans was evaluated by Dr J.L. van Laer.²² Diedrik Havermans had to stand trial for sex with under aged boys. He was part of a court case with 4 suspects and 17 witnesses of whom 4 were parents (3 mothers and 1 father), 4 were victims of sexual abuse and 9 witnesses who were under aged boy scouts who were not victims or claimed not to be victims. According to the police report, one of the mothers had confronted him directly. Diedrik Havermans did not deny his sexual affairs with her son, nor with the other boy scouts. After the mother asked him if it were true what the under aged boys had stated, he said: ‘Yes, but if you thought, that I would blush now and would feel ashamed, you are wrong, because why can a boy fall in love with a girl, but not with a boy?’

When Diedrik Havermans was heard by the police he testified that he was ‘diagnosed’ a homosexual for over a year by then. He denied having had sex with one of his pupils however.

Van Laer talked to the defendant on several occasions. The doctor talked to his parents as well, who, in passing, told the doctor that Diedrik Havermans was born ‘normally’, grew up ‘normally’ and had never given ‘trouble’. What is more, they never noticed anything homosexual about him other than his excessive sympathies for other boys. The parents had no

knowledge of any peculiarities about their sons sexual developments, although they did remember that their son left his boy scouts troop in 1938 after a row. The facts of that matter were never quite cleared up. Only later there had been gossip about homosexuality in the troop. Although Diedrik Havermans insisted on denying that a homosexual affair had caused him leaving his troop, he did confess to mutual masturbating with boys when he was a boy himself. The doctor on mutual masturbation: ‘This is a frequently seen practice, which does not indicate abnormal inclinations.’

Van Laer had to conclude:

‘Whether or not something happened in his adolescent years which may have laid the germ for his sexual derailments at his older age, has not been substantiated.’

In this report the occupation by Germany is mentioned on several occasions. At the beginning of his report, Van Laer mentioned that Diedrik Havermans, as a soldier, went into hiding in the last years of occupation. In December 1944 he had unsuccessfully tried to get into unoccupied Dutch territory (wherever that may have been) and returned home on the fifth of January 1945 (five months before the liberation of the Netherlands). The defendant himself refers to the consequences of the occupation in discussing his sexual offence. At first his sexual developments were normal in Van Laer’s view. He started masturbating at twelve, was quite successful with the girls and sought relief with ‘public women’ ‘when the sexual urge became too strong’. Prior to January 1946 he had never ‘given off’ with boys, even though he had been a troop leader with the boy scouts beforehand. The defendant could not come up with a satisfactory explanation for the committed indecencies with the boy scouts. Apparently, here the doctor was looking for the cause of this sexual behaviour. Immediately following this remark, Havermans mentioned how he slipped into a depression in 1946. His family took in four N.S.B.-children (children of members of the Dutch Nazi Party) because their parents – his aunt and uncle – were incarcerated. He felt neglected by his own parents, spent increasing amounts of time outside the house and got anxious and depressed.

In this case, Van Laer blamed both the atmosphere in the boy scouts troop and the war and its demoralising effects instead of the personality of the defendant, who did not come across as homosexual at all: ‘Once the breaks were off, things progressed.’ The doctor was not afraid for recidivism, as long as Diedrik Havermans was forbidden to join the boy scouts again. Here the

answer is sought outside of the defendant. By changing the scenery, Diedrik Havermans would continue his life ‘normally’. After all, his visiting prostitutes indicated that Havermans was a healthy man.

Conclusion: sex, gender and sex crimes

This gendered analysis of comparing heterosexual and homosexual sex crime files shows significant differences in the ways in which heterosexual and homosexual sexual transgressions were viewed. First of all, in the 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 illness, derailment and vice.

Although the age differences between the sex partners in both the heterosexual and homosexual cases are significant and similar, the medical expert witnesses approached these types of cases quite differently. During the years under research, medical doctors approached heterosexual defendants apologetically. Medical attention for the victims of these sex crimes was non-existent. This is extremely visible in the case against Bennard Bronkaars. After all, the doctors mentioned that the touching of the stepdaughters served no other purpose than heightening the pleasure of their stepfather. In other words, this fondling had no significant meaning. Moreover, the girls were accused of lying by the medical expert about their stepfather having brought his penis near to their vagina’s. The doctor did not bother to question the girls themselves. Carel Geraarts’ scarcely dressed student was suspected of lying by the medical expert who held it unimaginable that a teacher could force a 16-year old girl to do something against her will. Apparently, heterosexual males were expected to seek sexual gratification somewhere if their wives did not cooperate or were not satisfactory in sexual terms.

From the heterosexual sex crime files containing expert reports (27), 15 cases concerned incest or sexual relations within the family. The other 12 cases concerned sex with under aged girls in the defendants’ neighbourhoods. To large extent the reports discredited the involved under aged girls as ‘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. Sometimes medical doctors almost literally wrote down the

defendants' version of what had happened – without talking to the girls as well – discrediting what the under aged girls had told the police. Usually, advice focussed upon transforming the defendant or his surroundings was short of measures *directed at* the defendant. Quite the opposite, if the offender would return home, the home would have to be adjusted to the convict in order to prevent recidivism. Apparently, the doctors had trouble with approaching incest as something derailed fathers did. They 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 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' such as in the case of Jitze Zandt. Homosexual acts were therefore placed outside the realm of possibilities by expert witnesses. Diedrik Havermans' case is interesting in this regard. His case consists of a multitude of mixed signals. According to one of the boy scouts' mothers, Havermans refused to feel embarrassed about having had sex with boys. If boys could fall in love with girls, why not with other boys? Still, when heard by the police, he restrained from testing the Dutch moral boundaries in this regard. He admitted having been diagnosed a homosexual over a year ago and testified that he had therefore stopped his work at the boy scouts in order to prevent gossip. The

medical doctor, however, did not approach him as innate homosexual. Psychoanalytically, the doctor blamed the war. Before the war he had sought satisfaction with prostitutes and had had girlfriends. The demoralising effects of the war and the taking in of Dutch Nazi Party members' children in his home had made the defendant slip off a slippery slope. Change the scenery and Havermans will be all right again.

References

- ¹ Because of privacy regulations, all the names of *suspects* and *witnesses* in this paper are anonymous.
- ² Marloes Hülsken en Anna Tijsseling (22-3-2002) 'Verslag van de studiedag 'De ijkpunten geijkt'', in: *Website Dutch Association for Women's History* (<http://www.ljongma.dds.nl/nl/rede02.html>), Anna Tijsseling (2004) 'Why didn't I know?', in: *Gender. Tijdschrift voor Genderstudies* Vol. 7 No. 4 pp. 69-71 and Anna Tijsseling (2005) 'Mannelijke historici aan het woord. Een discussiemiddag over de verklarende kracht van gender in het werkveld van drie gevestigde hoogleraren', in: *Spiegelbeeld. Jaarboek voor Vrouwengeschiedenis* Vol. 25 pp. 171-180.
- ³ See for revisited notions of femininity: Christine Gledhill en Gillian Swanson (1996) *Nationalising femininity. Culture, sexuality and cinema in World War Two Britain* (Manchester); Philomena Goodman (2002) *Women, sexuality and war* (Hampshire) and Karen Hagemann en Stefanie Schuler-Springorum (2002) *Home/Front : The Military, War and Gender in Twentieth-Century Germany* (Oxford). See: the BBC-documentary Ian MacMillan (1997) *The age of innocence, 1920-1951*, portraying British homosexuals and lesbians living in the years 1920-1951 for increased possibilities for sexual agency for both male and female homosexuals in Britain.
- ⁴ Pieter Koenders (1996) *Tussen christelijk réveil en seksuele revolutie bestrijding van zedeloosheid in Nederland, met nadruk op de repressie van homoseksualiteit* (Amsterdam)
- ⁵ Pieter Koenders (2005) 'Vervolgingsjiver in een 'stamverwant' buurland. Bestrijding van homoseksualiteit in bezet Nederland', in: Klaus Müller (red.), *Doodgeslagen, doodgezwegen. Vervolging van homoseksuelen door het Nazi-regime 1933-1945* (Amsterdam)
- ⁶ Verwijzen naar dat artikel van het internet over deze zaak.
- ⁷ See: Ingrid Lammers (2001) *De TBR in de Tweede Wereldoorlog. Een onderzoek naar klinieken en hun patiënten* [Unpublished].; Marianne Braun (1992) *De prijs van de liefde. De eerste feministische golf, het huwelijksrecht en de vaderlandse geschiedenis* (Amsterdam), p. 16; Martin J. Wiener (1990) *Reconstructing the criminal. Culture, law and policy in England, 1830-1914* (Cambridge), pp. 342-345; Albert Eggens (2005) *Van daad tot vonnis. Door Drenten gepleegde criminaliteit voor en tijdens de Eerste Wereldoorlog* (Assen), p. 55-56
- ⁸ Dr F. S. van Bouwdijk Bastiaanse (1925) *Psychopathen en het ontwerp Psychopathenwet* (Amsterdam), p. 2
- ⁹ Bouwdijk Bastiaanse (1925), p. 5
- ¹⁰ Jacob Israël de Haan (1981, orig. 1904) *Pijpelijntjes* (Amsterdam), p. 129.
- ¹¹ Koenders (1996), 863-864.
- ¹² See for the history of psychological theories: Fred Zimbardo et.al. (eds.) (1995) *Psychology. A European text* (Harper Collins, London) p.453. 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 body build types of personalities. In 1947, Hans Eysenck introduced his personality theory and in 1953, Carl Jung introduced his.
- ¹³ NA, 3.03.15.03, file 88: article 249-case changed into a 247-case against Bennard Bronkaars (resulting in a prison sentence of 18 months) (psychiatrists' evaluation, 28.04.1931).
- ¹⁴ NA, 3.03.15.03, file 88: article 249-case changed into a 247-case against Bennard Bronkaars (police report, 24.03.1931)

¹⁵ I think it only fair to mention how Natali Z. Davis' work stimulated me in analysing court materials. See: Natalie Zemon Davis (1987) *Fiction in the archives. Pardon tales and their tellers in sixteenth-century France* (Cambridge)

¹⁶ NA, 3.03.15.06, file 31: article 247-case against Carel Geraarts: Medical expert's report (31.08.1951).

¹⁷ NA, 3.03.15.06, file 127: article 249-case against Cobus Hijmans: Medical expert's report (31.07.1955).

¹⁸ Ibidem: Letter Mr L. Heijningen ~ examining judge (01.07.1955).

¹⁹ NA, 3.03.15.01, file 110: 247-case against Jannes Thijssen (police reports June 1936). Note: although the under aged boys had not reached the age of 16, the police officers reported on Thijssen on the basis of the explicit homosexual article 248bis.

²⁰ NA, archive of the district court of The Hague (3.03.15.03), file 110: case Jannes Thijssen on the basis of 248bis, police report (08.06.1936).

²¹ NA, 3.03.15.03, file 37: case against Jitze Zandt

²² NA, 3.03.15.03, file 54: article 249 cum 248bis-case against Diedrik Havermans, one of the four troop leaders of the 'Karel Doorman' boy scouts troop which was terminated in March 1946.