CHAPTER 3
Punishment versus Reconciliation: Marriage Control in Sixteenth- and Seventeenth-Century Holland

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Introduction

Recently, Martin Ingram argued that, in order to understand various forms of early modern social discipline, historians should compare a range of secular and ecclesiastical jurisdictions over a long period of time. Focusing on Holland during the early modern period, this article attempts to accomplish exactly what Ingram advocated. Before elaborating on the issues he raised, it might be wise to start with defining the term “social control” and explaining the questions asked and the sources used.

This article follows the broad definition of Herman Roodenburg and Pieter Spierenburg in which “social control” is described as all those practices by which people define deviant behavior and respond to it by taking action. According to their description, “social control” covers formal social control exercised by the state, semiformal control exercised by various institutions such as churches, guilds, and charities, and informal control practiced by family members, neighbors, and friends.

In Holland a broad range of options either to impose social control or to be submitted to social control were in existence. This article deals with two of the most formal modes of social control in early modern Holland: church discipline and secular criminal justice. From 1572 (after the revolt against Spain) onward, both ecclesiastical and secular authorities meddled in domestic matters. Bailiffs brought adulterers, bigamists, and fornicators to court, where judges decided upon the suspect’s sentence. For their part, clergymen and elders kept an eye on the members of their church. During their visits to people’s homes, they obtained all kinds of information about these members. Whenever they heard of disorderly conduct in their district, clergymen informed the consistory, so that it could take appropriate action.

The main focus of this article is on the ways in which secular and ecclesiastical authorities controlled marriage and behavior related to marriage. I will argue
that, despite the fundamental differences that existed between ecclesiastical discipline and criminal justice, comparisons between court cases and church cases yield useful information on early modern social control. First, I will take a brief look at the influence of Reformed thought on marriage regulation and the division of tasks between the secular and ecclesiastical authorities. Second, I am focusing on the enforcement of secular legislation and ecclesiastical regulation in daily practice. Which forms of behavior were actually corrected by the government and the Reformed church, how did both institutions handle their cases, and to what extent did the control they exercised differ? Finally, I will pay attention to the legitimacy of the intervention of church and government. To what extent did people summoned before the consistory or punished by the court accept the interference of these institutions? In which cases did people themselves take the initiative to call upon these institutions to act?

In order to satisfactorily cover both secular and ecclesiastical marriage control, two different sources in the archives of two Dutch cities, Rotterdam and Delft, were examined. First, I investigated three different types of court records: sentence, correction, and confession books. Second, I examined the consistory notes of the Reformed Church. Both sources reveal interesting insights into marriage regulation during the sixteenth and seventeenth centuries.3

The sentence books consist of all sentences for serious offenses, while the correction books contain less serious cases. Although the confession books were meant only for the examination of suspect persons, in most cases sentences were also recorded. Where no sentence can be found in the examination books, they were recorded in the sentence books. Furthermore, the confession books contain examinations of all persons who played a role in the case. The examinations of spouses, children, neighbors, and other persons involved were recorded extensively.

The consistory notes contain the records of all Reformed consistory meetings, including disciplinary cases. In particular, the consistory handled matrimonial issues. Regularly, spouses or fiancées asked the consistory to mediate in matrimonial affairs. Besides that, clergymen often questioned relatives, neighbors, and other persons involved, in order to boost their discipline. Therefore, the consistory notes include complaints of fiancées, statements of relatives, and points of view of neighbors.

Marriage Regulation and Reformed Thought

Since the twelfth century, theologians emphasized the spiritual and sacramental character of marriage, and marital issues obtained a good deal of attention from the Catholic Church.4 However, the Reformers proclaimed marriage to be a political and public matter. In 1566 the Governor-General of the Netherlands, Margaret of Parma, granted freedom of religion, which allowed Protestant clergymen to take over Catholic churches. Although nearly half of the Dutch
population remained Catholic after 1572, the Reformed Church became the dominant religion, certainly in the province of Holland.

The most important change concerned the nature of marriage. Since the Reformed Church did not view it as a sacrament, but rather as a political affair, the secular authorities had to take responsibility for it. At least, they ought to draw up regulations. But even though Protestants proclaimed marriage to be secular, it continued to be a divine institution. Consequently, matrimonial matters nevertheless remained a concern for clergymen.

Reformed thought had its consequences: no longer was reproduction the only goal of marriage, as it had been under Catholic rule. Reformers like Luther did not judge reproduction as being of lesser importance, but they viewed it as the work of God himself. Marital love became the most important object of marriage. Love and companionship were to be the bond that kept men and women together.

A second important change concerned parental consent. Because the Reformed Church viewed parental authority as an extension of divine authority, children of minor age (under twenty-five for sons and under twenty for daughters) were supposed to have full consent of their parents when entering into marriage. This also meant that only marriage vows given with the full consent of the parents were valid. Contrary to canon law, the Dutch Reformed rulers claimed marriages without full consent of the parents or proclamation of the banns to be invalid.5

Third, Reformers changed the rules concerning the dissolution of marriages. Under Catholic rule, unless one of the spouses died, a marriage was virtually indissoluble. Since the Roman Catholic Church monopolized the jurisdiction and legislation in marital affairs, it had the power to outlaw divorce entirely. The Church only allowed the so-called divortium quoad thorum. However, this separation of board and bed did not end the conjugal union; it permitted spouses to split up their household. In other words, it suspended the obligation of living together. After the Reformation the divortium quoad thorum remained in existence, but Reformers also allowed divorce. Of course, divorce had strong limitations. Only in case of malicious abandonment or proven adultery could one obtain a divorce.

Although several crucial changes took place after the Reformation, most rules concerning marriage remained the same. Unless Catholic regulations were inconsistent with the Holy Bible of Roman law, Reformers adopted the existing canonical rules. Marriage vows could be broken only by mutual consent or for significant reasons put forward by one of the parties. The Reformers continued to allow this, but illegal breaches did have further consequences. One could be forced to marry when untrue or invalid reasons for breaking the vows were given. Forbidden degrees of kinship, which were instituted by the Catholic Church, remained in existence.
Secular Punishment and Ecclesiastical Discipline

Although many regulations concerning marriage stayed the same, the enforcement of marriage legislation changed fundamentally. Since the Reformers viewed matrimonial matters as a public issue, the secular authorities took control. From a judicial point of view, this meant a switch from civil law to public law.

The secular authorities drew up marriage regulations and executed criminal law. Bailiffs brought charges against those who transgressed the legal rules concerning marriage. Adultery, bigamy, and incest were regarded as serious crimes. Breaking a marriage vow and fornication were usually minor offenses, but still punishable by law. After their arrest, suspects were always subjected to interrogations, in order to make them confess. If it concerned a serious offense, bailiffs used instruments of torture to force the suspect’s confession. Surely, the criminal courts did not treat offenders of marital laws any differently from burglars or knife fighters.

Officially, the Church no longer decided in matrimonial affairs, but in practice it still felt the obligation to watch over the married life of its members. Since the Reformed Church lacked the authority to initiate legislation, it was limited in its activities concerning family life. First, it could only deal with people who were members of the Reformed Church. Furthermore, when it found members engaging in deviant behavior, it could only apply ecclesiastical sanctions. This usually meant that offending members were excluded from Holy Communion, until they showed an improvement in their domestic life.

The aims of consistorial discipline differed from those of secular justice. Both Els Kloek and Herman Roodenburg conclude that the consistories of Leiden and Amsterdam focused primarily on reconciliation. Indeed, secular punishment and ecclesiastical discipline constituted two fundamentally different ways of correction. When referring to this distinction, Sir Geoffrey Elton and Heinz Schilling have argued that historians should make a strict factual and methodological separation between the “history of crime” and the “history of sin.” Schilling in particular insists that, since the Reformers primarily wished to purify their own group of believers, church discipline focused on the sinner and his reconciliation with the community. The most important aim of the criminal court, however, was merely to punish the crime.

Elton and Schilling are right in arguing that historians should acknowledge the religious essence of church discipline in order to understand its nature. However, their statement that the “history of sin” and the “history of crime” are separate fields should be qualified. As noted at the beginning, Ingram claims that valuable insights into the functioning of early modern social control can be obtained by comparing its different agencies. Although I am restricting myself to the Dutch case, I support Ingram’s claim. While keeping in mind that it con-
cerns two essentially different ways of regulating marital conduct, we still can fruitfully compare criminal court cases with cases of church discipline.

In the first place, both institutions exercised social control within an official institutional context, according to regulations that were for the most part codified. Second, it would be wrong to assume that clergymen, elders, and magistrates themselves always made such clear distinctions between “crime” and “sin.” Consistories sometimes reaccepted offenders as soon as the case was settled in court. Furthermore, clergymen actively tried to influence both secular regulation and law enforcement where it concerned marital matters. Even though their discipline was primarily aimed at reconciliation, consistories were equally convinced that offenders should be sentenced. Although magistrates might have centered their correction around punishment, they took other considerations, as we shall see, into account as well. Finally, magistrates and clergymen often exchanged letters, debating both the criminal conduct they had to deal with and the proper reaction to it. Apparently, contemporary judges and clergymen themselves found that the cases they dealt with were comparable.10

This article does not intend to deny the crucial differences between church discipline and criminal justice. To the contrary, it constantly refers to the diverging objectives, interests, and methods of consistories and criminal courts. I only object to the assumption that the practices of consistories and criminal courts were unrelated altogether. In the next paragraphs I attempt to demonstrate that by comparing ecclesiastical and secular cases, historians can increase their insight into the functioning of and the interconnections between two different types of social control.

Marriage Regulation in Practice

During the period 1550–1700 more than 2800 cases, involving all sorts of conduct related to marriage, can be found in the judicial and ecclesiastical records.11 Since all sexual acts outside legal marriage were forbidden, other related cases have also been recorded. (See Tables 1 through 6 illustrating criminal court cases and church discipline cases concerning marriage, Rotterdam and Delft, 1550–1700.) In order to illustrate the results as clearly as possible, a distinction has been made between premarital and matrimonial cases. Of the total, 1466 cases were related to premarital matters, and 1372 cases concerned matrimonial offenses.12 Thus, matrimonial crimes resulted in prosecution almost as often as premarital offenses. However, we shall see that consistories and secular courts handled different cases. While the magistrates dealt with fornication and adultery more often, the churchmen concentrated on broken marriage vows and domestic quarrels. Obviously, the secular court only prosecuted those who had indulged in activities prohibited by criminal law. Consistories, however, interfered with all sorts
of conduct they considered inadmissible. Therefore, clergymen and magistrates not only handled cases in a different manner; they also dealt with different types of cases.

However, the difference between criminal justice and ecclesiastical discipline is not merely a function of the fundamental distinction between “crime” and “sin.” Various factors played a role in controlling deviant behavior. First, prosecutors and judges did not always handle cases according to the prescripts of the criminal law. Second, economic considerations influenced their judgment as well. Furthermore, where the public image of church members was at stake, consistories were selective in controlling sinful behavior. For example, clergymen were rarely inclined to expose the sinful act of adultery. Finally, accusers and complainants tended to submit certain complaints to the consistory rather than the criminal court, and vice versa. As the next paragraphs will show, only a comparison between church discipline and criminal justices uncovers these mechanisms for controlling marital conduct.

Premarital Matters

By far the largest number of premarital matters concerned sexual intercourse, concubinage, and the contract of marriage. Especially illicit lovemaking, with or without cohabitation, resulted in prosecution and discipline. Magistrates and clergymen dealt with more than 940 illicit love affairs. Since it constituted a criminal act, criminal courts chiefly controlled these matters. Magistrates usually called the crime “carnal conversation.”

All sexual acts outside marriage were forbidden, with or without previous marriage vows. Consequently, engaged couples who had made love before their wedding night were guilty of the crime of carnal conversation. However, magistrates did take extenuating circumstances into account. Having made marriage vows influenced their final sentence. Furthermore, the frequency of the carnal conversation was taken into account as well. Whereas some couples had established a long-term relationship, others knew each other for a shorter period, sometimes a single occasion only. As expected, the magistrates considered the first two situations more serious. Besides the questions of frequency and marriage vows, numerous other extenuating or aggravating circumstances were taken into account. Because of this, it is not always easy to assess the grounds on which the magistrates based their verdict.

Carnal Conversation

Premarital sexual acts were forbidden, but having exchanged marriage vows usually extenuated the crime of carnal conversation. Therefore, the majority of the accused claimed to be engaged or stated that they planned to marry. Women
especially used this argument, since their virtue was at stake. In his work about the consistory of Amsterdam, Herman Roodenburg finds that, when referring to sexual intercourse, women were anxious to preserve their virtue. Indeed, young women who lost their virginity without having received a promise of marriage not only risked conviction but they risked losing their honor as well. Behaving unchastely or committing fornication seriously limited a girl’s marriage opportunities. These moral judgments were common throughout Europe.14

Women who claimed to be engaged usually stated that they had only consented to giving up their virginity after having received a proposal of marriage. In the event that they could substantiate this claim by showing written evidence, by bringing forward witnesses, or persuading with convincing statements, they got away with a reprimand. Not surprisingly, sometimes illegitimate children were born of illicit relationships. However, being pregnant or having an illegitimate child had no influence on the sentence; at least, not until the second half of the seventeenth century.15 When the bailiff was able to capture both lovers, the magistrates ordered the couple to marry as soon as possible. For example, in 1696 a woman was arrested and accused of carnal conversation with the captain of a barge. It took the bailiff a month to find him, but because he confirmed having made a marriage vow, the court stopped legal proceedings, on the condition that the couple would marry soon.16

Although defendants who could prove their statements escaped with a reprimand, this was seldom the case. Most trials were much more complex, especially where married lovers were involved. Someone who entered into a relationship with a married person was formally committing adultery. But what if an unmarried lover had been unaware of the married state of the loved one?

**Table 1** Total criminal court cases concerning marriage, 1550 –1700

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<th>Men</th>
<th>Women</th>
<th>Total</th>
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<tbody>
<tr>
<td>Premarital cases</td>
<td>215</td>
<td>444</td>
<td>659 (52%)</td>
</tr>
<tr>
<td>Marital cases</td>
<td>317</td>
<td>291</td>
<td>608 (48%)</td>
</tr>
<tr>
<td>Total</td>
<td>532 (42%)</td>
<td>735 (58%)</td>
<td>1267</td>
</tr>
</tbody>
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*Source:* Tables 1–6 from Judicial archives of Delft and Rotterdam, sentence books, correction books, examination books, confession books (1550–1700)

**Table 2** Total church discipline cases concerning marriage, 1573 –1700

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<th></th>
<th>Men</th>
<th>Women</th>
<th>Total</th>
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<tbody>
<tr>
<td>Premarital cases</td>
<td>325</td>
<td>282</td>
<td>807 (51%)</td>
</tr>
<tr>
<td>Marital cases</td>
<td>435</td>
<td>419</td>
<td>764 (49%)</td>
</tr>
<tr>
<td>Total</td>
<td>670 (43%)</td>
<td>901 (57%)</td>
<td>1571</td>
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*Source:* Consistory notes and discipline books of the Reformed Church of Delft (1573–1700) and Rotterdam (1639–1700)
Examinations show that the magistrates’ primary aim was to find out whether defendants had had knowledge of the married state of their partner. Obviously, an offender could easily claim that this was the case. If it was true, the suspect had been unaware of committing a crime and, therefore, was not guilty of adultery. Indeed, the confessions of some defendants and the statements from neighbors or relatives leave no doubt that people sometimes acted in good faith, assuming that a sincere promise of marriage had been given. Geertruyd Jacobs, for instance, sincerely believed that her lover would soon marry her. She had not only received a marriage promise but their engagement was registered as well. Thus, Geertruyd had not been naive, nor had she acted rashly, and she was, therefore, not convicted, whereas her lover was sentenced to a banishment of six years.17

A similar attitude is apparent in other cases in which the magistrates were convinced of the sincerity of the statements. The criminal court considered even clandestine marriage vows as an extenuating circumstance. Clearly, in this respect it did not execute the criminal law to the letter. The Estates of Holland had instituted marriage legislation immediately after the Revolt. From 1580 onward, every
couple wishing to marry had to report their intended marriage to the magistrate or clergyman of their place of residence. The names of the bride and groom had to be announced three times to make sure there were no objections to the wedding. After these proclamations a couple could marry before the magistrates or a clergyman. The most important aim of these prescriptions was to bring marriage into the public sphere.\(^{18}\)

Prior to 1580 ambiguity had prevailed concerning the nature of marriage. The Catholic Church held that the mutual consent of a man and a woman constituted a binding marriage contract. Moreover, intercourse meant definitive endorsement of the contract. The Catholic Church had already made proclamation of the banns obligatory in 1535, but at that occasion it did not declare that failing to do so made the marriage invalid. From 1580 onward only legal marriage vows were valid. Nevertheless, the magistrates did not proceed according to these rules in criminal jurisdiction. Both defendants and magistrates did not make a clear distinction between public marriage vows and secret marriage vows. The criminal court considered both types valid. Moreover, magistrates accepted carnal conversation as long as couples married soon after their release from jail.

Due to the continuing acceptance of secret marriage vows, magistrates faced difficulties concerning the items of evidence. Those who had reported their marriage to the magistrate or a clergyman could easily prove their innocence. But it was often difficult to find out whether couples had truly exchanged marriage vows. For that reason, magistrates could only base their judgments on the declaration of the defendants and the statements of relatives and neighbors. Defendants unable to provide evidence of their engagement were convicted for committing carnal conversation or concubinage. The majority of the accused failed to prove their innocence, so they were convicted, usually to the penalties of banishment.

Usually, persons arrested for carnal conversation either were involved in a long-term relationships or they had had intimate relations with many different persons. Both types of offenders were generally punished severely. Most of the accused were sentenced to a banishment of six, ten, or twelve years. Light sentences were given where less serious carnal conversation was concerned. Judges considered sharing a bed together in an inn for one night, or having made love only one time, less serious. When the judges were convinced that it concerned a one-time event only, they sentenced the accused to fourteen days on bread and water, or the accused had only to beg for forgiveness in open court. Persons who had had long-term intimate relations without having the intention to marry their loved one were punished severely. Sentences of twenty-five years of banishment were usually given when the accused, especially if it was a man, had seduced sexually inexperienced minors. The shoemaker Cornelis Jans was even sentenced to a banishment of a hundred years because he had had intercourse with several young girls, seducing them with cake and apples.\(^{19}\)
Judges definitely considered having sexual relationships from an early age an aggravating circumstance. Conversely, those who had had sex with inexperienced youngsters of good reputation were punished severely. Rape and incest cases show the ambiguity of the magistrates’ attitude very clearly. Marital state and sexual experience influenced the judges’ attitude toward rape and assault victims. Furthermore, honor and good reputation played an important role in those cases. Unless rape and incest victims proved their sexual innocence and inexperience, judges put equal blame on the victim. In other words, they were guilty of carnal conversation, adultery (when married) or incest by having sexual intercourse. Since some lawyers considered incest a capital crime, judges were even less inclined to give incest victims the benefit of the doubt. A sad example of this attitude is the case of Dirkje Jans, who had been raped and threatened by her stepfather, during her mother’s absence. Even worse, as a result of her stepfather’s maltreatment, she had become lame. When she declared that she had had sexual intercourse with another man, the magistrates sentenced her. As contemporaries were of the opinion that mature women were sexually insatiable, married women, too, were accessories to any sexual relationship. Therefore, married women who had been raped were usually sentenced for committing the crime of adultery.

Marriage Vows

While the secular court mainly dealt with cases of carnal conversation and concubinage, the Church more often handled marriage contract disputes. This is not surprising, since the two agencies possessed different competencies and functions. The secular authorities enforced the criminal law, but consistories, apart from correcting people, also dealt with all sorts of requests concerning marriage. Almost all premarital offenses handled by the consistories were in some way related to the contract of marriage; in particular double marriage vows, breach of promise, and annulment of a marriage vow were matters in which the consistories played an important role.

Prospective spouses could complain to the consistory and ask for actions in the event that the other party had made marriage vows to more than one person or had tried to break the marriage vow. Men, especially, were accused of having made double marriage vows. Since the banns were announced publicly, earlier lovers could easily discover the implied breach of promise before the wedding took place. Most of the time, a woman objected to a marriage after she had seen the names of her fiancé and another woman announced at the city hall. Neeltje Ymant, accompanied by her mother, appeared before the consistory when she discovered that her fiancé, Pieter, had announced a marriage with Catalijntje. The woman was often accompanied by one of her relatives and sometimes by friends or neighbors who could testify to the promise of marriage she claimed to have received.
The consistories almost always reacted by summoning the accused man to appear and questioning him about the marriage vows he had made. In cases where the young man denied having done anything of the sort and evidence could not be brought forward, both parties were referred to the secular court.

All sorts of reasons were mentioned when marriage contract disputes were brought before the consistory. The elders and clergymen always demanded explanations for a petitioner's behavior, and if possible all parties were heard. Most men accused of double marriage vows or of breach of promise gave the first woman's dishonorable and immoral behavior as a reason. Again, loss of virtue and honor played an important role. Several times, women stated they were less interested in marrying the man to whom they were engaged than in saving their honor. Sometimes, young men gave their age as an excuse. They argued that, since they had entered upon an engagement while a minor and without their parents' consent, it could not be valid, or they claimed they had entered upon it out of ignorance. Women, however, could argue that they wanted to end an engagement because of the disabilities of their prospective spouse.

As discussed earlier, secular courts accepted secret marriage vows as long as couples promised to marry as soon as possible. Consistories, however, dealt with the matter by the book. Clergymen considered only public marriage vows valid. They refused to acknowledge secret vows, both in cases in which youngsters had made double marriage vows and in which they had broken a single promise. Thus, as far as the Reformed church was concerned, women who had intercourse after having received a verbal promise were de facto not engaged. Still, clergymen, like the magistrates, took the sincerity of the offenders into account as well. Where no double vows were involved, a consistory tried to convince youngsters to marry the person they had slept with. Furthermore, it always demanded a statement in writing, in which the alleged fiancé stated that he had not left a girl behind because of her immoral behavior. In that way, at least the girl's reputation and honor were preserved. Finally, a young man who had broken his promise, left his fiancée, or made a double marriage vow, was always excluded for several times from Holy Communion.

Another type of marriage contract dispute concerned parental consent. In cases where parents refused to consent to the marriage, youngsters often tried to obtain the support of the consistory. Conversely, parents who disagreed with their child's choice of partner could simply point out that the Church required parental consent. Although the clergymen indeed placed value on parental consent, the consistory always demanded a valid reason for withholding it. When children had reached majority and parents or guardians failed to come up with a good reason, the consistory decided to allow the marriage. However, when it concerned minors, clergymen followed the rules of parental consent very strictly. With or without valid reasons, children could never ignore their parents' rejection of a partner. Remarkably, clergymen often expressed their regrets about the parents'
obstinate refusal. Despite this, they advised youngsters to wait until they had reached majority. In all cases, the consistory attempted to reconcile the parties. But when youngsters disobeyed the rules, they were excluded from Holy Communion.

Morals and Financial Interests

Courts of law and consistories regularly punished or disciplined those who committed carnal conversation and concubinage or who had broken their marriage promise. In the course of the seventeenth century an increasing number of these offenders appeared before them. Both demographic and moral changes lay behind this development.

Several English and German studies have shown that most European countries witnessed an increase in the number of illegitimate children during the second half of the seventeenth century. Data on the Dutch illegitimacy rate are scarce for this period. The Dutch Reformed Church, however, showed a growing interest in the matter. Influenced by English Reformers, the Dutch Reformed Church embarked upon a program of “Further Reformation.” With this program, the Church tried to promote the ideal way of living—the Reformed way. The Church’s aim was to ban all immoral behavior. Premarital relationships were among the main targets of this campaign. Both the Reformed church and the secular courts intensified their disciplinary actions in the field of sexual intercourse. However, secular courts and consistories seemed to have different interests.

Illegitimacy became the overriding concern in the legal prosecution of premarital intercourse. The magistrates ostensibly paid greater attention to women whose children were born out of wedlock. Besides this, they distinguished more clearly between mere sexual intercourse and having an illegitimate child. In cases of illegitimate birth, women were punished more severely. At least, more severe sentences were imposed on women whose lover remained unknown. This suggests a relationship between the court’s judgment and the identification of the father.

Both Martin Ingram and Keith Wrightson have pointed out that a growing concern among the authorities for the problems of poverty resulted in an increase in prosecutions concerning premarital relations. The financial burden of illegitimate children came down primarily on the local authorities, who were responsible for poor relief. Similar motives seem to have influenced the attitude of the Dutch courts. For this reason, midwives who assisted an unmarried mother were obliged to ask for the name of the father. Local authorities did not have to take up the financial care for the child, as they could force the father to do so.

Court cases reveal a neat relationship between the sentence and the possibility of child support. The judges expected single mothers to disclose the name of their lover, and, if they did the court requested financial guarantees from the
father. Whether he was married to someone else seemed to matter less. The father’s name and his financial support were the most important issues during the investigation. It was not unusual that the authorities provided assistance in such matters and, as one example shows, not only in cases in which honor and virtue were beyond doubt. Anna became pregnant when she was having an affair with Jan Michel, a married man. However, when she delivered the baby, the magistrates not only imposed a fine upon him but he also had to make monthly payments to support the child.28

Obviously, financial interests played an important role in court. The consistories, however, never took any financial considerations into account. They based their judgments solely on moral grounds. Cases concerning pregnant maids clearly reveal the divergent interests of the secular court and the consistory. Both institutions considered sexual relationships between masters and maids reprehensible, especially when maids got pregnant. However, when a master supported the child, magistrates considered the matter settled and done, provided of course, that the couple would discontinue their relationship. The consistories, however, continued to intervene as long as the maid and her master shared a household. The clergymen were of the opinion that members of the Reformed church should avoid any suspicion about their moral conduct.

The clergymen disciplined every unmarried couple guilty of sexual intercourse, whether they were engaged or not. In order to avoid having to do so too often, consistories insisted that couples should marry within a month after their third proclamation of the bans. Besides that, in cases where clergymen discovered the couple’s premarital activities months after the actual wedding, they disciplined the newlyweds after all. Such cases of belated prosecution never occurred in criminal court. As shown before, judges merely ordered illicit lovers to enter upon marriage as soon as possible. If a couple obeyed that order, the magistrates felt no need to deal with the case any longer. The secular authorities considered premarital intercourse problematic only to the extent that it involved financial interests. As we shall see, the magistrates exhibited a similar attitude toward marital matters.

Marital Matters

By far the greatest number of marital matters concerned adultery and marital conflict. Magistrates and clergymen handled more than 560 cases of adultery and approximately 600 cases related to marital disputes. Besides these offenses, both institutions regularly dealt with issues regarding abandonment, bigamy, and incest as well. Again, secular courts and consistories handled different matters. Evidently, because it concerned a punishable act, the criminal court dealt with adultery in particular. The secular courts’ primary aim was to enforce the law. As long as quarrelling spouses refrained from causing disturbance and noise or maltreating each
other, they did not commit any criminal act. They did, however, offend Reformed moral rules with regard to marital life. The Reformed ideal of marriage required a peaceful home for both parents and children. This ideal became even more important during the seventeenth century. For that reason, consistories regularly summoned quarrelling and fighting couples to their meetings.

Adultery, Abandonment, and Bigamy

The 1580 ordinance of the Estates of Holland comprised strict rules for penalizing the crime of adultery. If both partners were married, it prescribed a banishment of fifty years, while fines of one hundred or two hundred guilders ought to be imposed if only one of the lovers had a spouse. Despite these clear instructions, magistrates sentenced adulterers to various penalties. They regularly received a banishment of six, ten, or twelve years. Even more striking, perhaps, is that the crime of adultery could be bought off.

Although legally forbidden, buying off one’s adultery was a widespread custom in the whole of Holland. The offenders and the public prosecutor both profited from such settlements: bailiffs earned an extra income and adulterers escaped conviction. When adultery was settled out of court, bailiffs only mentioned the crime and the amount of money paid in their account books, without recording the offender’s name or the circumstances of the act. Since most bailiffs’ accounts have not been preserved, it is hard to tell exactly how many offenders bought off their adultery, but court records and consistory notes indicate that this was often the case. However, the system had severe limitations. First, since large sums of money were involved, only wealthy offenders were able to buy off their adultery. Second, the deceived spouses had to give their approval to the settlement. Trijntje Jans, for example, had cheated on her husband, but she was rich enough to escape conviction. Unfortunately for her, her husband refused to give his approval, and therefore she was sentenced to a banishment of ten years.

Remarkably, women in particular were convicted for committing adultery. One might conclude that the authorities observed different moral standards for men and women. Women were also more vulnerable because their adulterous behavior could lead to pregnancy. When we take a closer look at the women’s statements, however, another picture emerges. Over 25 percent of the female adulterers complained about the long lasting absence of their husbands. The fact that Rotterdam and Delft were trade centers and a large number of the population earned a living by working on ships sailing abroad must have made an imprint on marital life. Indeed, according to the statements, many husbands sailed to the East or West Indies, leaving their wives behind in uncertainty. The husband of Dingenom Dirx had left his wife eleven years ago, and she had heard nothing of him since. Other women presumed their husbands to be long dead. Yet, magistrates always con-
victed women and men accused of adultery, if they failed to prove that their spouse had died. Most adulterers received a fine or a banishment of fifty years.

Whereas women were accused of adultery more often, men were prosecuted especially for abandonment and bigamy. Again, financial considerations played a crucial role. According to the magistrates’ records, abandonment resulted in poverty and unchaste behavior. When Willem deserted his family, his wife was forced to beg or to resort to prostitution in order to support herself and their child. After being deserted by the breadwinner, most families were left behind in poverty and as a result they had to turn to the parish. The financial burden of deserted families lay with the secular and ecclesiastical agencies responsible for poor relief. For that reason, the magistrates prosecuted men more often than women. When bailiffs were able to discover a deserter, they ordered him to return to his family. In addition, some breadwinners were publicly whipped on the scaffold because their families had to rely on poor relief as a result of their desertion. In the event of a deserter committing adultery, however, the magistrates did not treat him any differently from other adulterers.

Lawrence Stone has argued that English magistrates did not pursue bigamy cases intensively. In Holland, however, the strict rules regarding a public wedding limited one’s possibilities to commit the crime of bigamy. As a result, clergymen and magistrates generally exposed impostors before their second or third wedding took place. This can be taken as support for Martin Ingram’s statement that “there is no real evidence to support Stone’s assertion that the practice was both easy and common.” In cases of bigamy, notably when a man managed to marry for the third time, magistrates imposed special sentences that symbolized the gravity of the act. Male bigamists were always sentenced to a banishment of fifty years and beaten with distaffs (symbolizing the women they had cheated on) while they were escorted outside town.

Marital Disputes and Maltreatment

Although consistories, too, dealt with adultery and abandonment of a wife at times, this constituted only a minor part of their business. They did, however, frequently handle marital conflict. As many couples were accustomed to physical violence, fights and maltreatment often ensued from marital quarrels. Moreover, domestic violence occurred in combination with the use of alcohol most of the time. Finally, while men were summoned more often for marital disputes, wives were usually disciplined for running away from their husbands. Twice as many women as men were summoned because they wished to separate. These differences are easily explained. According to the consistory’s notes, husbands behaved so violently that wives left the house out of sheer necessity.

The question is how consistories handled these matters. Despite the sometimes
obvious maltreatment of wives, the clergymen were never inclined to involve the criminal court. They were primarily bent on restoring peace in the family, not on denouncing abusive or quarrelsome spouses to the criminal court. Above all, Reformed discipline was aimed at restoring the sinner’s relationship with God and the Reformed church. In order to accomplish that, consistories always tried to reconcile the married partners. Meanwhile, couples who were publicly quarrelling or living separately were excluded from Holy Communion, until they showed an improvement in their behavior.

Men especially were sometimes excluded for years. As long as husbands or wives refused to make an effort to make their marriage work, the Church enforced its discipline. Since the consistories were never inclined to involve the bailiff, couples often felt they could speak about their dissatisfactions freely. Strikingly, most husbands complained about their wives’ domineering behavior. They often claimed that their wives’ assertive conduct had forced them to take violent action. Married women were often accused of being drunk, neglecting their household, refusing sexual intercourse, and being gadabouts. Furthermore, husbands repeatedly complained about their spouses’ unfriendly, obstinate, stubborn, and disagreeable character. Indeed, foreign visitors expressed their surprise when they noted that in the Dutch Republic, wife beating was severely frowned upon. But did this mean that Dutch wives were more free and independent than other married women in seventeenth-century Europe?

Without discussing this extensively, let me just state that the Reformed rules potentially improved women’s power position within marriage. As mentioned above, the Reformers permitted divorce in the event of adultery and willful abandonment. Several Dutch studies have shown that women especially requested the magistrates to allow them to divorce. However, the extended opportunities to escape abusive husbands did not in fact result in an increase in divorce. But perhaps they made separation of bed and board and informal separations by mutual consent more acceptable. They might also have made married women’s position within the household stronger.

Although officially allowing divorce and separation of bed and board, the Reformed church never permitted their own members to live apart from their marriage partner. Battered women were never advised to divorce, nor did the clergymen help church members in getting a separation order from the magistrates. Instead, they attempted to reconcile the couple and summoned the abusive husband and various relatives in an effort to ameliorate the domestic circumstances. When a husband refused to improve his behavior, the consistory excluded him from Holy Communion. But as soon as a wife left her abusive husband or filed for divorce, she was disciplined as well.

Although, in cases of maltreatment by their husbands, women had access to the legal process, only some of them used that right. It appears that other interests could be of greater importance. First, a convicted husband was unable to sup-
port his family, since banishment or imprisonment evidently entailed the loss of one’s livelihood. Second, being convicted brought not only shame and dishonor on the accused but on his wife and children as well. Women started legal action against their husbands only where their abusive behavior endangered their lives and that of their children. Frequently, neighbors acted as plaintiffs when husbands molested their wives. Causing noise and disturbance in the neighborhood were reasons for the community to intervene. Perhaps even more important, severe maltreatment could bring shame and dishonor on the whole neighborhood.

Punishment versus Reconciliation

Although both the secular and ecclesiastical authorities considered adultery and abandonment of one’s partner criminal acts, the consistories tended not to denounce adulterers to the criminal court. On the contrary, consistories always attempted to keep the immoral and criminal behavior of church members as private as possible. Apparently, the consistory’s primary concern was to keep the serious sins and the criminal conduct of church members from public view.

When church members were arrested nevertheless, the clergymen often instructed both the adulterers and their spouses to make arrangements with the bailiff. The consistory of Delft, for instance, advised Heijndrickje Wijnants in 1664 to plead on her husband’s behalf in criminal court. She, however, did not at all desire her husband’s release, since his mistress was pregnant with his child. Despite his patently obvious adultery, the clergymen kept on telling her that she ought to reconcile with her husband and make their marriage work.43

In this case, too, consistories were primarily focused on reconciliation and aimed less at correction. Of course clergymen corrected people by excluding them from Holy Communion, but adulterous members were never excommunicated. Indeed, consistories were never inclined to make church members’ adultery or abandonment public. Thus, when the adulterous husband Teen Pauwels accused the clergymen of informing the bailiff about his crime, they reacted with great indignation.44 Consistories enforced their discipline mildly, as long as couples were prepared to reconcile, showed remorse, and their offense remained private. Members who persisted in their misconduct or crimes were excluded until they improved their behavior. As mentioned above, sinners were sometimes excluded for years. However, when people showed their repentance and regret, they were always readmitted to the church.

Adultery and abandonment cases clearly show the divergent objectives of secular courts and consistories. Whereas the magistrates’ final aim was to punish criminals, the clergymen used their discipline only as a means to reconcile members both with each other and the Church. Consequently, deceived marriage partners did not hesitate to inform the clergymen about their spouses’ immoral
behavior. Evidently, they were well aware that the consistory rarely notified the bailiff. As the clergymen always advised spouses to make up, some members must have been slightly disappointed about the consistory’s attitude toward their problems. Trijntje Jacobs, for instance, asked the clergymen to discipline her husband’s mistress. However, they rejected her request, arguing that it would only cause renewed dissension between Trijntje and her husband. Clearly, the consistory considered restoring the family peace more important than punishing the criminal.

The discipline by consistories differed from that of the criminal courts in yet another way, since the former more often summoned women leaving their husbands than men leaving their wives. As financial interests took primacy in the criminal courts, the courts prosecuted men more often than women for this offense. The magistrates convicted men more often because, as breadwinners, they had to care for their wives and children. Again, the clergymen rarely mentioned financial motives for disciplining church members. They only referred to the offenders’ immoral and sinful behavior, emphasizing that husbands should be dependable and trustworthy. Financial interests surfaced in consistory notes only where it concerned bankruptcy or divorce. At all times, the clergymen aimed at reconciliation between married partners and to a much lesser extent at punishing breadwinners whose abandonment led to poverty.

The Legitimacy of Secular and Ecclesiastical Discipline

Consistories and criminal courts both meddled in private affairs, but to what extent did people accept the interference of these institutions? Roodenburg has rightly argued that historians should distinguish “conflict” from “criminality,” because many private settlements of conflicts concerned acts that were not punishable by law. As shown above, criminal courts and consistories not only handled different cases, but each institution also treated similar matters differently. As a result, people did not hesitate to inform the clergymen about the illicit conduct of their spouses, while at the same time they hoped to hide it from the magistrates.

Besides consistories and secular courts, various other arenas for social control and the settlement of conflict were in existence. In order to cover all modes of administration of justice, Roodenburg suggests using the term “legal pluralism,” which he defines as a set of rules, linked to a procedure of administration of justice. Indeed, consistory notes sometimes reveal interesting information about other ways to settle conflicts. The clergymen regularly noted that “neighborhood masters” mediated where minor conflicts were involved. Several Dutch historians have emphasized the significant role of the neighborhood masters in settling conflicts among neighbors. This seems to have been the case in Rotterdam and
Delft also. Fifteen-year old Annetje, for instance, asked the neighborhood masters for help, since she had been accused of committing the crime of carnal conversation.  

Neighborhood masters might have been respectable citizens or men of influence, but they did not have the competence to execute civil or criminal law. Their judgment concerned an informal procedure only, and it was not in any way linked to the official secular court. As far as legal proceedings were concerned, a neighborhood master could act only as an honorable witness. Nevertheless, they often played a crucial role in settling conflicts among neighbors. Most likely, people complained about their nearby residents to the neighborhood master first. If the latter did not succeed in settling the differences, consistories and secular courts became involved.

Historians have debated the extent of acceptance of the discipline exercised by secular and ecclesiastical authorities. Did people support the authorities in their handling of cases, or were they merely the subjects of discipline from above? Both Leuker and Roodenburg have argued that neighbors themselves often informed the magistrates about the immoral and shameless conduct of nearby residents. Indeed, both secular and ecclesiastical records reveal the involvement of parents, guardians, relatives, friends, and neighbors where premarital and matrimonial matters were concerned. All of them were involved as plaintiffs, witnesses, defenders, or supporters when a person was accused. They also played an important role in the process of reconciliation. In almost all cases, the community showed a great concern for behavior in premarital and matrimonial matters, or in any case, they meddled in such affairs.

Whether it concerned secular or ecclesiastical discipline, the majority of the accused were arrested or summoned because relatives or neighbors had spied on them. Adulterers, bigamists, and youngsters who unlawfully shared a bed were often caught red-handed by the bailiff. Tattlers, gossips, and envious next-door neighbors sometimes notified the authorities, but more often local residents seriously objected to the immoral conduct in their neighborhood. Making noise and causing commotion constituted one of the reasons for the community to intervene, but neighbors were also anxious about the reputation of their community.

Martin Dinges concludes that whenever individual community members crossed the borderline of decent or honorable behavior, the neighborhood as a whole could feel threatened. The records of Dutch criminal courts and consistories clearly confirm his findings. Daniel from Rotterdam was denounced by people from his street because the maltreatment of his wife brought “shame and disgrace” on his fellow neighbors. For the same reason, Leendert was not allowed to return to his former neighborhood. In Rotterdam, people regularly requested the magistrates to expel dishonorable community members from their neighborhood. The accusations could refer to prenuptial fornication, bridal pregnancy, adultery, and severe maltreatment of wives and husbands.
Marriage control concerned the honor and reputation not only of the victim and the perpetrator but also of neighbors and family members. Although the latter did not stand trial or risk conviction, their good reputation was endangered as well. Therefore, neighbors played an important role in controlling premarital sex and supervising matrimonial conduct. As soon as their honor and reputations were concerned, the inhabitants of neighborhoods directly supported the authorities’ regulative actions. Relatives and spouses sometimes supported regulation as well, but again, protection of one’s reputation influenced one’s decision to take family members to court. Financial interests were also of decisive importance, as banishment or imprisonment of the breadwinner evidently led to the loss of income. Therefore, family members rarely informed the criminal court about their relatives’ improper behavior. They rather asked the consistory to assist them in their marital problems and to discipline their sinful and criminal relatives.

Table 6  Marital church discipline cases, 1573 –1700

<table>
<thead>
<tr>
<th></th>
<th>Men</th>
<th>Women</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marital dispute</td>
<td>206</td>
<td>217</td>
<td>423</td>
</tr>
<tr>
<td>Adultery</td>
<td>66</td>
<td>71</td>
<td>137</td>
</tr>
<tr>
<td>Desertion</td>
<td>23</td>
<td>40</td>
<td>63</td>
</tr>
<tr>
<td>Bigamy</td>
<td>17</td>
<td>16</td>
<td>33</td>
</tr>
<tr>
<td>Incest</td>
<td>13</td>
<td>22</td>
<td>35</td>
</tr>
<tr>
<td>Other cases</td>
<td>20</td>
<td>53</td>
<td>73</td>
</tr>
<tr>
<td>Total</td>
<td>345</td>
<td>419</td>
<td>764</td>
</tr>
</tbody>
</table>

Marriage control concerned the honor and reputation not only of the victim and the perpetrator but also of neighbors and family members. Although the latter did not stand trial or risk conviction, their good reputation was endangered as well. Therefore, neighbors played an important role in controlling premarital sex and supervising matrimonial conduct. As soon as their honor and reputations were concerned, the inhabitants of neighborhoods directly supported the authorities’ regulative actions. Relatives and spouses sometimes supported regulation as well, but again, protection of one’s reputation influenced one’s decision to take family members to court. Financial interests were also of decisive importance, as banishment or imprisonment of the breadwinner evidently led to the loss of income. Therefore, family members rarely informed the criminal court about their relatives’ improper behavior. They rather asked the consistory to assist them in their marital problems and to discipline their sinful and criminal relatives.

Conclusion

My comparison of criminal justice and church discipline has highlighted the differences and resemblances between two types of social control in the early modern period. The evidence shows that the differences between criminal justice and church discipline are not satisfactorily explained by the parallel contrast of “sin” versus “crime.” It seems that, with respect to marital conduct, both institutions had various aims and objectives.

First, economic factors influenced the prosecution and sentencing in marital matters. When criminal behavior resulted in poverty causing family members to request urban poor relief, judges tended to punish more severely. Therefore, mothers of illegitimate children and abandoning husbands were punished more frequently and more severely. Second, consistories did not only aim at controlling sin and morality but also at preserving the reputation of their parishes. In dealing with sinful matrimonial behavior, clergymen were rarely inclined to take on adultery cases. Although it concerned a serious criminal act, they rather kept it from public view. Finally, the business of consistories and criminal courts was
selectively influenced by the complainant’s preference. Accusers preferred to take certain complaints to the consistory rather than the criminal court, and vice versa. The evidence shows that the urban population was more than just a subject of secular punishment and ecclesiastical discipline. The comparison of criminal justice and church discipline clearly reveals that people played an active role in both prosecution and the reconciliation process. They also understood how to make use of the institutions as a means of resolving their private and public problems.

Besides consistories and secular courts, various modes of social control were in existence. Only by comparing all these types of discipline can historians determine how these institutions operated and how they involved various people.

Notes

1. Ingram, “History of Sin or History of Crime?” 95.
2. See the contributions by Herman Roodenburg and Pieter Spierenburg to this volume.
7. Kloek, Wie hij zij, 78–121; Roodenburg, Onder censuur, 381–82.
10. Van der Heijden, Huwelijk in Holland, 56–76.
11. Ibid., 29.
12. For figures see tables 1 to 6 on premarital and matrimonial church discipline and criminal court cases in Rotterdam and Delft during the period 1550–1700.
15. This seemed to be the case in Germany as well: Harrington, *Reordering Marriage*, 239.
17. GAR, sentence book 251, 1697, fol. 175, confession book 142, 24 December 1696.
23. GAR, church council notes 1, 1639.
30. Ibid., 82.
31. Ibid., 83–84.
32. GAR, sentence books, 248, 1646, fol. 24–25.
34. GAR, sentence books 250, 1679, fol. 166–67.
35. GAR, sentence book 246, 1623, fol. 139.
38. Ibid., 218–37.
43. GAD, church council notes 276, 30 June, 2–25 August, 5 September 1664, fol. 119.
44. GAD, church council notes 3, 4 December 1600.
45. GAR, church council notes 5, 7 February 1661.
47. For instance: Roeck, “Neighbourhoods and the Public,” 193–209.
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55. GAD, sentence books 46, 1562, fol. 35–36.