

Summary

IN HOPE OF AGREEMENT. USE OF FORUMS FOR DISPUTE SETTLEMENT IN SEVENTEENTH-CENTURY LEIDEN

In the early modern period Dutch citizens could choose from a variety of judicial and infrajudicial forums to settle their disputes. In Leiden these institutions consisted of neighbourhoods, guilds, textile associations, civic militia, church councils, notaries, subordinate courts (a court established for settling matters about easement and other forms of urban servitude, and the so-called peacemaker court or *vredemakers*), and the official court or *vierschaar*. These forums dealt with tens of thousands of cases. Historians have overlooked institutional dispute settlement as an instrument of social control for a long time. They concentrated primarily on the ways by which the state disciplined people into well-behaved citizens. Consequently, they focused on the development of legislation and the study of criminal records. Nowadays social control is understood in an extended manner, as all forms by which people define deviant behaviour and react on it by taking steps. This includes institutional conflict settlement as a major aspect of social control – an aspect confirmed by the vast caseloads handled by judicial and infrajudicial forums. Moreover, most disputes reflect every-day life better than do criminal lawsuits.

The aim of this book is to explore the ways in which citizens of Leiden used forums of dispute settlement to put conflicts to an end. Legal anthropologists showed that disputants have great influence on the outcome of conflicts. Aggrieved parties may choose to do nothing at all, avenge wrong themselves, negotiate with each other, or appeal to a third party as arbitrator, such as neighbours, colleagues, family, or one of the forums of dispute settlement. People pragmatically select those options that best fit their problematic situation (*forum shopping*). This was also the case in seventeenth-century Leiden. How did Leiden complainants use the available forums? What strategies did they follow? Did people switch from one forum to the other (*forum hopping*)? Or did they mobilise only a single institution to end their disputes? In order to answer these questions, computer databases were made of all disputes piled up in the archives of the various judicial and infrajudicial forums of dispute settlement. These files were linked and analysed. This unique and complex operation could only be realised for a limited

period of time, given the amount of research. This study focuses on the years 1664-1668, after which the flourishing Leiden economy started to decline.

Leiden witnessed great economic prosperity in the seventeenth century, influenced first and foremost by immigrant textile masters. Because of this influx, textile production increased enormously. But it also led to a massive overpopulation. The Leiden population increased to about 60,000 in 1664. In order to handle these huge numbers of people and the accompanying social disorder, the Leiden municipality reorganised the judicial system. It uniformed the medieval neighbourhood associations into officially recognised institutions of social control. Masters of the neighbourhood, or *buurtheren*, were turned into gatekeepers of the Leiden judicial system. They had to hush up quarrels and to reconcile people. Only after intervention of these neighbourhood officials people were allowed to mobilise official courts. It's hard to tell whether *buurtheren* actually fulfilled their new task. They didn't keep a record of their activities. The Leiden archives only contain cash books of two seventeenth-century neighbourhoods in which treasurers recorded collected fines. Most of these fines refer to non-attendances at funerals. Sanctions to deviant behaviour of neighbours were quite rare. This may point to a frequent involvement of *buurtheren* in ending conflicts. In that case imposing fines in irreconcilable disputes was hardly necessary. Or did neighbours seldom mobilise their *buurtheren* to settle disputes? The masters of the neighbourhood, then, were not regarded as gatekeepers, but as an additional instrument of everyday social control.

Traditionally the Leiden guild organisations enforced their own regulations and arbitrated in conflicts between members. In early-modern times, the municipality carefully preserved these guild privileges to maintain social order. Guilds guaranteed a certain level of subsistence to their members. Therefore, guild officials supervised the production of goods and strictly adjudicated violations of quality norms. Unfortunately, the Leiden archives only hold four question books or *kwestieboeken* in which guilds recorded their activities of adjudication and arbitration. These four guilds differ vastly and their books span different periods of time. Moreover, the *kwestieboeken* contain only a few cases. Guilds seemed to have solved most problems in an informal way. Judging from the *kwestieboeken*, guild officials were primarily engaged in enforcing the statutes. In general, they adjudicated members when informal rebukes had no results. Guild officials depended mostly upon guild members complaining about their colleagues' trespasses. Some guilds actively monitored their members by visiting them two or three times a year. Costumers seldom lodged complaints with guild officials. Personal conflicts among guild members also were infrequent in most *kwestieboeken*. In addition, practically all disputes had to do with debts. More immaterial issues, like defamation, were notably rare. Considering their commercial interests, guild members seemed to have preferred other options to settle their disputes rather than submitting them to guild officials.

Compared with the guilds, the cloth association was far more often called in as arbitrator. This government organization controlled the production of heavy woollen cloth or drapery, on which more than two-thirds of the Leiden population depended.

Mainly, producers mobilised the association governors to collect debts. The officials checked the claim and made an arrangement, which they recorded in their question books. To the textile industry, these settlements were of high importance. Producers who were unable to pay their debts brought trouble upon their colleagues sooner or later. Further, governors of the cloth association were engaged in enforcing quality regulations. Violations of these norms could hamper the textile industry as well. Trespassers were first summoned by the associations bailiff. When drapers disagreed with his judgement or otherwise refused to pay, the bailiff appealed to the governors. Perhaps that is why the relatively small number of cases in the question book does not match with the industry's importance to Leiden. Like guild members, cloth producers were reluctant to appeal to the sector's forum. They opted for informal settlements which best suited their business interests.

The Leiden civic militia or *schutterij* was formed out of two militia-guilds in the sixteenth century. Its main task was to maintain law and order and to defend the city in wartime. The militia council supervised the *schutterij* and imposed fines on unwilling militiamen or *schutters*. Officers adjudicated offences like insufficient armament, illegal shootings, drunkenness, and scolding. Not all trespasses were recorded in the militia's journal. The provost generally fined *schutters* himself during the night watch or even – according to some complaints of the militia council – overlooked their breaches. Consequently, the council only dealt with problematic offences and militiamen who refused to pay their fines. These cases were all submitted by the provost. *Schutters* rarely appealed to the council themselves. They clearly had other ways of settling disputes, like drinking off their conflicts, scolding, and fighting. Only when these informal strategies failed, were militiamen prepared to mobilise the council.

Church discipline exercised by the Dutch Reformed consistory appears to have been a marginal phenomenon in Leiden. The church council sought to keep an eye on its members in order to obtain a 'glorious church without spot or wrinkle'. However, the Leiden municipality had limited the council's instruments to achieve that objective. Further, the consistory only consisted of twenty people, too small a number for effective supervision. According to the consistory notes only eighty-nine people appeared before the church council. These were certainly not all the sinners the consistory was informed of. Clergymen and elders also dealt with deviancy in an informal way. The majority of cases in the consistory notes concerned marital life. Secular and ecclesiastical authorities both denounced these matters. Besides, deviant matrimonial conduct was relatively easy to uncover during visits to people's homes. Those parish visits appeared to be crucial to the Dutch Reformed church discipline. Church members hardly reported sins themselves or invoked the church council's ability to arbitrate disputes, unless the council consistently kept these matters outside official meetings. The consistory notes of the Walloon Reformed Church, however, reveal a different kind of picture. The Walloon clergymen and elders handled twice as many cases as did their Dutch Reformed colleagues. Moreover, they dealt with considerably more social sins, like dispute, defamation, and violence, confessed by church members. On the one hand, this can be explained by the more forceful social control exercised by the strong

Walloon community. On the other hand, the Leiden municipality exerted less influence on the Walloon consistory. This also holds true for the Flemish Mennonite Congregation. The Flemish congregation was rather small. Yet, the control exercised by the Mennonite elders and preachers was vigorous. Proportionally, the Flemish congregation was most active in disciplining their members, both on marital and social matters. Again, informal control exerted by the Walloon and Flemish councils has to be taken into account.

Notaries formed a much frequented instrument of infrajudicial conflict settlement. They were entitled to draw up notarial attestations or statements of evidence, by means of which aggrieved persons could defend their reputation in the eyes of the community. At the aggrieved party's request, witnesses made depositions about the course of events and testified to his or her honesty. That meant that they put the blame on the adversary. Thus, notarial attestations were very important in furnishing proof in view of future lawsuits. Requisitionists used them as a final warning, a way to boost the pressure on their opponent to accept a settlement out of court. Should the other party refuse to back down, the requisitioner would be prepared to institute legal proceedings. This strategy seems to have been successful in ninety-five percent of all attestations drawn up by the examined four Leiden notaries. None of the requisitionists involved could be found in the cause-list of the official court. Only few attestations were used in ongoing lawsuits. People most frequently relied on notarial statements of evidence when they were in need of solid argumentation, for example in matrimonial matters, disputes about acquisition and supply, and inheritance problems.

Petty lawsuits were handled in a subordinate court, the so-called peacemaker court or *vredemakers*. This particular court was created especially for this purpose in 1598 and consisted of two aldermen and one burgomaster. It had to prevent the official court from getting stuck in all kinds of small conflicts arising from the ever-swelling influx of immigrants. The *vredemakers* handled all civil actions and tried to reconcile the parties involved before it had to send them on to the official court. In this respect, the court was largely modelled after a forum established in 1583 for settling matters about easement and other forms of urban servitude. However, the peacemaker court was made more accessible. The *vredemakers'* procedures were quick and affordable. The peacemaker court was allowed to adjudicate claims under a fixed amount. Mainly, the court dealt with common administrative affairs. No fewer than eighty-three percent of the cases were related to debts and rent arrears. The peacemaker court sought to make an arrangement between debtors and creditors, provided that debtors confessed their guilt. Plaintiffs also mobilised the *vredemakers* to settle affairs of honour, the second largest category, involving defamation, insults, and violence. Honour cases needed swift action to restore the plaintiffs reputation.

The official court or *vierschaar* largely dealt with financial problems as well. However, the claims were much higher. Further, a close look reveals that two-thirds of the plaintiffs appearing in the *vierschaar's* cause-list had skipped the peacemaker court. Thus, the *vredemakers* hardly acted as gatekeepers. Rather, the *vierschaar* appeared to have been a court of first instance, despite municipal rules. Beside administrative conflicts,

the official court primarily handled complex affairs, like pre-marital and matrimonial matters, and disputes concerning inheritance. In these cases, conclusive proof was of the utmost importance. Ultimately, plaintiffs mobilized the *vierschaar* for divorce proceedings or separations from bed and board. Aldermen or *schepenen* ended cohabitation only in cases of serious maltreatment. Malicious desertion or proven adultery were grounds for divorce. These offences could also be filed before the criminal court, but that hardly ever happened. Plaintiffs appealing to the *vierschaar* did not want the judges to punish their opponents. They only used the court to clear themselves of any guilt and to officially dissolve their marriage.

Most plaintiffs appeared to have mobilized only one forum to settle their disputes. According to the forums registers they hardly ever switched from one institution to the other. But some remarks are due here. First, only four notaries out of thirty are examined. Accordingly, attestations might have remained unnoticed. Second, the *kwestieboeken* of most guilds and textile associations are lost, so overlaps with the judicial system cannot be explored. The same is true of neighbourhood registers. Third, church councils not only disciplined parishioners formally, but also in a more or less silent way not recorded in the consistory notes. Thus, church members who mobilized secular forums might have been admonished informally. However, most importantly plaintiffs frequently dropped cases. Their use of forums was never intended to institute and conclude proceedings. Submitting a case to court merely was a strategy to improve one's own chances in infrajudicial settlements. Consequently, dropped cases could indicate *forum shopping*, i.e. the mobilization of a third party as arbitrator. Of course, some disputes might have solved themselves with the lapse of time or disappeared for one reason or the other.

Parties involved in institutional dispute settlement largely came from the Leiden middle class of craftsmen, merchants, and shopkeepers. To be sure, socio-economic backgrounds are available of only forty percent of the plaintiffs and sixteen percent of the defendants. Moreover, one third of the plaintiffs whose occupation is known, was solicitor or *procureur*. These lawyers represented people that mostly remain obscure in *vredemakers* cases. Yet, the information accessible seems to be typical. It is unlikely clerks systematically omitted specific occupational groups. Nevertheless, lower-class people are absent in the registers of Leiden institutions of judicial and infrajudicial dispute settlement. Labourers, sailors, soldiers, paupers, beggars, and the like simply couldn't afford to mobilize these forums. They lacked knowledge of all options available, which explains the small numbers of *pro deo* cases. But the city's elite, too, is hard to find in some registers. Representatives of the Leiden upper class seldom made use of notarial attestations. Nor did they submit cases to the peacemaker court. Perhaps some of them hired *procureurs* to defend their interests.

Most plaintiffs and defendants were men. Male dominance amounted to eighty-three percent. Officially only men were entitled to institute legal proceedings. They also accompanied their wives in court. Unmarried women or widows had to call in a male guardian. But in practice they launched lawsuits themselves, especially at the peacemaker court, and women had notaries recording attestations. Most women

figured as plaintiffs in cases related to themselves, like premarital or matrimonial matters. Single mothers summoned their lovers to make them support the child financially. Wives went to court in cases of adultery, malicious desertion, or maltreatment by their husbands. Consequently, the over-representation of male plaintiffs in the forum registers merely was the result of the dominance of administrative affairs in early-modern Leiden. Financial problems greatly affected the household. As only men had the right to administer the household property, to enter into contracts, and to carry out legal transactions, it was self-evident they represented their family in court. Women summoning debtors or tenants were mostly widows.

The massive caseload presented in this study allows for the closest view of conflict settlement. It shows that going to court was frequently used as an additional instrument of everyday social control. Many lawsuits were launched in the hope of accelerating the settlement of disputes, preferably without having to fight them through to the end. Generally, plaintiffs were focussed on restoring peace and social balance, rather than furthering their dispute. Most parties needed to live together amicably thereafter. They depended on each other as neighbours or colleagues. Instituting and concluding proceedings could put these relationships at risk. Besides, submitting a case to court was expensive and took a lot of time. All this gave people bargaining power in settlement negotiations.