Civil litigation in Rotterdam in the eighteenth century
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FIRST DRAFT

On the central square of the city of Amsterdam, the old town hall is still accessible today – as it has been since the middle of the seventeenth century – via the courtroom (vierschaar). As the rest of the building, it displays a rich iconography on the principles of urban governance. The central image in the courtroom exhibits the narrative of the wise king Salomon who faced the awkward task to reconcile two women who claimed to be the mother of the same baby. Salomon determined to split the baby, so that each could have half of it. As only one of the two woman lamented not killing the baby, he was able to determine who was the genuine mother. The fact that this courtroom was situated at the outer part of the town hall, visible to anyone passing, reveals the magnitude of the task of urban governors to arbitrate and solve conflicts between inhabitants and to further peace and harmony.

Peace was one of the basic values of urban communities since their remote beginnings and the city governors were required to watch over it. Many other civilian and religious local authorities were involved in dispute settlement as well. The parish priest performed an important task as arbitrator, either informally or in religious rituals. Both direct neighbours and more institutionalised neighbourhood organisations assumed the arbitration of conflicts, as did migrant communities, prominent (noble) members of the local community, guilds, and notaries.¹

In a recent special issue on ‘Urban stability and civic liberties’ of *Urban History* Joachim Eibach has stressed the increase of the city government’s responsibility in conflict resolution during the early modern era. Whereas in the Middle Ages burghers mostly settled their conflicts themselves, the city council began to assert control in the late fifteenth century. Hence, the aforementioned ‘infrajustice’ institutions had mostly disappeared by the beginning of the eighteenth century. Concomitant with the loss of the right to bear arms in public, citizens increasingly took their disputes to court instead of resolving it through ritualised violence. Eibach is clearly a student of the German historiographical tradition that discerns an early modern process of ‘Verrechtlichung’ in which communal ideas disappeared in favour of top-down governmental initiatives. The work of Bruce Lenman and Geoffrey Parker – that discerns a development of ‘private law’ to ‘state law’ – also echoes an evolutionary perception of litigation.

The dramatic proliferation of litigation since the late sixteenth century indeed reflects the increased importance of civil courts. This upsurge is well documented and described for many European regions and cities as for example England, Castile, Florence, Bremen and Paris. The expansion related to various types of conflicts. Conflicts about debts and contracts were unmistakably dominant – eighty to ninety per cent of all court cases – but...
lawsuits on defamation, sexual conflicts, marriage contracts and inheritances equally showed a marked increase.\textsuperscript{7}

From the late seventeenth century, litigation however showed a dramatic deflation, challenging the above-described evolutionary view. The decrease of court cases again related to the various types of conflicts, and it applied to both central and local courts.\textsuperscript{8}

The chronology of both the inflation and the deflation of litigation occurred in similar stages in the different regions of Europe. It shows a maximum of cases in the last decades of the sixteenth century, a ‘high stagnation’ in the seventeenth century, a modest decline from the second half of the seventeenth century and rapid decline from the second quarter of the eighteenth century. The number of lawsuits in the middle of the eighteenth century was only a fraction of litigation in the late sixteenth century. In some regions, it started to grow again in the late eighteenth century, in others growth resumed concomitant with the industrial revolution only.\textsuperscript{9}

The purpose of this paper is to bring together the various explanations that historians of different parts of Europe have formulated to explain this marked decrease of civil litigation and to test these explanations on the evolution of civil litigation in the Dutch town Rotterdam. The highly urbanised Low Countries have so far not been included in the analyses of legal historians, apart from a stimulating scrutiny of cases waged by guilds in


\textsuperscript{9} Wollschläger, ‘Civil litigation’; Castan, ‘The arbitration’.
early modern Antwerp.\textsuperscript{10} As the phenomenon is evidently international, it is valuable to add another region to the analyses, and to test the validity of formulated explanations. Does the decrease of litigation point towards a decreasing significance of the legal services of local governments to urban populations?

\textit{Lawsuits at the civil bench of aldermen in Rotterdam}

The town governments of Holland – the core region of the Dutch Republic – equally witnessed a swelling demand for their legal services in the late sixteenth and seventeenth century as elsewhere in Europe. To date, this upsurge in litigation has not been quantified, but it is revealed by the instalment of new institutions as the so-called Peacemakers (\textit{Vredemakers, Peismakers}) that were to settle minor disputes, in order to reduce the tasks of the aldermen. In fact, the Bench of Peacemakers was the most important establishment of dispute settlement.\textsuperscript{11} Unfortunately, the records of the Peacemakers of Rotterdam – installed in 1628 – are not available, but close to all eighteenth century records of the civil bench of aldermen (\textit{civiele schepenbank}) could be consulted (see graph 1).

The high fluctuations of the curve may possibly indicate an unusually high number of lawsuits in the first quarter of the eighteenth century. This is however unlikely as the civil courts of many other European regions and cities show a decline in the second quarter of the eighteenth century. We do have some qualitative data on litigation levels of the seventeenth century. The council members rescheduled the hearing of cases in 1641 and in 1673 to remedy a backlog. Moreover, they gradually extended the competences of the Peacemakers to cope with high levels of litigation.\textsuperscript{12}

The high fluctuations of the early part of the curve may be attributable to a distinction between premodern and modern wave patterns that were also established for the city of

\textsuperscript{10} Deceulaer, ‘Guilds and litigation’.

\textsuperscript{11} The city of Leiden was first in installing \textit{Vredemakers} in 1598. In the years 1664-1668 it heard no less than 23,600 cases, whereas the civil court of aldermen heard only 1,600 cases in the same period, Van Meeteren, \textit{Op hoop}, 226-275.

\textsuperscript{12} Gemeentearchief Rotterdam, Oud Rechterlijk Archief (henceforth GAR, ORA), inv. nr. 1, Resoluties van schepenen, 30 oktober 1657-2 oktober 1739, Actum 20 January 1673, f. 21-22; inv. nr. 102, Keuren en resoluties van de Weth, Octroy van de Staten van Holland, 1641; GAR, OSA, inv. nr. 784, Stukken betreffende de werkwijze en bevoegdheden van de vredemakerskamer, 1719-ca. 1800.
Bremen by Christian Wollschläger. According to him, the high proportion of debt collection cases and the ‘basic instability of early modern legal and economic relations’ accounted for the huge variance in the number of court-cases in subsequent years.\(^{13}\) The more stable distribution of the curve from the 1730s onwards indicates a more modern way of civil litigation.\(^{14}\)

*Graph 1: number of lawsuits at the civil bench of aldermen in Rotterdam (1702-1810)*

The events of the early eighteenth century can partly explain the fluctuations. The devastating effects of the Spanish War of Succession (1702-1713) may explain the high number of court cases in the 1710s. The first financial crisis of 1720 – induced by the experiments of the French minister of finance John Law – is probably responsible for the

\[^{13}\] Wollschläger, ‘Civil litigation’, 271.

\[^{14}\] The standard deviation divided by the average values of the data from 1702 to 1740 was 0,61 while it was 0,29 for the years from 1740 to 1810. This undeniably points towards a much more stable distribution of values in the latter part of the graph. Nader bekijken!
high number of cases in 1721. The short-term fluctuations of litigation rates are however not our first concern here. What can account for the general decline of litigation rates?

The ‘social pathology’ thesis and changes in communal relations

Lawrence Stone was the first English historian to address the subject matter of civil litigation and to look for an explanation of varying numbers of court cases. He formulated the so-called ‘social pathology’ thesis, which explains high litigation rates in the sixteenth and seventeenth century as a feature of the deep social tensions, that characterized local society and attributes the decline of court cases in the eighteenth century – which paralleled a decline of interpersonal violence – to an improvement of social relations. According to Martin Dinges, interludes of temporary elevated mistrust and insecurity can indeed explain established ‘cycles of recourse to justice’. The years of uncertainty during the Spanish War of Succession and the financial crisis of 1720 might likewise explain the high levels of litigation in Rotterdam. Conversely, the War of Austrian Succession or the devastating effects of the French occupation did not witness an increase of the number of court cases. It can moreover only explain (some) changes on the short term, and not the overall and consistent decline of court cases from the latter part of the seventeenth century.

There is another reason to counter argue the social pathology thesis. Many legal historians have drawn attention to the fact that only a minority of the court cases were pursued until the aldermen had formulated a verdict. Bringing a case to court was often the last means of settling a conflict by mounting pressure on the defendant. This pressure often sufficed to bring the alleged offender to senses and conclude an informal settlement

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16 Dinges – Shoemaker Checken en uitbreiden
out of court. The reason people went to court was therefore not to take revenge or to aggravate matters, but to repair temporarily disturbed relations.18

These considerations do however not fully refute the possibility that changes in social relations account for varying litigation rates. Maybe the declining numbers of court cases indicate a fading rather than an improvement of social relations. Shoemaker explains the decline of defamation cases in eighteenth century London by the more modern, individualised ways of social conduct as the urban community increasingly differentiated and social control weakened.19 The work of W.A. Champion underscores a weakening of social ties: defendants found it increasingly difficult to find pledges to lend surety ship. By the eighteenth century, ‘the once dense network of pledging relations was ripped apart’.20 The Rotterdam data support a decline of pledges.21

In his examination of the decline of court cases at the royal courts at Westminster, C.W. Brooks found that the gentry withdrew from litigation by the late seventeenth century, and was supplanted by merchants, tradesmen and artisans who were far more reluctant to take cases to court, which may explain the drop in litigation.22 Further scrutiny in other regions might lend support to Brooks’ analysis. As for Rotterdam there are yet little indications for a change in the social background of plaintiffs and defendants.23 The fact that litigation levels dropped in both urban and in rural contexts also undermines the vigour of Brooks’ hypothesis. Weakening of social relations is hard to measure and identify and can scarcely account for the rapidity of reduction in litigation levels in the second quarter of the eighteenth century in various regions.

19 Shoemaker, ‘The decline’.
21 A preliminary analysis of the ‘civiele besogneboeken’ – compilations of documents that were drawn up for civil court cases – show 23 pledges in 1675; 4 in 1700, 1 in 1725, 0 in 1750, 1 in 1775 and 0 in 1800. These numbers however have to be interpreted with much caution, as the ‘besogneboeken’ were probably not compiled very systematically. Deze gegevens kunnen worden aangevuld met tellingen uit de voluntaire rechtspraak, o.a. schuldboeken waarbij onroerend goed wordt verkocht met borgstelling van derden.
23 In Leiden in the third quarter of the seventeenth century, the majority of plaintiffs for the civil court belonged to mercantile and artisanal groups, Van Meeteren, Op hoop, 312-313.
Changes in credit relations

A full-fledged corroboration of changes in social relations in the eighteenth century stretches far beyond the field of legal history and still waits to be formulated. As credit relations permeated early modern society, legal history can however contribute empirical evidence to such wide-ranging explanatory scheme, as the seminal work of Muldrew shows. He points out that the high litigation rates of the earlier part of the era had an independent effect on social relations: the ‘explosion of debt litigation’ – that often affected the vast majority of the heads of local populations – ‘in turn resulted in social relations being partly redefined in terms of contractual equality’. The high litigation rates of the late sixteenth century were due to the lack of cash, which forced households to consume by means of informal credit. The so-called ‘chains of credit’ became progressively longer and complex and inevitably led to increased conflicts over non-repayment of debts. Hence, in the seventeenth century ‘the structures of credit networks adapted to higher levels of economic activity, making litigation less necessary’. People could extend or obtain credit on bonds and other new financial instruments that made credit more flexible and convertible. This made credit relations more formalized and bureaucratic. What is more, governments entered the credit market as well, offering increased opportunities for extending credit.

Can an increased use of promissory notes and governmental debt explain the sudden decline of the number of court cases in the second quarter of the eighteenth century? In the Dutch Republic public debt thrived from the second quarter of the seventeenth century. Yet the decline of the number of court-cases in eighteenth century Rotterdam followed the same chronology as the decline of litigation rates in England, where governmental debt did indeed only fully develop in the eighteenth century. So the impact of the emergence of public debt is probably limited.

24 Muldrew, The economy, 7.
25 Muldrew, The economy, 3.
The described line of reasoning is more convincing as for the evolution of private financial markets. Formal establishments of money transfer and credit emerged in eighteenth century Rotterdam. Many of those establishments admittedly disappeared in the wake of the financial crisis of 1720. The success of the ‘Rotterdam Society for Insurance and Loans’ (*Maatschappij van Assurantie Disconteringe en Beleening der Stad Rotterdam*), the commercial firm of the family Osy and several smaller banks is however telling.\(^{27}\)

It must be feasible to measure to some extent the evolution of the volume of private formalised credit transactions by making use of archival resources that were produced at the aldermen’s court for voluntary jurisdiction. When people extended credit to each other, they often asked aldermen to sanction the transaction. In the so-called *renteboeken* the aldermen recorded loans on security. In 1704 a total of 155 acts could be counted, in 1751 only 79. This tally is however far too preliminary to jump to conclusions.

Another possible measure of the volume of formalised transactions of credit is the provincial income from the duty on the so-called small seal duty (*klein zegel*) in the district of Rotterdam (see graph 2). Since 1624 a seal had to be attached to a wide range of legal documents, as for example verdicts, testaments, marriage contracts and various notorial deeds. Considering the wide range of legal documents the duty had to be paid for, it can only say something on the evolution of credit arrangements to very limited extent. As in case of the rent books, we can establish a decline of the number of deeds.\(^{28}\)

So the recorded formalised credit engagements appear to drop. A decrease of the extension of credit may indeed explain dropping numbers of court cases. There are (preliminary) indications that in Rotterdam the number of court cases with multiple defendants increased in the latter part of the eighteenth century, pointing towards increased prominence of business partnerships.\(^{29}\) It is plausible that ‘commercial chains’ between tradesmen shortened in the eighteenth century – as they made progressively less

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\(^{28}\) The abrupt climb of the curve after the mid-eighteenth century is fully attributable to a changed way of collecting the tax. Before it was collected by farmers, afterwards by one governmental collector, R. Liesker en W. Fritschy, *Gewestelijke financiën ten tijde van de Republiek der Verenigde Nederlanden* (Den Haag 2004) 59.

\(^{29}\) [Moet ik nog cijfermatig bevestigen in het materiaal, is totnogtoe slechts indruk.]
use of intermediaries to engage in business contracts – and therefore surely experienced less defaulting. This may also partly explain dropping litigation rates.

Graph 2: Income from the duty on the ‘small seal’ at the district of Rotterdam (1675-1805)

Source: Nationaal Archief, Financie van Holland, inv. nrs. 826-828.

Economic performance and demography

Various authors on litigation rates have observed that there is an important correlation between economic performance and the number of court cases. Wollschläger established a vast expansion of litigation in nineteenth century Bremen, in line with industrialisation and population growth. He however adds to his analysis that litigation rates in the seventeenth century were higher than today, so the number of contracts and debts cannot account for the absolute level of litigation.\textsuperscript{30} Muldrew also stresses the importance of economic growth for litigation rates. In the fourteenth century, England witnessed relatively high court activity as well. The number of court cases declined parallel with

\textsuperscript{30} Wollschläger, ‘Civil litigation’, 271-4.
economic performance in the fifteenth century, and mounted to unprecedented levels during the sixteenth century economic boom.\footnote{Muldrew, \textit{The economy}, 236.}

They however also point out the double effect of economic growth or decline. An increase of the number of market transactions gives more occasions to breach of contract or unpaid debts. Muldrew for instance explicates that during economic hardship in the 1590s English households consumed less and consequently made less use of credit, which explains a downfall of the number of court cases.\footnote{Muldrew, \textit{The economy}, 225-226. Dave Deruysscher has also established an overlap between litigation rates and economic performance in seventeenth century Antwerp. As litigation rates dropped in the 1670s, the correlation did however cease to exist. Personal communication to the author.} Brooks however asserts for the early decades of the eighteenth century that high real wages brought about low indebtedness and hence low litigation levels.\footnote{Brooks, ‘Interpersonal conflict’, 371-373.} Harald Deceulaer equally points out that thriving Antwerp guilds went less to court than guilds that faced hardship. Wollschläger explains – by identifying premodern wave patterns – some short-term upsurges in litigation by economic hardship as well.\footnote{Deceulaer, ‘G guilds and litigation’, 195; Wollschläger, ‘Civil litigation’, 271.} Muldrew admits that his assertion sounds counterintuitive. Yet the complexity of local economies and networks of credit precluded that short-term economic hardship led to increased litigation, notwithstanding that several individuals were dragged to court to pay their debts: ‘trends in the fluctuation of the rate of litigation were the result of general economic vitality of the town’s \textit{entire} economy’.\footnote{Muldrew, \textit{The economy}, 226.}

The Dutch Republic and Rotterdam faced economic decay in the eighteenth century. This might explain the deflation of litigation. Decline was however only relative to other countries that assumed control over trade that was formerly performed by Dutch go-betweens. Overall, there was no quantitative decline. Data on commercial activities in the Rotterdam port reveal a slight increase from the 1720s, followed by expansion that is more vigorous from 1750. The fourth Anglo-Dutch War (1780-1784) set off decades of decline.\footnote{Van der Schoor, \textit{Stad in aanwas}, 319-320.} This variation in economic performance is not paralleled by the litigation rates. Nor is demography: at the end of the seventeenth century, the Rotterdam population is estimated
at about 51,000 inhabitants; in 1750, there were about 44,000 to 47,000 inhabitants, while in 1800 there were about 57,000 to 58,000 inhabitants. Wollschläger and Muldrew may be correct in emphasizing the determining role of economic and demographic development for the longitudinal evolution of litigation, but it is insufficient as an explanatory factor.

Legitimacy of aldermen and civil courts
In explaining the deterioration of court activity in Castile during the seventeenth century, Richard Kagan asserts that the high litigation rates of the sixteenth century can partly be explained by the efforts and consideration that the Habsburg kings Charles V (1516-1556) and Philip II (1556-1598) paid to dispute settlement and high-quality justice. Their heirs did however pay much less attention to this aspect of administration, and nor did urban oligarchies as they ‘were generally more interested in furthering themselves and their families than in promoting a just and efficient rule of law’. The withdrawal of political elites from the management of justice brought about a rise of costs and increased complexity. ‘Tied to the interests of a narrow socio-economic elite, [these] local courts commanded little in the way of authority and respect and therefore served as a deterrent to litigation, persuading the populace to resolve their disputes by other means’. On the other hand, the eighteenth century did not witness a revival of litigation in Castile even though the economy and population expanded and the new Bourbon monarchy devoted fresh attention to law and legal reforms. The attitude of the (central) government may nevertheless also explain the decline of lawsuits waged by guilds in eighteenth century Antwerp. The central government of the Austrian Netherlands took active measures to discourage guild trials.

The oligarchies of Dutch towns were under repeated attack of burghers during the eighteenth century. Broad layers of urban populations viewed the so-called regents as a

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37 Van der Schoor, *Stad in aanwas*, 327.
class that first served its own interests and paid far too little attention to the needs of burghers. Episodes of broad dissent regularly surface in the history of the Dutch oligarchies, as was the case in 1672, 1747 and 1780. The crises of 1747 and 1780 are indeed reflected in a decline of court-cases. Therefore, the weakened legitimacy of the class of regents, that also filled the benches of the aldermen’s court, may partly explain lower court activity. After the 1740s and the 1780s, litigation rates however instantly resumed their former volumes, excluding ‘weak governmental legitimacy’ as a sufficient explanatory factor for the general decline of litigation rates. Moreover, the sharp decline of lawsuits in the 1720s was not paralleled by a political crisis.

It is furthermore highly unlikely that people no longer took their disputes to court because local politicians allegedly paid less attention to the administration of justice. The archival records of Rotterdam show numerous documents that reveal their awareness of the importance of local justice. The local government regularly issued regulations on civil procedures. The set of rules that covered the entire functioning of the civil bench – that dated from 1580 – was thoroughly revised in 1732 and again in 1777. In the various directives, the aldermen stressed the ‘essential and genuine concern of prompt and regular administration of civil justice for the burghers of the town’.

It is equally unlikely that other courts or ‘infrajustice’ institutions drew litigation away from the local aldermen’s courts. The central courts of Brabant, Castile, London and Paris all saw a decline of court-cases. The central courts in The Hague most likely underwent a decline of activity as well. Ecclesiastical courts have so far hardly been scrutinized, but

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42 GAR, ORA, inv. nr. 1, Resoluties van schepenen, Actum c. 1678, f. 59v-62; ORA, inv.nr. 108, Resoluties, door schepenen genomen betreffende hun organisatie en werkwijze, 1748-1776, afschriften; GAR, Handschriftenverzameling, inv. nr. 5.104, Reglement voor procureurs van de vierschaar van Rotterdam, 1696, 1706.

43 ORA, inv. nr. 102, Keuren en resoluties, Extract uyt de generale keuren, 1732, 1777.

44 Original quote from the 1777 directive: ‘het groot en wezentlijk belang het welk hunne burgers en ingezetenen hebben in de spoedige en regelmatige administratie van civiele justitie’, ORA, inv. nr. 102, Keuren en resoluties, Extract uyt de generale keuren, 1777.


46 Steekproefsgewijze tellingen in archiefmateriaal Hof van Holland moet ik nog doen.
there is no reason to assume an increase of their activities.\textsuperscript{47} Nor can guilds have performed more arbitrating activities in view of the fact that they became more elitist. Neighbourhoods did probably not assume amplified mediating activities either. Their character changed deeply during the early modern era. In the late sixteenth and seventeenth century city governments imposed increased tasks of arbitration on prominent members of neighbourhoods with the purpose of averting part of the multiplication of court cases.\textsuperscript{48} In the latter part of the early modern era, increased social differentiation and segregation brought about a growing inability of neighbours to informal dispute settlement. Catharina Lis and Hugo Soly have established that families increasingly asked for imprisonment of deviant family members because they and their neighbours could not reconcile them. People also increasingly made use of the services of police forces.\textsuperscript{49} They apparently did not make use of civil courts.

\textit{Professionalisation}

The aforementioned directive of 1580 included 46 stipulations, the directive of 1732 numbered 32 clauses and the one of 1777 ran up to no less than 132 stipulations.\textsuperscript{50} Perhaps excess rather than lack of attention of local governors for legal procedures explains the waning appeal of the civil bench. Various authors have stressed the increased complexity of juridical procedures and the growing gap between council members and potential litigants. Deceulaer claims that the increased legal training of judges and attorneys may account for declining litigation rates. People did not have a desire for the service of legal professionals, who ‘may have been more reluctant to acknowledge the legitimacy of unwritten rules, customs, and oaths of innocence or to allow gifts or petitions to sway their

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\textsuperscript{49} Catharina Lis and Hugo Soly, ‘Neighbourhood social change in West European Cities’, \textit{International review of social history} 38 (1993) 1-30, there 23.
\textsuperscript{50} ORA, inv. nr. 102, Keuren en resoluties, Extract uyt de generale keuren, 1732, 1777; For the directive of 1580, which was issued by the States of Holland for all urban and rural civil benches: Paullo Merula, \textit{Synopsis Praxeos Civiles. Maniere van Procederen in dese provintien Hollandt, Zeelandt ende West-Vrieslandt belangende civile saken} (Amsterdam 1592), book 2, p. 39-62; cfr. M. Jb. Zeylemaker Jnz, \textit{Geschiedenis van de wetenschap van het burgerlijk procesrecht (praktijkrecht) in Nederland van de aanvang tot 1813} (Amsterdam 1952) 98-99.
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judgements’.\textsuperscript{51} Kagan juxtaposes the ‘unrestrained’ and ‘empirical’ legal regime of the late sixteenth century and the ‘professional’ legal practices of the end of the seventeenth century, stressing the attractiveness of the first type of legal services for ordinary people.\textsuperscript{52} Dinges also stresses that litigants preferred courts that were close to them and not presided over by legal professionals.\textsuperscript{53} This may be the case, but in Rotterdam the proportion of aldermen with an academic degree did not augment throughout the eighteenth century (see graph 3).

Graph 3: Legal training of aldermen in Rotterdam (1675-1779).

Source: GAR, Handschriftenverzameling, inv. nr. 5094, Naamlijsten van schepenen over de periode 1699-1811.

What is more, none of the attorneys (\emph{procureurs}) that were active at the civil bench had legal training.\textsuperscript{54} The judges and attorneys active at the civil bench must accordingly have

\textsuperscript{51} Deceulaer, ‘Guilds and litigation’, 195.
\textsuperscript{52} Kagan, ‘A golden age’, 161
\textsuperscript{53} Dinges, ‘The uses’, 163.
\textsuperscript{54} They were all notaries, and notaries most rarely boasted an academic degree. Of the 193 known notaries that were active in Rotterdam between 1585 and 1809, only nine had legal training, see the inventory of the notorial archives at http://www.gemeentearchief.rotterdam.nl
been fairly approachable for most ‘ordinary’ inhabitants of Rotterdam. In directives and regulations, litigants were typically referred to as the ‘masters’ of attorneys, designating a clear hierarchy.\textsuperscript{55} The position of notaries and attorneys may nevertheless have changed towards a more elitist station during the eighteenth century. In England, attorneys raised their fees and became prominent members of local communities who made handsome profits through extending credit by making use of their knowledge of creditworthiness of their co-inhabitants.\textsuperscript{56} This may have been the case in Rotterdam as well. The attorney and solicitor Johan van Pavord (active in the years 1675-1715\textsuperscript{57}) probably left his widow Maria van ‘t Wedde an important inheritance. In the year 1715 alone, she went 79 times to court to settle disputes on the inheritance and to force debtors to reimburse her.\textsuperscript{58}

Rising costs may likewise explain declining appeal of civil legal procedures. In England, the rise of costs of litigation was due to the climbing fees of attorneys to great extent, as they charged extra for performing all sorts of acts, drawing, and signing legal documents. Their counselling services moreover become more indispensable in view of the increased complexity of law and court procedures. The courts also charged more and so did the government by introducing stamp duties on legal documents.\textsuperscript{59} Brooks states that the costs of taking legal action for small debts often amounted to higher sums than the cause of action, making litigation useless. The high costs of court cases were often lamented in pamphlets and in parliament. Between 1680 and 1750, the costs of litigation in English central courts doubled.\textsuperscript{60} The rising costs most likely withheld many potential litigants. Based on evidence from England, Dinges claims that occasional ‘tariff reductions

\textsuperscript{55} GAR, ORA, inv. nr. 1, Resoluties van schepenen, actum c. 1678, f. 59v-62; ORA, inv.nr. 108, Resoluties, door schepenen genomen betreffende hun organisatie en werkwijze, 1748-1776, afschriften; GAR, Handschriftenverzameling, inv. nr. 5.104, Reglement voor procureurs van de vierschaar van Rotterdam, 1696, 1706.


\textsuperscript{57} Checken in civiele rol!

\textsuperscript{58} GAR, ORA, inv. nr. inv. nr. 358, Civiele rol 10 april 1715-4 maart 1716 en arrestrol 1 april 1715-2 december 1715. Is pas vanaf april; in inv. nr. 357 nog aantal zaken januari-april tellen!

\textsuperscript{59} Champion, ‘Recourse’, 184-5.

\textsuperscript{60} Brooks, ‘Interpersonal conflict’, 375, 377-382.
sometimes tripled the number of accusations’. However, litigation was and became increasingly expensive during the litigation boom of the late sixteenth and early seventeenth century too. 

It is hard to detect the costs of legal action in Rotterdam. The legal documents of the court do not reveal the fees charged by attorneys. Most recorded lawsuits show the names of one or two attorneys, so both plaintiffs and defendants mostly – if not always – made use of attorneys to speak for them. A gradual rise of the fees charged by the civil court is unlikely. The city council issued a new tariff in 1739, more than a decade after the most spectacular fall of the number of lawsuits. There are no tariffs known for the period before that. The aforementioned small seal tax must have caused a rise of legal costs. From 1595 the Provincial government also imposed a tax on ‘badly motivated lawsuits’ (ongefundeerde processen), in order to discourage potential litigants to go to court for minor causes. That tax was however abolished in 1664. It was imposed again in 1750, which was decades after the great litigation decline as well. Therefore, we cannot measure the rise of legal costs in Rotterdam, but it is not unlikely that they did indeed rise during the eighteenth century.

Despite the lack of exact figures on the costs of litigation, it is however possible to measure the importance of legal costs for litigation rates by tallying the relative proportion of lawsuits that were waged free of charge (pro-deo) (see graph 4). People, who did not have the wherewithal to litigate, could ask the aldermen for this procedure. These figures bring to light the major importance of rising costs for decreasing litigation rates. People were clearly less reticent about taking cases to court when they did not have to pay for

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63 GAR, ORA, inv. nr. 111, Lijsten en aantekeningen over de door schepenen ontvangen salarissen en emolumenten, 1720-1820; ORA, inv. nr. 117, Lijsten, houdende tarieven voor kosten van ambtshandelingen, toekooend aan diverse functionarissen bij de schepenbank, 1739.
64 Uitzoeken: evolutie van tarieven.
65 NA, FvH, inv. nr. 826; Liesker and Fritschy, Gewestelijke financien, 220.
66 NA, FvH, inv. nr. 831-832.
67 GAR, ORA, inv. nr. 137, Stukken betreffende het weigeren van aanvragen van procureurs pro-deo door de schepenbank, 1766, 1774. Toevoegen gegevens uit reglementen 1732 en 1777.
legal services. Apart from the exceptionally high litigation rates of the 1710s, the
distribution of cases free of charge seemed to rise throughout the eighteenth century. This
may indicate that there would not have been a decline of litigation rates if legal costs had
not inflated so much during the eighteenth century!

Graph 4: Proportion of cases free of charge at the civil court of Rotterdam (1675-1779).

This measure is however somewhat flawed, as the cases that were administered at court
free of charge are atypical. Both in 1715 and in 1787 no less than 70 per cent of the
plaintiffs in these cases were women, while the overall proportion of female litigants in
those years was only 21 and 20 per cent.\textsuperscript{68} There were of course women going to court for
cases on debt or broken agreements, but the high proportion of women in cases free of

\textsuperscript{68} GAR, ORA, inv. nrs. 357-358 and 390-391.
charge indicates that it principally concerned conflicts over marriage contracts and sexual problems, a type of conflict that caused only a minority of lawsuits at the civil bench. So if there were changes in the attitude – apart from preoccupations on legal costs – of potential litigants in cases relating to broken agreements and unpaid debts, these cannot be detected by measuring the proportion of cases free of charge.

Another reason not to overestimate the explanatory value of the factor ‘legal costs’ is that a decline in litigation was also apparent in courts where legal costs were absent or minor. This was the case in the leet jurisdictions in England that dealt with communal offences. There were equally declining rates of complaints about criminal offences. The Peacemakers – who were a more important urban court for dispute settlement – were equally less exposed to increasing complexity and costliness of legal procedures. It is unfortunate that close to all records of the Rotterdam Peacemakers have vanished. A modest scrutiny of the records of the Peacemakers of Leiden, points towards a drastic decline of court cases there as well. While in 1664 the Leiden Peacemakers heard no less than 5,384 cases, in 1764 they heard only 549 cases and 746 cases in 1768. While in 1664 they examined on average 54 cases per hearing, they considered less than 12 cases per hearing a century later. All in all, the augmentation of legal costs was not the cause of the decline of litigation rates, but it definitely reinforced the process.

Conclusions

The major fluctuation in litigation rates – notably the sharp decline of the number of court cases in the eighteenth century – undermines the accuracy of a process of Verrechtlichung.

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69 In Leiden 94 per cent of the cases related to broken contracts, agreements and unpaid debts, Van Meeteren, Op hoop, 282. There is no reason to assume that the causes for lawsuits were much different in Rotterdam.
71 Regionaal Archief Leiden, Oud Rechterlijk Archief (508), inv. nr. 47LLL, Vredemakersboeken (1759-1765), 47MMM, Vredemakersboeken (1765-1770); Van Meeteren, Op hoop, 240.
Rather the reverse seems to be true: civil courts became less important as litigation rates declined to unprecedented low rates. Processes of professionalisation and the increase of legal costs undoubtedly go far in explaining this decline. Creditors of small amounts of money refrained from going to court as the legal costs and the painstakingly complex procedures did not balance the financial reward of winning the case. This assertion does however not fully elucidate the declining appeal of civil courts, as other courts likewise witnessed decreasing attractiveness for litigants, while costs or complexity of court cases did not increase. Nor does the declining legitimacy of oligarchic urban governance explain the declining litigation rates. Moreover, it is unlikely that ‘infrajustice’ institutions became more active in arbitration. The ebb and flow of court activity relates to social and economic processes far beyond the boundaries of legal and political history.

In explaining declining litigation rates, it is very hard to assess the weight and nature of transformations in social relations during the eighteenth century. Historians have postulated both the waning of social relations and the improvement of interpersonal dealings as explanatory factor. This is however very hard to measure and clearly calls for further elucidation. As most conflicts originated in troubled credit relations, possible changes in the way people engaged in credit may prove fertile ground for understanding the variability of litigation. It is conceivable that people increasingly extended and acquired credit through formalised procedures. A formal agreement can of course still be broken and end in court. A breach of contract yet probably led to more conflicts in case of informally agreed stipulations. This avenue of research, however, remains to be explored.