

## Judging Migrants

*Towards a New Research Agenda on Social Control, Local Conflict and the Judicial Position of Migrants in the Early Modern Dutch Republic*

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### Abstract

The Dutch Golden Age is often referred to as a prime example of Dutch tolerance with regard to the 'open' policies towards migration and the harmonious co-existence of migrants with their local neighbours. Considering that, before 1800, migrants made up approximately 25 to 60 percent of the urban communities of the early modern Dutch Republic, and that there is evidence of the rise of many stereotypes about these migrants, this rosy picture of Dutch tolerance is called into question. How exactly this tension between tolerance and the persistence of these stereotypes played out in the daily realities of migrants living in early modern Dutch cities remains an understudied area of research. This article identifies the overlaps between existing research in the fields of migration history, urban history, and social legal history, as well as the areas in which these approaches can further supplement each other. It does so in order to plead the case for the benefits of an integrated history of crime and migration in uncovering new evidence, themes, and patterns in the social history of (urban) migration in the early modern Dutch Republic.

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## Introduction

On 24 January 1750, Jan Gansuijyer, a twenty-nine year old man from Sluissse (most likely Sluis, Zeeland), received a criminal sentence in Amsterdam for various incidents of violence against people in the streets of Amsterdam together with his accomplice, Warnaer van Wierst. Van Wierst verbally abused a man seeking to enter the city through the *Utrechtsepoort* early in the morning of 14 November 1749, calling the man *dief* (thief) and *mof*, a common swearword used in reference to Germans.<sup>2</sup> From the attestation made by eyewitnesses before the notary who worked for the chief officer, we learn that the man who was threatened was Jochem Regter, likely from the German states judging by his name and the nature of the verbal abuse. We might even assume that this Jochem Regter, who was the victim of this abuse, was the same Jochem Regter who travelled with the Dutch East India Company (VOC) to Ceylon in 1760. According to his employment record, his place of origin was Hamburg.<sup>3</sup> Gansuijyer threatened to leave the city through the gate to stab him or throw him into the water. Coming through the gate, Gansuijyer confronted Regter, hit him, threw him to the ground, and kicked him in his side. Afterwards, Gansuijyer and van Wierst ran amok in the city, brandishing knives at random passersby. Gansuijyer received a sentence of public shaming on the scaffold with a knife displayed above his head, public whipping, confinement in the *Rasphuis* (penitentiary) for ten years, and ‘eternal’ banishment from the city. Van Wierst, however, does not appear to have been sentenced alongside Gansuijyer; from a later case against one Warnard van Wierst in 1751, we might tentatively suggest both cases refer to the same man who, in 1751, is recorded as being from Utrecht. We also learn that both Gansuijyer and van Wierst were *volkhouders*, meaning they ran lodging houses for the Dutch East India Company (VOC), which presumably explains the context of this particular conflict.<sup>4</sup> The insights we gain from this source into the lived experiences in early modern Amsterdam

2 ‘Dat hy gev: op den 14e november van den jaere 1749 laestleden, ’s morgens voor agt uuren met eene Warnaer van Wierst by de Utrechtsepoort is koomen ingaen zeecker manspersoon welke door gem[eld]e van Wierst wierd uijtgescholden voor een dief mof en diergelyke scheldwoorden meer.’ Stadsarchief Amsterdam, inv. 5061, De Archieven van de Schout en Schepenen, van de Schepenen en van de Subalterne Rechtbanken, cat. nr. 614, Sententieboeken, f96r.

3 Stadsarchief Amsterdam, Notarieel Archief, 13131\_A31239, f.72-3; Nationaal Archief, 1.04.02, inv. 6389, f.67.

4 Stadsarchief Amsterdam, inv. 5061, De Archieven van de Schout en Schepenen, van de Schepenen en van de Subalterne Rechtbanken, cat. nr. 411, Confessieboeken, f.155v.

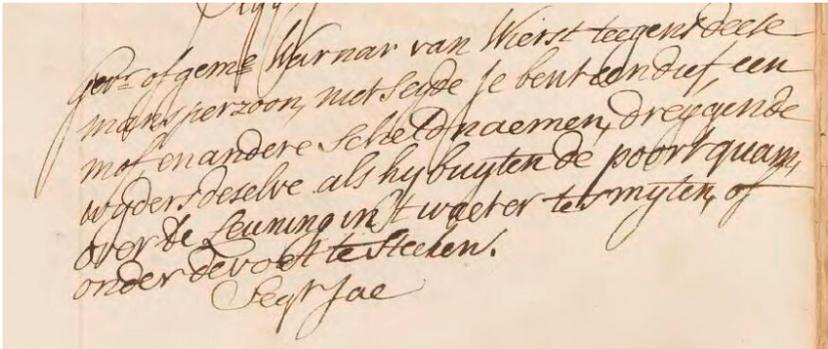


Illustration 1 An image of Jan Gansuijer's court case, in which it was stated that Jochem Regter had been called 'thief' and 'mof' (source: Amsterdam City Archives, inv. 5061, The Archives of the Schout and the Schepenen, of the Schepenen and of the Subalterne Rechtbanken, cat. no. 409, Books of Confession, f.150.)

are threefold: 1) During this conflict, Regter's place of origin evoked a particular racialized form of verbal abuse; 2) the judicial treatment of Gansuijer and Van Wierst differed significantly, despite both being migrants from other regions in the Dutch Republic; 3) Regter relied on the protection of the city and positioned himself within the city's community by replying to Gansuijer that Amsterdam 'is not a city of fights but a city of rights'.<sup>5</sup> Though court records and other judicial sources have rarely been used for this purpose, sources like these give vivid examples of the everyday tensions between the various groups of inhabitants in the cities of early modern Holland, as well as the stereotyping and violence that it could often result in.

The Dutch Republic, especially during the 'Golden Age', attracted a large variety of migrants, and Dutch historians have long been keen to point out its economic prosperity and the tolerant and open climate as 'pull factors' for most of these migrants.<sup>6</sup> The everyday encounters of inhabitants of the early modern Dutch Republic with all sorts of 'strangers' not only created a multitude of perspectives on migrants, but also gave rise to many stereotypes, especially of newcomers from

5 Stadsarchief, Notarieel Archief, 13131\_A31239, 72-3.

6 J. Lucassen, *Naar de kusten van de Noordzee. Trekarbeid in Europees perspectief 1600-1900* (Gouda 1984); J.L. van Zanden, *Arbeid tijdens het handelskapitalisme* (Bergen 1991); L. Lucassen and B. de Vries, 'The rise and fall of a Western European textile-worker migration system: Leiden, 1586-1700', *Revue du Nord* 15 (2001) 23-42; B.J. Kaplan, 'Dutch religious tolerance. Celebration and revision', in: R. Po-chia Hsia and H.F.K. van Nierop (eds), *Calvinism and religious toleration in the Dutch Golden Age* (Cambridge 2002) 8-26, 8-9. For a recent summary: L. Lucassen and J. Lucassen, *Vijf eeuwen migratie. Een verhaal van winnaars en verliezers* (Amsterdam 2018).

German regions, as the case above makes clear.<sup>7</sup> Indeed, studies have shown the increased tensions within specific early modern communities in response to high levels of migration.<sup>8</sup> Still, the Dutch Golden Age is often referred to as a prime example of Dutch tolerance. Generally, this idea of tolerance is used to refer to the emphasis on religious freedom and ‘open’ policies towards migration within the Dutch Republic.<sup>9</sup> How exactly the tensions between tolerance and stereotypes played out within the daily realities of migrants in early modern Dutch cities is not specified and remains an understudied area of research within migration history.

The transformational impact of migration on early modern society has been readily established. Historians of migration have demonstrated the effects of migration on early modern European labour markets as well as on the development of social institutions, such as systems of poor relief.<sup>10</sup> More recently however, cultural historian Geert Janssen has called for the inclusion of a ‘cultural history of migration’, which he sees as foregrounding daily practices over long-term trends, in further understanding the transformative effects of migration in the early modern period.<sup>11</sup> Asking a similar question, Benjamin Kaplan has urged us to move beyond attempts at quantifying degrees of tolerance, advocating instead an exploration of ‘the many social and cultural dimensions of confessional coexistence’ that characterized life in

7 Anne Frank Stichting (ed.), *Vreemd gespuis* (Amsterdam/ The Hague 1987); H. Hendrix and T. Hoenselaars (eds), *Vreemd volk. Beeldvorming over buitenlanders in de vroegmoderne tijd* (Amsterdam 1998) 2-12.

8 E. Kuijpers, *Migrantenstad. Immigratie en sociale verhoudingen in zeventiende-eeuws Amsterdam* (Hilversum 2005); G. Dorren, *Eenheid en verscheidenheid. De burgers van Haarlem in de Gouden Eeuw* (Amsterdam 2001) 86; G. Dorren, *Het soet vergaren: Haarlems buurtleven in de zeventiende eeuw* (Haarlem 1998); K. Walle, “Dewijle zo veel hoofden ende sinnen zijn”. De inburgering van Zuid-Nederlandse migranten in vroeg 17e-eeuws Leiden’, *Holland* 39 (2007) 148-164; K. Walle, *Buurthouden. De geschiedenis van burengebruiken en buurtorganisaties in Leiden (14e-19e eeuw)* (Leiden 2005).

9 H. Bots, “Tolerantie of gecultiveerde tweedracht. Het beeld van de Nederlandse tolerantie bij buitenlanders in de zeventiende en achttiende eeuw”, *BMGN – Low Countries Historical Review* 107:4 (1992) 657-669, 659. See also: L. Lucassen and W. Willems, *Waarom mensen in de stad willen wonen* (Amsterdam 2009); and, for Leiden, see: C.A. Davids, ‘Migratie te Leiden in de achttiende eeuw. Een onderzoek op grond van de acten van cautie’, in: H.A. Diederiks *et al.* (eds), *Een stad in achteruitgang. Sociaal-historische studies over Leiden in de achttiende eeuw* (Leiden 1978) 146-192.

10 A. Winter and B. De Munck, *Gated communities? Regulating migration in early modern cities* (Farnham 2012); J. van Lottum, *Across the North Sea. The impact of the Dutch Republic on international labour migration, c. 1550-1850* (Amsterdam 2007).

11 G.H. Janssen, ‘The republic of refugees. Early modern migrations and the Dutch experience’, *Historical Journal* 60:1 (2017) 233-252.

the early modern Dutch Republic.<sup>12</sup> This article considers how social historians of the early modern Dutch Republic can answer this call. It argues that foregrounding daily practices cannot only be achieved by engaging in a ‘cultural history of migration’, but can also benefit considerably from the socio-historical approach of using legal sources to further explore co-existence in practice.<sup>13</sup> As the case of Jan Gansuijer demonstrates, these sources hold a wealth of information on the everyday relations and tensions between the inhabitants of the densely populated early modern cities of the Dutch Republic. As yet, however, legal sources have not been systematically mined for this purpose.

This article puts forth a research agenda that brings existing research in the fields of migration history, urban history, and social legal history together, as well as pointing to the areas in which these approaches can further augment each other. It does so in order to plead the case for the benefits of an integrated history of crime and migration in uncovering new evidence, themes, and patterns in the social history of (urban) migration in the early modern Dutch Republic. It will start by looking at developments in the historiography of crime and social control, which different historians have taken in diverse directions to understand the various ways in which ‘deviant’ behaviour was defined and regulated, both through instances of top-down and bottom-up regulation and control. Nonetheless, these insights have not yet been systematically applied to the interactions of migrants before the courts or within the various urban communities.

Debates on migration in the social sciences have raised the question of whether increased ethnic diversity leads to reduced social cohesion and increased conflict within communities.<sup>14</sup> This debate on social cohesion has mainly addressed the effects of contemporary migration, yet questions of boundary-building and boundary-defense on the basis of ‘origin’ between ‘in-groups’ and ‘out-groups’ are just as crucial in understanding ‘the many social and cultural dimensions of confessional coexistence’ in the early modern period.<sup>15</sup> The second half

12 Kaplan, ‘Dutch religious tolerance’, 25-26.

13 See for example: J. Kamp, *Crime, gender and social control in early modern Frankfurt am Main* (Leiden 2019).

14 R. Putnam, ‘E pluribus unum. Diversity and community in the twenty-first century. The 2006 Johan Skytte Prize Lecture’, *Scandinavian Political Studies* 30:2 (2007) 137-174; and, for an overview of the debate since: T. van der Meer and J. Tolsma, ‘Ethnic diversity and its effects on social cohesion’, *The Annual Review of Sociology* 40 (2014) 459-478.

15 Applying the impact of ethnic origin on the assignation of a ‘master status’ as ‘migrant’ or ‘outsider’, in: E. C. Hughes, ‘Dilemmas and contradictions of status’, *American Journal of Sociology* 50 (1945) 353-

of the article will show that where the integration of migrants in the early modern period has been studied, this process has been framed within assessments of the regulation of migrant mobility, highlighting vagrancy and poor relief laws and regulations in particular. Not only did the regulation of mobility and ideas on who was considered an ‘outsider’ change over time, but economic hardship further led to the increased regulation of migration. At the same time, it has also been suggested that migrants became increasingly overrepresented in criminal cases in times of economic decline.<sup>16</sup> As yet, however, the insights of new strands of research on over-representation and ‘crimmigration’ – the convergence of criminal and migration law – in migration history have not been applied to the early modern period, despite numerous indications of biased systemic policing of migrants across the justice systems of early modern cities.<sup>17</sup>

As this article will make clear, there is a solid foundation of work both in the history of crime and social control as well as in the history of migration to build upon. Questions on the long-term mobility and integration of migrants have been readily addressed in the literature. As yet, however, systematic surveys of the daily realities of how migrants related to both the judicial institutions and the social networks of their communities are lacking. This article reviews the existing historiography for the Dutch (and wider Northern European) early modern period in order to identify the lacunae in previous work and to put forth a new research agenda that foregrounds judicial sources as a lens onto the daily social relations between locals and migrants.<sup>18</sup>

359 to the early modern period demonstrates one way of answering Janssen's call to understand the realities of social and cultural co-existence.

16 S. Faber, *Strafrechtspleging en criminaliteit te Amsterdam 1680-1811. De nieuwe menslievendheid* (Arnhem 1983); T. Balvers, *Verdraagzaamheid in 18e-eeuws Rotterdam. Een vergelijkend onderzoek naar de bestrafing van criminele migranten in Rotterdam* (MA Thesis, Leiden 2014).

17 M. De Koster and H. Reinke, ‘Policing minorities’, in: A. Johansen and P. Knepper (eds), *Oxford handbook of the history of crime and criminal justice in Europe and North America, 1750-1945* (Oxford 2016) 268-304; M.C. Blanc-Chaléard (ed.), *Police et migrants. France 1667-1939* (Rennes 2001); M.H.D. van Leeuwen, *The logic of charity. Amsterdam, 1800-1850* (Basingstoke 2000); M.H.D. van Leeuwen, ‘Overrun by hungry hordes? Migration and poor relief in the Netherlands, sixteenth to twentieth centuries’, in: S. Hindle and A. Winter, *Settlement and belonging in Europe, 1500-2000: Comparative perspective* (New York 2013) 173-203; A. Winter and T. Lambrecht, ‘Migration, poor relief and local autonomy. Settlement policies in England and the southern Low Countries in the eighteenth century’, *Past and Present* 218:1 (2013) 91-126; Kamp, *Crime, gender and social control*.

18 The historiographic review presented in this article forms the basis for two PhD projects currently being researched as part of the NWO project *Tolerant migrant cities? The case of Holland 1600-1900* [<https://www.nwo.nl/projecten/40618hw008-0>]

## Regulating behaviour: The history of (urban) crime and control

The histories of crime and criminality have long had their roots in the discussions around the concept of 'social control'. This concept was first introduced in 1901 by economist and sociologist Edward Alsworth Ross as a way of expressing that society was no more than an abstract concept. According to Ross, it was the behaviour of individuals that affected and regulated the behaviour of other individuals through the contribution towards a 'collective mind' of ideals, traditions, and institutions.<sup>19</sup> The concept was picked up by historians a little later. According to Aries van Meeteren, it was mostly applied in a unilateral way, in which social control was regarded as the manner of ways in which the governing elite tries to enforce certain norms of behaviour on the people. The focus of this historical research remained very much on social control as policy and regulation.<sup>20</sup> The interest of historians in top-down regulatory forms of social control such as criminal policy and policing led to a wave of legal histories, published in the 1970s, which looked at the justice system as a coherent regulatory tool over the behaviour of a uniform population.<sup>21</sup> Studies such as these have been criticized by Florike Egmond, among others, for relying too heavily on the works of Foucault and Elias, and not coming from an explicit vision of societal criticism. According to Egmond, the angle, especially in Dutch historiography, has too often been top-down, and too focused on this notion of a coherent state.<sup>22</sup>

The shift towards *criminaliteitsgeschiedenis* (criminal history), however, altered the focus from regulation history towards criminal history, taking into account the gap between norm and practice. Although this shift resulted in a myriad of quantitative studies on crime,

19 P. Spierenburg, 'Social control and history. An introduction', in: C. Emsley, E. Johnson, and P. Spierenburg (eds), *Social control in Europe. Volume 2, 1800-2000* (Columbus 2004) 1-22, 2-3.

20 A. van Meeteren, *Op hoop van akkoord. Instrumenteel forumgebruik bij geschilbeslechting in Leiden in de zeventiende eeuw* (Hilversum 2006) 13.

21 Faber, *Strafrechtspleging en criminaliteit*; P. Spierenburg, *Judicial violence in the Dutch Republic. Corporal punishment, executions, and torture in Amsterdam, 1650-1750* (Amsterdam 1978); L.T. Maes, *Vijf eeuwen stedelijk strafrecht. Bijdrage tot de rechts- en cultuurgeschiedenis der Nederlanden* (Antwerpen 1947); P. Spierenburg, *The spectacle of suffering. Executions and the evolution of repression. From a preindustrial metropolis to the European experience* (Cambridge 2008).

22 F. Egmond, 'Recht en krom. Corruptie, ongelijkheid en rechtsbescherming in de vroegmoderne Nederlanden', *BMGN – Low Countries Historical Review* 116:1 (2001) 1-33, 2-4.

the emphasis remained on top-down, government-centered control.<sup>23</sup> In one such collection, Stanley Cohen and Andrew Scull argue that social order is maintained primarily by legal systems, police forces, asylums, and prisons and that social control should be understood as a mainly negative category opposing 'benevolent intentions'. To Cohen and Scull, social control entails the labelling of deviance and the checking of deviant people and their behaviour.<sup>24</sup>

In the course of the 1970s, historical research into 'social control' was expanded. In addition to criminal history, attention was now also paid to extrajudicial institutions and their agendas. A collection of essays edited by A.P. Donajgrodzki is claimed to have been the first collection of historical essays making explicit use of the concept of 'social control'.<sup>25</sup> The essays in this collection deal mostly with non-state forms of control through subjects like poor relief, charities, and educational policy, viewing social order as being upheld through 'a wide range of social institutions from religion to family life', and not just through legal systems and policing.<sup>26</sup> Other historians, like Herman Roodenburg, started looking into church discipline as a means of social control, but attention also shifted towards secular extrajudicial instances with private justice systems such as guilds and neighbourhoods.<sup>27</sup> Although historians distanced themselves from the notion of social control as merely government repression by moving from criminal history towards a focus on extrajudicial forms of social control, the historiographical emphasis remained on a top-down perspective of institutional control and regulation.<sup>28</sup>

23 See, for example: A. Soman, 'Deviance and criminal justice in western Europe, 1300-1800: an essay in structure', *Criminal Justice History* I (1980) 1-28; S. Cohen and A. Scull (eds), *Social control and the state* (London 1983); H.A. Diederiks (ed.), *Strafrecht en criminaliteit* (Zutphen 1988); P. Spierenburg, *The prison experience. Disciplinary institutions and their inmates in early modern Europe* (Amsterdam 1991).

24 Cohen and Scull, *Social control and the state*.

25 A.P. Donajgrodzki, *Social control in nineteenth-century Britain* (London 1977).

26 Spierenburg, 'Social control and history', 6.

27 Van Meeteren, *Op hoop van akkoord*, 14; H. Roodenburg, *Onder censuur. De kerkelijke tucht in de gereformeerde gemeente van Amsterdam, 1578-1700* (Hilversum 1990); H. Roodenburg, 'Naar een etnografie van de vroegmoderne stad. De "gebuyrten" in Leiden en Den Haag', in: P. te Boekhorst, P. Burke and W. Frijhoff (eds), *Cultuur en maatschappij in Nederland 1500-1850. Een historisch-antropologisch perspectief* (Meppel 1992) 219-243; E. Kloek, *Criminaliteit en sekse in de confessieboeken, 1678-1794* (Hilversum 1990).

28 Van Meeteren, *Op hoop van akkoord*, 14. For a critique on that top-down approach, see: L. Lucassen, 'Administrative into social control. The aliens police and foreign female servants in the Netherlands, 1918-1940', *Social History* 27:3 (2002) 327-342.

## Bottom-up regulation: the uses of justice and agency in the cities of the early modern Dutch Republic

Eventually, the idea of treating the history of crime from a bottom-up perspective gained ground. Though originally introduced by legal anthropologists, this perspective was picked up by historians no longer considering courts of laws and other institutions of conflict settlement as the only determining factors in procedures of conflict resolution. Within this perspective two core ordering principles of early modern European cities, as identified by Lotte van de Pol, stand central: citizenship and honour.<sup>29</sup> Changing ideas on belonging and honourability were interwoven into the everyday reality and choices of people from varying social groups. Social order and the many different ways in which disputing people chose to resolve their conflicts had everything to do with their social status and notions of who was honourable and what behaviour could lead to a dishonourable reputation.

Starting with Natalie Zemon Davis's *Fiction in the archives* (1987), the way in which every person, whether they be plaintiffs, suspects, witnesses, or victims, constructed their own story to their advantage in court has become an important part of research into criminal history.<sup>30</sup> Malcolm Gaskill took this one step further by not only taking into consideration the narratives performed in court, but also the behaviour and words of witnesses during the pre-trial procedure. He argues that these ordinary men and women played a crucial role in English accusatory justice because it was ultimately their words and choices that brought a case to court. Instead of using the judicial source material of their registered statements merely to flesh out the circumstances of the crime, Gaskill argues that these sources deserve attention as meaningful narratives in their own right that can 'yield clues about the motives and intentions of the people directly responsible for their existence as documents'.<sup>31</sup> This methodological standpoint has opened the field of criminal history to more ways of approaching court material from a bottom-up perspective. Some historians have accordingly gone on to analyze how disputing parties themselves managed to influence

29 L.C. van de Pol, 'Prostitutie en de Amsterdamse burgerij. Eerbegrippen in een vroegmoderne stedelijke samenleving', in: Te Boekhorst, Burke and Frijhoff (eds), *Cultuur en maatschappij in Nederland 1500-1850*, 179-218.

30 N. Zemon Davis, *Fiction in the archives. Pardon tales and their tellers in sixteenth-century France* (Cambridge 1987).

31 M. Gaskill, 'Reporting murder. Fiction in the archives in early modern England', *Social History* 23:1 (1998) 1-30.

these procedures by, for example, choosing to either ignore a conflict, to try to solve the conflict on their own, or to involve a judicial or non-judicial third party in their process of resolving a conflict.<sup>32</sup>

This bottom-up perspective has further expanded the definitions and uses of the concept of social control. According to Pieter Spierenburg, since social control involves a multifaceted system of practices and beliefs, from conflict settlement to the regulation of behaviour and the enforcing of certain norms, the concept itself 'draws attention to the relationships between various mechanisms inducing people to act in a way that is desirable according to a certain standard or ideal'.<sup>33</sup> Using 'social control' as a lens onto early modern times requires a broad and open definition of the concept that fits the complexity of early modern society – described by Michael Ignatieff as a 'densely woven fabric of permissions, prohibitions, obligations and rules, sustained and enforced at a thousand points'.<sup>34</sup> Such a broad and open definition was provided by Martin Dinges who, following the sociologist Donald Black, envisioned social control as 'all forms by which people define deviant behaviour and react on it by taking steps'.<sup>35</sup>

The work of Dinges has been hugely influential in igniting a new wave of studies on the agency of 'the ordinary person' in relation to the justice system, by focusing on the plaintiffs, rather than the court prosecutors.<sup>36</sup> Within his 'uses of justice' approach, Dinges not only re-centers the narrative on the voice of the plaintiffs but also emphasizes the importance of the 'tolerance threshold' of the plaintiff's social environment and aims over the severity of a criminal act as defined in legal texts.<sup>37</sup> Here, too, we see Van de Pol's ordering principles of honour and citizenship at play, as these tolerance thresholds demonstrate both the ubiquity of informal settlements and their limitations in enabling integration.<sup>38</sup> The question of how social control functions in any society is linked directly to the question of who has control. When historians start looking at social control from a bottom-up perspective,

32 Van Meeteren, *Op hoop van akkoord*, 14.

33 Spierenburg, 'Social control and history', 10.

34 M. Ignatieff, 'State, civil society, and total institutions. A critique of recent social histories of punishment', *Crime and Justice* 3 (1983) 153-192.

35 H. Roodenburg, 'Social control viewed from below. New perspectives', in: H. Roodenburg and P. Spierenburg (eds) *Social control in Europe, 1500-1800* (Columbus 2004) 145-158, 147.

36 M. Dinges, 'The uses of justice as a form of social control in early modern Europe', in: Roodenburg and Spierenburg (eds), *Social control in Europe, 1500-1800*, 159-175.

37 Dinges, 'The uses of justice', 165.

38 *Ibid.*, 169.

it raises the question of agency, in particular: who had it, and how did they use it? Such questions about agency have been particularly important in research considering marginalized or overlooked groups, such as women or enslaved people.

The theory of Dinges's 'uses of justice' has been taken further and quantitatively explored in studies focusing on urban communities. One striking example is the work of Robert Shoemaker and Tim Hitchcock, who researched the interactions of the ordinary people of early modern London with the English justice system. Adopting the term 'pauper agency', Shoemaker and Hitchcock demonstrate how the 'institutional doppelgängers of criminal justice and poor relief' – crime and poverty – were influenced and moulded by the demands and actions of plebeian Londoners with direct impact on the emergence of 'the most complex and expansive system of police and justice, relief and charity Britain had ever seen'.<sup>39</sup> Unlike Zemon Davis and Gaskill, who focused their research mainly on witnesses within the justice system, and Dinges, whose theory takes into consideration the motives and behaviour of plaintiffs, Shoemaker and Hitchcock focus their analysis on the accused criminals themselves. For early modern Europe more broadly, important works such as *The Uses of Justice in Global Perspective* (2019) have studied multiple and various instances of the use of judicial and extrajudicial structures by their users, demonstrating that 'ordinary people knew what judicial options were available to them, and they seem to have weighed the consequences attached to these options'.<sup>40</sup> In this manner, the legal agency of social groups that have generally been assumed to have had little to no agency has been uncovered.

These insights into the legal agency of ordinary people are part of a more general historiographic debate on agency that was boosted by Walter Johnson's 'On Agency'. Johnson addressed the influence of changes in the present on the way we address the past and the motivations behind the attribution of agency to marginalized people in the past.<sup>41</sup> Though Johnson's theorization focuses on the history of slavery, for which he prescribes a disentanglement of 'agency', 'humanity', and 'resistance', the debate it sparked has had notable impact on the field of gender history as well as the history of slavery. As

39 R.B. Shoemaker and T. Hitchcock, *London lives. Poverty, crime and the making of a modern city, 1690-1800* (Cambridge 2015).

40 G. Vermeesch, M.P.C. van der Heijden and J. Zuijderduijn (eds), *The uses of justice in global perspective, 1600-1900* (Abingdon 2019).

41 W. Johnson, 'On agency', *Journal of Social History* 37:1 (2003) 113-124.

indicated by Martha Howell, ensuing research on ‘agency’ (particularly agency of women) ‘has measurably enriched and complicated the historical record. Most of the women’s historians publishing during the last half century or so necessarily concentrated on correcting an historical record that had all but ignored women, thus seeking to expose what were usually described as “women’s roles” in society’.<sup>42</sup>

For scholars such as Anne Montenach and Deborah Simonton, looking anew at the agency of women in relation to the early modern European economy uncovers evidence of women having had a tangible contribution to urban society as well as the construction of urban gender identities. This despite the portrayal of urbanization as largely a ‘product of masculine agency’ in urban history studies.<sup>43</sup> According to Montenach and Simonton, the agency of women can be found in ‘the variety of everyday interactions in which women accommodated, negotiated or manipulated social rules and gender roles’.<sup>44</sup> Other scholars, such as Danielle van den Heuvel, have demonstrated that a refocusing on everyday practices and the materiality of the urban city itself leads to new conclusions in which the agency of women is foregrounded. In particular, research into interactions on establishing control over the street transcend the binaries of top-down or bottom-up or of authority and disorder; instead, ‘conflict and subtler forms of negotiation are to be found side by side’.<sup>45</sup> Yet, for other scholars, such as Martha Howell, caution must be taken when labelling such interactions as evidence of women having had agency; for Howell, the very requirement of women in early modern Europe to negotiate, accommodate, or manipulate social rules and gender roles demonstrates that this form of female agency can only be seen as a product of the patriarchal structure itself. In her words, ‘[female] agency was achieved by circumventing rather than confronting or altering conventional norms’.<sup>46</sup>

Though the debate on agency between gender historians does not center on urban crime history specifically, the questions of individual

42 M. Howell, ‘The problem of women’s agency in late medieval and early modern Europe’, in: S.J. Moran and A.C. Pipkin, *Women and gender in the early modern Low Countries, 1500-1750* (Leiden 2019) 21-31, 21.

43 A. Montenach and D. Simonton, *Female agency in the urban economy. Gender in European towns, 1640-1830* (New York 2013) 1-2.

44 Montenach and Simonton, *Female agency*, 5.

45 D. van den Heuvel, ‘Gender in the streets of the premodern city’, *Journal of Urban History* 45:4 (2018) 693-710, 701.

46 Howell, ‘The problem of women’s agency’.

agency in relation to institutional and social structures clearly overlap with questions that scholars building on Dinges's 'uses of justice' must also ask. It is in the field of gender and crime that these questions of social control and agency have up until now most clearly come together. Studies into gendered patterns of violence and subsistence have demonstrated the wide range of measures available to early modern women to negotiate and accommodate the various challenges of their daily lives. Manon van der Heijden has applied Dinges's concept of the 'uses of justice' to show how families made use of formal and semi-formal procedures to get justice in relation to alcohol abuse and (domestic) violence.<sup>47</sup> Similarly, Jeannette Kamp has pointed out that in the criminal investigation records of early modern Frankfurt only few domestic cases were prosecuted formally, demonstrating instead how women could make use of systems of strong informal control within the household to obtain some form of justice informally.<sup>48</sup> Looking more specifically at the position of single migrant women in the Dutch Republic, Manon van der Heijden and Ariadne Schmidt have illuminated the various options for single women to get justice, including: Protestant consistories, civil lawsuits, paternity action, and the appeal for the power to legally represent absent husbands (such as those sailing under the Dutch East India Company).<sup>49</sup> Across these studies, the high rates of female crime have been framed in terms of whether these suggest that women acted either out of a state of vulnerability, or out of independence that came from having more opportunities for action than is often assumed.

Although the impact of migration and migrant status on female crime rates and female interactions with the justice system have been explored somewhat in these works, the 'uses of justice' by and against migrants more generally have not been a systematic field of research. This gap persists despite clear overlaps in the questions of vulnerability and agency with the field of crime and gender, as well as the similar challenges faced by migrants in their everyday lives. As was recently argued by Justyna Wubs-Mrozewicz in her article on multi-level conflicts and conflict management in pre-modern commercial cities, high levels of mobility definitely heightened the complexity of

47 M. van der Heijden, *Women and crime in early modern Holland* (Leiden 2016).

48 J. Kamp, *Crime, gender and social control*.

49 A. Schmidt and M. van der Heijden, 'Women alone in early modern Dutch towns. Opportunities and strategies to survive', *Journal of Urban History* 42 (2016) 21-38.



*Illustration 2 People fleeing enemy advance during a war, painting by Sebastien Vrancx (source: Municipal museum St Léger, Soissons.)*

conflicts which appeared there.<sup>50</sup> Applying the insights of the concept of the ‘uses of justice’ to the daily lives and interactions and conflicts of migrants with their neighbours and with the wider criminal justice system as a whole would allow us to further understand the many and various ways in which migrants could access forms of justice or have similar systems of social control used against them.

## **Regulating mobility: vagrancy, poor relief, and the criminalization of migration**

The case for looking at the everyday realities for migrants in the early modern Dutch Republic becomes clear when considering the centrality of mobility and migration to early modern European life. During the sixteenth and seventeenth centuries some 600,000 foreigners settled in the Dutch Republic, the majority in the province of Holland.<sup>51</sup> At the

50 J. Wubs-Mrozewicz, Conflict management and interdisciplinary history. Presentation of a new project and an analytical model; *TSEG-The Low Countries Journal of Social and Economic History* 15:1 (2018) 89-107.

51 L. Lucassen and J. Lucassen, *Winnaars en verliezers. Een nuchtere balans van vijfhonderd jaar immigratie* (Amsterdam 2011) 30. The religious wars of the sixteenth and early seventeenth centuries

same time, the urbanized coastal cities of the province of Holland also became attractive destinations for large numbers of migrants settling there from other cities and provinces within the Dutch Republic itself. In the early modern period, the legal boundaries between provinces and towns were as important in demarcating 'newcomers' from 'locals' as one's country of origin. Often, all sorts of people from outside the city walls were referred to as 'strangers' or *vreemdelingen* – as a category opposing the city's freemen or 'burghers' (*burgers* or *poorters* in Dutch) – and later, with the arrival of these many migrants, also a third category of 'residents' or *ingezetenen*.<sup>52</sup> Being a newcomer was not necessarily antithetical to the status of 'citizen', since citizenship largely entailed the guarantee of certain economic rights and could be purchased by migrants; in 1607 the magistrates of Amsterdam, for example, famously declared that 'strangers' and those who held formal citizenship would enjoy the same legal status in all financial transactions.<sup>53</sup> To keep the economy flowing, the demand for workforce, especially in the sixteenth century, was great both in cities and in rural areas. Strangers were more than welcome to fulfill this need, contributing to the Republic's high degree of urbanization and a steady stream of (seasonal) migration.

Large numbers of migrants like this are bound to significantly influence the social cohesion of the receiving region, an effect that has not gone wholly unacknowledged.<sup>54</sup> Robert Putnam, for example, has researched the influence of immigration and ethnic diversity on social cohesion in the US and argues against the common assumption that in-group trust and out-group trust are negatively correlated. He concludes,

resulted in the influx of large numbers of French, Walloon, and Flemish migrants fleeing the consequences of war in their home regions. They only constitute a quarter of the total inflow, however; the majority of immigrants were labour migrants. On top of the 600,000 immigrants, between 1600-1800 almost half a million sailors flocked to the harbour cities to enlist in the East India Company (VOC). See: J. Lucassen and J. van Lottum, 'Six cross-sections of the Dutch maritime labour market. A preliminary reconstruction and its implications (1610-1850)', in: R. Gorski (ed.), *Maritime labour in the northern hemisphere c. 1750-1950* (Amsterdam 2007) 13-42. Another 30,000 German seasonal workers were active between spring and fall in the coastal provinces. See J. Lucassen, *Migrant labour in Europe. The drift to the North Sea* (London 1987).

52 For a more extensive overview of early modern Dutch urban society, see for example: Te Boekhorst, Burke and Frijhoff, *Cultuur en maatschappij in Nederland 1500-1850*, 109-147; L. Lucassen and W. Willems, *Living in the city. Urban institutions in the Low Countries, 1200-2010* (New York 1992); M. Prak and L. Hesselink, 'Stad van gevestigden 1650-1730', in: W. Frijhoff and M. Prak (eds), *Geschiedenis van Amsterdam vol 2. 1. Centrum van de wereld, 1578-1650* (Amsterdam 2004) 89-149; W. Frijhoff and M. Prak, 'Zelfbewuste stadstaat 1650-1813', in: Frijhoff and Prak (eds), *Geschiedenis van Amsterdam*, 9-13.

53 G. Janssen, 'Migration', in: G. Janssen and H. Helmers (eds), *The Cambridge companion to the Dutch Golden Age* (Cambridge 2018) 56.

54 For an elaborate example of how early modern societies changed due to the arrival of migrants see: Kuijpers, *Migrantenstad*.

however, that, in the US, diversity can often lead – at least temporarily – to an overall withdrawal from public life and thus to less social cohesion.<sup>55</sup> More recently, Tom van der Meer and Jochem Tolsma have reacted to the assumed detrimental effect of ethnic diversity on social cohesion. They argue that evidence to support Putnam's claim can only be found to a limited extent and, more importantly, that there is even less evidence for a negative relation between ethnic diversity and interethnic social cohesion outside of the US.<sup>56</sup> Instead they point at the importance of institutional and distributional factors in increasing or decreasing trust at the neighbourhood level.

Despite the application of Putnam's 'constrict hypothesis' to the Netherlands showing much more nuanced results, policy makers usually remain insistent upon the dominant discourse of the negative effect of ethnic concentration on integration and cohesion in society.<sup>57</sup> The dominant political and public debates in the Netherlands often focus on the way ethnic segregation forms an obstacle for individual migrants' possibilities to advance socio-economically, and the ways in which an increase in ethnic diversity can create tensions and thus threaten the social cohesion in a neighbourhood. What is generally left out of these debates are the more nuanced or even positive effects of ethnic clustering, for example, the ways that it can promote solidarity, encourage economic activity, and even provide protection against discrimination and racism, as has been illustrated by the vast range of work on 'superdiverse' neighbourhoods in the last twenty years.<sup>58</sup>

Research into the effects of ethnic diversity, however, is often based on empirical evidence – something that is much harder to achieve when researching a time other than the present. Although in debates about modern-day migration the concept of integration is often used to discuss degrees of social cohesion, we agree with Erika Kuijpers that it is difficult to measure integration or assimilation of migrants in the early modern period.<sup>59</sup> Instead, we choose to focus on the effects of migration on notions of 'belonging' and on social coexistence in practice.

55 Putnam, 'E pluribus unum', 137-174.

56 T. van der Meer and J. Tolsma, 'Ethnic diversity and its effects on social cohesion', *Annual Review of Sociology* 40 (2014) 459-478.

57 R. Staring and B. Van Stokkom, 'Superdiversiteit, wijken van aankomst en conflicten. Een inleiding', *Tijdschrift over Cultuur en Criminaliteit* 7:1 (2017) 7.

58 On superdiversity: see, for example, this special issue of the Dutch journal of culture and criminality (on superdiversity, neighbourhoods of arrival, and conflict): *Tijdschrift over Cultuur en Criminaliteit* 7 (2017).

59 Kuijpers, *Migrantenstad*, 27-28. Although it should be noted that from her work we can deduce

Flows of migration influenced already ever-changing notions of who belonged and who did not and often gave rise to a greater need to control and regulate these strangers. The label of 'vagrant', for example, was elastic enough to cover the most varying forms of geographic mobility, and the policing or persecution of vagrancy varied greatly in intensity throughout early modern Europe.<sup>60</sup> External factors like economic fluctuations could affect both a city's or a neighbourhood's authorities' reactions to vagrancy and the way newcomers were treated by local city dwellers. However, according to Lien Bich Luu, economic considerations were secondary to security and political issues. At least, this was the case for London's government policies towards refugees in the mid-fifteenth century.<sup>61</sup> More recently, W. Mark Omrod, Bart Lambert, and Jonathan Mackman have placed the emphasis back on the importance of economic motivations for policy and the general treatment of 'aliens' in England during that time.<sup>62</sup> Instead, they point to ways in which economic concerns resulted in many of the discriminatory measures taken against minorities and highlight contemporary concerns about the protection of English jobs for English men during economic recession, as well as the influence of Londoners' agendas on the invention and management of the 'alien problem'.<sup>63</sup>

As Roodenburg has shown, a high urbanization rate and overpopulation could also be cause for a variety of top-down and bottom-up reactions towards newcomers.<sup>64</sup> Increased regulation over migrants occurred in periods of economic decline and unemployment in order to prevent overburdening systems of poor relief, ensure public order, and regulate the labour market. Individuals and groups were even more vulnerable for persecution when the local population perceived them as 'unbound outsiders'.<sup>65</sup> According to Barry Godfrey *et al.*, standing out as an outsider in combination with a lack of informal networks, much

that part of the (lower-skilled) migrants in Dutch cities, especially those from German states and Scandinavia, ended up in the urban proletariat and experienced what more recently has been termed 'segmented assimilation'. See: M. Zhou, 'Segmented assimilation. issues, controversies, and recent research on the new second generation,' *International Migration Review* 31 (1997) 975-1008.

60 M. De Koster, 'Migranten en minderheden in het vizier van staat en politie,' *Tijdschrift voor Criminologie* 57 (2015) 429-434; L. Lucassen, 'A blind spot. Migratory and travelling groups in Western European historiography,' *International Review of Social History* 38 (1993) 209-235.

61 L. Luu, *Immigrants and the industries of London, 1500-1700* (Ashgate 2005).

62 W. Omrod, B. Lambert and J. Mackman, *Immigrant England, 1300-1550* (Manchester 2019) 194-196.

63 Omrod, Lambert and Mackman, *Immigrant England*, 35, 194.

64 Roodenburg, 'Naar een etnografie van de vroeg-moderne stad,' 219-243.

65 L. Lucassen, 'Cities, states and migration control in Western Europe. Comparing then and now', in: De Munck and Winter (eds), *Gated communities?*, 217-240.

more than cultural, religious or ethnic differences, often gave migrants an unfavourable position within the criminal justice system.<sup>66</sup> There were, of course, notable exceptions, such as Jewish migrants or groups of Romany who, through the particular ethnic profiling of authorities, often faced separate and distinct methods of trial and prosecution than the rest of the early modern Dutch Republic's population.<sup>67</sup>

Where social control over migrants has been the topic of research, it has been mainly focused on top-down strategies of authorities and policies or regulations in relation to poor relief and mobility. Margo De Koster and Herbert Reinke, for example, give an overview of the way in which, from the sixteenth century onward, migrants and travelling groups increasingly became the subject of public and official interests, and attempts to regulate their movements through vagrancy policies and poor relief systems arose.<sup>68</sup> De Koster and Reinke advocate placing current debates on the policing of minorities in the much longer history of the policing of migrants because, they suggest, regulation and control of migrants has been a core phenomenon in the development of modern-day police and a driving force behind the professionalization of the police ever since the *ancien régime*.<sup>69</sup> The regulations imposed on migrants depended significantly on the labour needs of individual cities as well as their abilities to support migrant workers who found themselves (even temporarily) without work. According to Marco van Leeuwen, in his study on migration and the Dutch poor relief system, this situation was also cause for a system to arise in many of the cities in which newcomers were forced to provide a 'letter of indemnity', or *borgbrief*, at the city gates. In practice, it meant that migrants who could not be vouched for and could thus become a financial liability could either be turned away upon arrival or at least be evicted within their first year inside the city walls.<sup>70</sup> Although Van Leeuwen is not the first to make a connection between a declining labour market and the rise of these letters of indemnity – Karel Davids had already linked them for Leiden – he takes the connection between poor relief and mobility further by arguing that such regulations were not just a unidirectional reaction to migration and the state of the labour market but that, in

66 B. Godfrey, C. Williams and P. Lawrence, *History & Crime* (Los Angeles 2008).

67 F. Egmond, *Underworlds. Organized crime in the Netherlands 1650-1800* (Oxford 1993).

68 De Koster and Reinke, 'Policing minorities', 268-304; K. Härter (ed.), *Policey und frühneuzeitliche Gesellschaft* (Frankfurt am Main 2000).

69 De Koster and Reinke, 'Policing minorities', 268.

70 Van Leeuwen, 'Overrun by hungry hordes?', 186-189.

turn, poor relief arrangements influenced the extent and direction of migration flows themselves.<sup>71</sup>

Anne Winter and Thijs Lambrecht, however, point out that it is important to ‘downscale the role of legislation in shaping reality in the domain of poor relief and settlement to its true proportions’.<sup>72</sup> They argue that actual policies towards both migrants and the poor were often determined mainly by local concerns and challenges, as well as shaped by various inter-parish and intra-parish decisions and bargaining processes. ‘National or regional legislation at best provided only a broad framework – an arena – in which these bargaining processes took place, but within this framework, local interest groups and authorities “played within the rules” to manipulate existing practices to their benefit.’<sup>73</sup> In Bert De Munck and Anne Winter’s *Gated Communities*, this premise is expanded on through the idea that: ‘merchants, entrepreneurs, small-scale artisans, workers, relief payers, relief recipients and local and central administrations could all have different and often opposing interests with regard to the influx and incorporation of urban migrants in early modern Europe’.<sup>74</sup> This thinking ties in with the earlier mentioned shift in research towards a broader definition of ‘social control’, consisting also of non-state or extrajudicial institutions and their agendas. It forms an important example of how competing agendas and interests could have an impact on both judicial and extrajudicial institutions and their policies that were aimed at controlling migrants, vagrants, and the poor.

## **Towards a new perspective on discriminatory regulation: Crimmigration in the early modern Dutch Republic**

The increased regulation of ‘outsiders’ was not just limited to considerations of those who were welcome and those who were sent onward, but also had a clear impact on the regulation of those ‘newcomers’ once they were within the city limits. Historians such as Leo Lucassen have pointed to the similarities between modern migration

71 Van Leeuwen, ‘Overrun by hungry hordes?’, 175; Davids, ‘Migratie te Leiden in de achttiende eeuw’, 146-192.

72 Winter and Lambrecht, ‘Migration, poor relief and local autonomy’, 91-126.

73 *Idem*, 122-123.

74 B. De Munck and A. Winter, ‘Regulating migration in early modern cities. An introduction’, in: De Munck and Winter (eds), *Gated communities?*, 18.

policies and those of early modern Europe, arguing for ‘a difference in scale, but not so much principle’ and emphasizing the continued regulation of migrants once inside the physical city gates.<sup>75</sup> Beyond the territorial regulation of migration, labour and welfare institutions also contribute as forms of regulation, ‘the bottom line [being] that insiders (or the established) have preferential rights compared to outsiders, however they are defined.’<sup>76</sup> Furthermore, since poor migrants were increasingly associated with criminal behaviour and disruption of the public order, influxes of migrants into the cities of early modern Europe often resulted in biased policing and criminal prosecution procedures.<sup>77</sup> In general, then, historians point to the relations between authorities’ views of mobility and criminality, confirming Egmond’s argument that it is ‘at the very point of separating those with fixed domicile from those without that we find the borderline between people with a relatively protected position as regards criminal law and those who are invariably treated harshly by criminal justice.’<sup>78</sup>

Pointing out a similar trend in contemporary criminal law and the distinction between aliens and citizens in the United States, legal scholar Juliet Stumpf coined the term ‘crimmigration’ to denote the increasing merging of criminal law with migration law. Crimmigration is the process of criminalization of migrants, resulting from growing anxieties about security and crime. According to Stumpf, it can be explained by membership theory: decision makers or authorities are provided with the justification necessary for excluding individuals from society, consequently using immigration and criminal law as the means of exclusion.<sup>79</sup> The concept has since been introduced into Dutch research by Maartje van der Woude, Joanne van der Leun, and Jo-Anne Nijland who pointed out how the trends in the political and social discourse on migration in the Netherlands have become more exclusionary and repressive. Since the late 1990s, links between crime, security, migration, and integration have been more readily made as a result of these converging discourses.<sup>80</sup> Van der Leun *et al.* push for

75 Lucassen, ‘Cities, states and migration control’, 238.

76 *Idem*, 238.

77 Blanc-Chaléard, *Police et migrants*; Van Leeuwen, *The logic of charity*; Winter and Lambrecht, ‘Migration, poor relief and local autonomy’.

78 Egmond, *Underworlds*, 53.

79 J. Stumpf, ‘The crimmigration crisis. Immigrants, crime, and sovereign power’, *American University Law Review* 56 (2006) 367-419.

80 M. van der Woude, J. van der Leun and J. A. Nijland, ‘Crimmigration in the Netherlands’, *Law and Social Inquiry* 39 (2014) 561.

a broader definition of crimmigration, arguing that since legislative changes do not evolve in a vacuum, the social context of crimmigration as articulated in both public and political discourse on crime and migration needs to be included.

Crimmigration has been applied as a 'sensitizing concept' for present-day migration regulation as a lens through which to identify the convergence of migration regulation and criminal law into increasingly intolerant discourses and practices. Several indications of this merging are characteristic of crimmigration: the use of harsh penalties for breaching migration laws; harsher punishments for immigrants, compared to native born; mandatory deportation of unwanted newcomers; and the increasing over-presentation of migrants among criminal convictions.<sup>81</sup> Though not applied specifically to the early modern period, growing research shows that these markers of crimmigration are equally visible in early modern Europe. De Koster and Reinke have claimed that the interplay of migration and crime was a continuous issue of official concern from the sixteenth century onward. The developments in migration regulation and law were a crucial impetus behind the expansion and professionalization of the police forces.<sup>82</sup> These developments have led scholars to claim that early modern Europe was characterized by legal inequality and biased prosecution policies.<sup>83</sup>

Legal inequality, as indicated by the overrepresentation of migrants among criminal convictions, has been studied in a number of cases across the early modern Dutch Republic. For early modern Delft, D.J. Noordam concluded that, between 1600 and 1810, only 14 percent of defendants were local born.<sup>84</sup> For early modern Amsterdam, Sjoerd Faber has noted that the overrepresentation of migrants among the accused tended to only be noticeable when the economy started to decline.<sup>85</sup> Herman Diederiks attributed the overrepresentation of migrants to areas of high urbanization, supporting Thannée Balvers's evidence for this trend for early modern Holland more broadly.<sup>86</sup> Looking beyond patterns in the prosecution policies of singular cities

81 Van der Woude, Van der Leun and Nijland, 'Crimmigration in the Netherlands'.

82 De Koster and Reinke, 'Policing minorities'.

83 P. King, 'Ethnicity, prejudice, and justice. The treatment of the Irish at the Old Bailey, 1750-1825', *The Journal of British Studies* 52 (2013) 390-414; Godfrey, Williams and Lawrence, *History & crime*.

84 D.J. Noordam, 'Strafrechtspleging en criminaliteit in Delft in de vroeg-moderne tijd', *Tijdschrift voor sociale geschiedenis* 15 (1989) 209-244.

85 Faber, *Strafrechtspleging en criminaliteit*.

86 Diederiks, *Strafrecht en criminaliteit*; Balvers, *Verdraagzaamheid in 18e-eeuws Rotterdam*.

and instead at gendered prosecution patterns, the work of Manon van der Heijden and Ariadne Schmidt argues that the high levels of female crime in the Dutch Republic were partly due to the marginal status of many migrant women, many of whom lived a highly mobile lifestyle.<sup>87</sup>

As yet, however, these observations have not been systematically explored. Furthermore, looking for markers of crimmigration in the early modern period goes beyond simply ascertaining whether migrants were overrepresented among the accused. In his seminal study of the Amsterdam *confessieboeken* (confession books) between 1680 and 1811, Faber claims that discrimination on the basis of origin did not play a demonstrable role in the trial and punishment process.<sup>88</sup> Overrepresentation, however, is only one of the markers of crimmigration. To ascertain whether there are indications of systematic discrimination in trial proceedings against migrants, the nature of the punishment and the duration of the sentence, in relation to the severity of the crime also need to be taken into account.

Two important works stand as promising comparative European cases for the early modern Dutch Republic. Peter King's work on Irish migrants through the eyes of the Old Bailey in early modern London demonstrates the role of ethnicity and migrant status in determining the treatment of the accused.<sup>89</sup> For early modern Antwerp, Gerrit Verhoeven shows through the eyewitness statements from the *Vierschaer* courts that, whereas many of the migrants relegated to menial work in Antwerp due to its economic slump moved on after saving enough money, migrant withdrawal from the urban community was also largely temporary, with indications of integration within first-generation migration. At the same time, ethnic-based violence against 'outsiders' with different accents was also commonplace in Antwerp.<sup>90</sup> These studies are intriguing but by no means representative of any structural overrepresentation of migrants across early modern Europe. The urban cities of the early modern Dutch Republic, different from each other in character, legislation, and wealth, would present a welcome comparative case study.

King's work on Irish migrants living in early modern London comes closest to offering us an example of the systematic exploration

87 Van der Heijden and Schmidt, 'Women alone'.

88 Faber, *Strafrechtspleging en criminaliteit*, 321.

89 King, 'Ethnicity, prejudice, and justice.'

90 G. Verhoeven, 'How do these foreigners blend in? Migration and integration in late eighteenth-century Antwerp (1715-92)', *Cultural and Social History* 13 (2016) 161-177.

of the markers of crimmigration in the early modern period, without consciously using such terminology. In his analysis of the court records of the Old Bailey, King argues that ethnicity and migrant status played a determining role in the treatment of the accused, concluding that the proportion of Irish offenders accused of murder, assault, riot, or rape was twice that of the accused as a whole.<sup>91</sup> King's approach is innovative as he argues for the importance of using 'mixed methods' or, in other words, a combination of micro-history case studies with quantitative sources to avoid generalization and to fully understand the complexities within London attitudes towards its migrant population. King's overarching question gets to the heart of the questions behind the study of crimmigration, albeit for the early modern period: 'Did the main decision-making groups in the criminal justice process – the police and the key actors in the courts (i.e. prosecutors, lawyers, grand jurors, petty jurors and judges) – treat ethnic/immigrant minorities in much the same way as they treated all offenders, or were some or all of these migrant groups treated very differently when they were accused of crimes at the Old Bailey?'. Just as Lucassen demonstrated that the regulation of migrant mobility in the early modern period differed only from the modern period in terms of 'a difference in scale, but not so much principle', so, too, do we see that the convergence of discriminatory legislation and prosecution identified by Stumpf in contemporary migration regulation can also be found in the early modern period.

## **Towards an interdisciplinary approach: a synthesis of crime and migration**

Let us circle back to Janssen's call for a 'cultural history of migration' and the foregrounding of daily practices over long-term trends of development. The status quo of research into migrants' position within the early modern Dutch Republic as discussed above has shown that there is yet more ground to cover within the social history of migration. The aim of this review has been to put forth a research agenda for the use of judicial sources as a lens onto the daily social relations between locals and migrants which combines and builds on insights from the fields of legal, migration and urban history. Developments in the history

91 King, 'Ethnicity, prejudice, and justice', 18.

of crime towards a more bottom-up approach have already offered more insight into the lives of 'ordinary people' through questions of gender and agency, both in bottom-up forms of social control and within (extra)judicial institutions and their agendas. However, in this regard migrants so far have been largely neglected. Applying the concept of 'uses of justice' to early modern interactions and conflicts between locals and migrants will allow us to get closer to a better understanding of these migrants' day to day realities. By asking questions about access to various forms of conflict regulation as well as questions about the negative imaging, categorization, and framing of 'outsiders' due to their place of origin, in relation to both everyday conflicts and the ways in which conflict regulating institutions could be used against newcomers, we can challenge the largely undisturbed image of the Dutch Republic as a beacon of tolerance and social cohesion. Instead, the focus on conflict and conflict resolution will bring to light the struggles that migrants came across because of their status as an 'outsider', as well as the ways in which that status may have been defined through time.

Although, as of yet, consensus on the supposed detrimental effect of ethnic diversity on social cohesion eludes us, it cannot be denied that factors like economic decline, rises in unemployment rates, as well as migration flows themselves can influence definitions of belonging. In the past, these fluctuations have given rise to a greater (perceived) need to control and regulate these newcomers both at, and inside, the city gates. The construction of 'outsider'-status, a common theme within these regulations, resulted in the vulnerable position of migrants both in relation to access to poor relief policies and within measures aimed at curbing vagrancy. Although these regulations have been examined as legal practices with the specific goal of regulating the mobility and the flows of migration of outsiders, legal practices aimed at curbing problematic migrant behaviour within the city have not yet been researched in their own right, despite the growing evidence for the convergence of criminal and migration law across the justice systems of other early modern European cities. Just as legal sources have provided key insights into the everyday realities of the urban poor as well as urban women, the (over) representation of migrants within the early modern Dutch criminal justice system constitutes a vital area of further research within the social histories of migration of the early modern Dutch Republic.

As shown in this survey of previous research, the history of crime and social control and the history of migration should not be looked at separately, since it is clear that themes such as tolerance, the idea of

'belonging', and the creation and maintenance of physical and social boundaries through regulation – social and institutional alike – are central to both. Legal sources, and, more widely, sources that document interpersonal conflicts at the level of neighbourhoods allow us to go beyond the analyses of integration on a purely labour or confessional level and enable us to look anew at questions of tolerance, integration, and cohesion through the lens of social control, conflict, and crime. By mining early modern Dutch judicial sources for data considering local interactions with migrants, we can move beyond the labels affixed to the cities of the Dutch Republic as 'tolerant' and 'open' communities for migrants. Instead, we can examine the 'framing' of migrants both before courts of law and in relation to established city dwellers. As a result, we can question whether systematic discrimination by the courts and the cities' locals – both in attitudes and in legal practices – was part of early modern reality.

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