

**Liberal Ideology and Morals:
The Debate on Prostitution in the Netherlands, 1850 - 1911**

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Introduction

Prostitution has been a topic of debate on several levels of politics for centuries, continuing in present times. States have been dealing with prostitution because of the dangers of Sexually Transmitted Diseases (STD's), enforcement of public order or to counter sexual exploitation. In the second half of the twentieth century the emergence of international trafficking and the reactions of feminists to prostitution made it an issue which was discussed at the United Nations and the European Union.¹ The Netherlands is known for its very free or liberal attitude towards certain issues as soft drugs or prostitution. Even today the Netherlands has got an atypical legislation on prostitution as it is a legal profession. Only in the Netherlands, parts of Australia and Austria prostitution is legal, in most other Western countries policy aims to criminalise the profiteers of prostitution.²

This striking difference between the Netherlands and the rest of the Western world is quite interesting, in turn making the question interesting of how this came to be. A historian's way of looking at remarkable phenomena is by tracing the path which has led to the current situation. Along that path a wide array of questions should be asked. The question I will be answering is focused on the case of prostitution in the Netherlands in the nineteenth century. The Netherlands has had a Napoleonic era between 1795 and 1815 in which the Dutch legal system was highly influenced by the Napoleonic Code. In this period, 1813 to be exact, prostitution and its brothels were legally acknowledged and regulated.³ In the century that followed power, polity and legislation became subject of a struggle between liberal politicians and the *Ancien Régime*. The subject of prostitution became a political question which was debated furiously during the entire century. When parliament gained real power after 1848 by the new liberal constitution, the debate was fuelled. Liberalism obviously achieved victories in terms of state politics in the nineteenth century; the liberal ideology was accepted to meet popular demands by King William II.⁴ Apparently the people demanded freedom. However, did this apply to a morally laden topic as prostitution as well? One could argue that contemporary moral considerations would oppose the liberal ideology. In order to analyse this possible conflict I will focus on answering the question to what extent the liberal ideology changed in the debate on legal attitudes towards prostitution in this period, the second half of the nineteenth century.

¹ J. Outshoorn, 'The Political Debates on Prostitution and Trafficking of Women', *Social politics* 12 (2005) 141-155, 141.

² J. Outshoorn, 'Pragmatism in the Polder: Changing Prostitution Policy in the Netherlands', *Journal of contemporary European Studies* 12 (2004) 165 – 177, 165.

³ M. Bossenbroek and J.H. Kompagnie, *Het Mysterie van de Verdwenen Bordelen: Prostitutie in Nederland in de negentiende eeuw*, (Amsterdam 1998) 27.

⁴ R. Aerts e.a., *Land van kleine gebaren: Een politieke geschiedenis van Nederland 1780 – 1990* (Amsterdam 1999) 101.

A lot has been written on the subject of prostitution in the Netherlands. From the nineteenth century onwards it became a serious topic to be studied by physicians because of its alleged connection to syphilis, this was not only the case in the Netherlands.⁵ Since 1980 historical research into the subject has started, the period from the nineteenth century onwards has gotten the most attention whereas there have been some publications on the seventeenth and eighteenth centuries. Lotte van der Pol, for instance, has conducted an extensive research on prostitution in the Republic in these centuries.⁶ Martin Bossenbroek and Jan H. Kompagnie have written on the disappearance of brothels in the nineteenth century, focussing mainly on the municipal policy whilst handling the different civil associations and the debates in parliament as well.⁷ Petra de Vries also handles both the civil associations and the political debate and shows the connections between the debate on the regulation of prostitution and the larger debate on the sexual positioning of men and women in society, focussing on the period between 1850 and 1911, the latter being the year brothels were banned.⁸ As the legislative power was transferred to parliament in the same period, which is the time and space I will focus on.

A method to analyse parliament debate is the discursive methodology. The discursive approach is an approach based on the idea of contextualisation of the discourse used in a certain period regarding a certain subject. Such a method is used by Theo van der Meer in his article on discourse surrounding sodomy in the Republic where he finds that the notion of sodomy was construed under the influence of religious and moral thoughts on being sober and restrained.⁹ Van der Meer uses court cases and pamphlets as sources to offer a cross-sectional analysis of the contemporary discourse. Petra de Vries also applied a discourse analysis in her dissertation but, as I mentioned before, focused on the larger debate on sexuality, using pamphlets, reports from associations and conferences and proceedings of parliament. I will also use proceedings of parliament, focussing on liberal politicians in order to analyse their discourse on the debate on prostitution in two decisive moments. Focussing on ideologies specifically Michael Freedon describes the idea behind discursive analysis as 'to conceive of language as a communicative set of interactions, through which social and cultural beliefs and understandings are shaped and circulated'.¹⁰

⁵ L. van der Pol, *Het Amsterdams hoerdom: Prostitutie in de zeventiende en achttiende eeuw* (Amsterdam 1996) 21.

⁶ Van der Pol, *Het Amsterdams hoerdom*, 23.

⁷ Bossenbroek and Kompagnie, *Het Mysterie*.

⁸ P. de Vries, *Kuisheid voor mannen, vrijheid voor vrouwen: reglementering en bestrijding van prostitutie in Nederland, 1850-1911* (Hilversum 1997).

⁹ T. van der Meer, 'Sodomy and Its Discontents: Discourse, Desire, and the Rise of a Same-Sex Proto-Something in the Early Modern Dutch Republic', *Historical Reflections* 33 (2007) 41 – 67, 52.

¹⁰ M. Freedon, *Ideology: A Very Short Introduction* (Oxford 2003)103.

In order to answer the research question I will start by giving a background on the nineteenth-century laws on prostitution in the Netherlands and an analysis of the public and political debate on those laws. This will be followed by a chapter on liberalism as an ideology. After that I will do a discursive analysis of the two proceedings of parliament, which report on two decisive debates on prostitution namely the debate in 1880 on the creation of a new Criminal Code and in 1911 when brothels were banned.

1. Laws and Debate on Prostitution in the Nineteenth Century

In the nineteenth century many changes took place in the Netherlands with regard to the legislation on prostitution. At the time of the incorporation of the Netherlands into the French Empire prostitution was legalized under certain conditions by Napoleon and his Penal Code. It would take about a century until legalization would be reversed, under the influence of a social and political debate. After analysing the influence of the Penal Code on prostitution in the Netherlands I will focus on these debates that took place in the period after the parliament gained legislative control in 1848 thereby offering a background in which the discourse analysis of the subsequent chapters will take place.

1.1 Laws on Prostitution

Napoleon and the Penal Code

"Ma vraie gloire n'est pas d'avoir gagné quarante batailles. Waterloo effacera le souvenir de tant de victoires. Ce que rien n'effacera, ce qui vivra éternellement, c'est mon Code civil."

~Napoleon Bonaparte¹¹

Napoleon made the above statement when he was in exile on the island of Saint Helena in 1815. He states that he will be remembered not mainly because of his military campaigns but because of the introduction of his legal code. This legal code, also known as the Napoleonic Code, had quite an impact on the vast territory that was under Napoleon's influence during his reign, including the Netherlands. One of the topics this Napoleonic Code, in particular the Penal Code, influenced was prostitution, which is the topic I will focus on. In 1811 prostitution was legalized by the Penal Code by means of article 334. This article also stated that the deed of matchmaking (*koppelarij*) under-aged women was regarded as a criminal offence. The precise regulations and their implementation were handed to the police, who created a system in which prostitutes were forced to be subject to examination by a police surgeon two times a week in order to be allowed to practice their profession.¹² It is noticeable that the Penal Code stated what was regarded legal or illegal, but did not say anything about the regulation or the implementation of the now legal act of prostitution. It seems obvious that the Code paved the way for this regulation which was apparently wanted by Napoleon. It is thought that the reason for Napoleon to legalize and regulate prostitution was

¹¹ J. Halpérin, 'L'histoire de la fabrication du code le code: Napoléon?', *Pouvoirs* 107 (2003/2004) 11-21, 11.

¹² Bossenbroek and Kompagnie, *Het Mysterie*, 32.

because he wanted to keep his soldiers clean from venereal diseases.¹³ On the other hand one could argue that legalizing and regulating prostitution is in accordance with the liberal ideology as it gives freedom to the prostitutes but protects the other citizens from possible insecurities coming from the freedom given to prostitutes. This does not mean that the pragmatic and ideological reasons behind the legalization exclude each other. In the next chapter I will elaborate more on liberalism itself.

When the French had left in 1813 the Netherlands were transformed into a kingdom under the legislative powers of William I and William II. Initially the Penal Code was maintained. Contrary to what many local officials had thought William I saw the advantage of regulated prostitution in relation to the welfare of his soldiers and he decided to continue this policy.¹⁴ Besides this pragmatic view the continuation of the policy may also be contributed to a biological and liberal argument. Male sexuality was seen as in need of the option to have sex, this urge was not to be repressed but rather regulated.¹⁵ It must be noted that in practice most local authorities have stalled, delayed and have protested against this policy from the central government for decades whilst carrying out their own local policy. Halfway the nineteenth century there was still no nationwide policy, Willem II also failed in his attempt to implement national policy.¹⁶

Thorbecke and the New Constitution

In 1848 changes took place in the field of law making because of the new constitution written by, amongst others, Johan Thorbecke, who was a liberal politician and leader of the first cabinet formed after 1848.¹⁷ Four issues were stipulated in this new constitution which would all have an impact in any way on the debate on prostitution after 1848. First of all it captured the freedom of press, assembly and association, secondly the secular state where church and state were separated, thirdly it handled electoral rights and finally it changed the position of the king.¹⁸ These issues would have quite an impact on the way the debate on prostitution was held as we will see later in this chapter. A direct implication for the legislation on prostitution came from the Local Government Act of 1851, endorsed by Thorbecke. At the hands of this act local authorities were held responsible for regulating prostitution, guidelines were not given. A state commission was established to advise the Minister of Justice on national guidelines for regulation, but due to a rapid succession of different cabinets this did not lead to clear national regulation.¹⁹ The different cities, with their newly obtained power

¹³ De Vries, *Kuisheid voor mannen*, 24.

¹⁴ Bossenbroek and Kompagnie, *Het Mysterie*, 33.

¹⁵ J.C.J. Boutellier, 'Prostitution, criminal law and morality in the Netherlands' *Crime, Law and Social Change* 15 (1991) 201-211, 202.

¹⁶ Bossenbroek and Kompagnie, *Het Mysterie*, 45.

¹⁷ Aerts e.a., *Land van kleine gebaren*, 103.

¹⁸ *Ibidem*, 103.

¹⁹ Bossenbroek and Kompagnie, *Het Mysterie*, 58.

thanks to the Local Government Act, were able to withstand the wishes of the national government and all made their own policy. In 1876, however, 34 municipalities, most of them medium-sized, had followed up on the official guidelines for regulation.²⁰ Amsterdam, Rotterdam and Utrecht refused to comply and regulate prostitution officially, but their policy was *de facto* the same as everywhere else.²¹ The hygienists, on which I will elaborate more in chapter 1.2, had been successful in their calls for regulation, the factual implementation was performed nearly everywhere despite of the politico-juridical battle between local governments and the national government that it was surrounded by.

Ban on Brothels

In the seventies of the eighteenth century the reverend Hendrik Pierson, as director of the Heldringinstitutes, had been taking in 'fallen women' for years. He did so out of his philanthropist beliefs and now started to spread his opinion on prostitution more publicly.²² The timing was good because an impending change on criminal law, the Napoleonic Penal Code would be replaced by a new Criminal Code (Wetboek van Strafrecht) in 1886, led to debates starting in 1879. The final debate on prostitution led to what could be seen as a pyrrhic victory of the opponents of prostitution.²³ Some affairs were addressed in the new law. First of all adultery was noted as an offence, making it impossible for married men to go a prostitute, also the minimal age required to be a prostitute was raised from twenty-one to twenty-three and finally the brothel keeper was obligated to explain in the presence of the Mayor to new prostitutes what sort of work they would be doing. Although this seemed a victory, Pierson realized that this meant that the act of brothel keeping was legally listed in the new Criminal Code, thereby legalizing the brothel itself.²⁴ However in 1890 a Christian coalition was formed and the article was repealed.²⁵ From that moment the legal way was cleared and public pressure rose leading to the abolishment of brothels in town after town in the period between 1897 and 1904, culminating in a legal prohibition of brothels supported by an overwhelming majority in parliament in 1911.²⁶

²⁰ Ibidem, 66

²¹ Ibid., 71.

²² A Houkes and M. Janse, 'Foreign Examples as Eye Openers and Justification: The Transfer of the Anti-Corn Law League and the Anti-Prostitution Movement to the Netherlands', *European Review of History* 12 (2005) 321-344, 331.

²³ Bossenbroek and Kompagnie, *Het Mysterie*, 149.

²⁴ Ibidem, 152.

²⁵ Ibid., 194.

²⁶ Ibid., 302.

1.2 The Debate and the Public

As we have seen the new constitution of 1848 was in many ways determinative. Also the debate on prostitution was highly influenced by it. In the first decades after 1848 the constitution itself and the interpretation of it were the main subject of debate in parliament and the dividing line between the positions of liberals and conservatives. After 1870 the main subject of debate was more centred around certain issues such as the right to have religious education, social legislation and suffrage.²⁷ As we have seen the debate on prostitution was also fuelled in this period.

The parties who contributed to the debate on prostitution could be divided into two, the proponents and the opponents. The proponents (of regulation) relied on a mix of hygienist, liberal and biological ideas and were therefore called the hygienists. The medics, then scientifically and socially very influential, had united themselves in the *Nederlandsche Maatschappij tot bevordering der Geneeskunst* (NMG), the Dutch Society for the Advancement of Medicine in 1849.²⁸ In the Local Government Act of 1851, as we have seen before, local authorities were held responsible for regulating prostitution. The goal was to serve the public order, morality and the health of the residents as well as the health of the soldiers. It was thought by the influential proponents that the choice was not to allow prostitution or not, as it would be there anyway, but whether to openly regulate it or let it be clandestine and unchecked.²⁹ At the end of the nineteenth century the medical consensus on regulation of prostitution disappeared. The hygienist would no longer play a role of significance in the public debate after the turn of the century.³⁰ The opponents of the regulation of prostitution were called the abolitionists and consisted of a mix of Christian puritans, feminists, a few socialists and later on even some medical specialists.³¹ The abolitionists had two main arguments against regulating prostitution. The first argument was that it was statistically proven that regulation had no influence on the spread of venereal diseases as only women were checked and not their male customers. The second argument was that both women and men should be morally obliged to control their sexual needs and that doing so would not compromise men's health.³²

Not only the different parties were formed but other changes took place in the debate as well. The location and the means of the debate changed significantly. As we have seen before the constitution gave legislative powers to the parliament which, in combination with the freedom of

²⁷ Aerts e.a., *Land van kleine gebaren*, 99.

²⁸ Bossenbroek and Kompagnie, *Het Mysterie*, 153.

²⁹ *Ibidem*, 59.

³⁰ *Ibid.*, 231.

³¹ Boutellier, 'Prostitution, criminal law and morality in the Netherlands', 203.

³² P. de Vries, 'De ketenen van de blanke slavin en het belastbare inkomen van de sekswerkster: Honderd jaar feminisme en prostitutie in Nederland', *Eeuwige kwesties: honderd jaar vrouwen en recht in Nederland*, (Deventer 1999) 140-153, 145.

press, made the debate more open than before. That the debate was more open than before is observed in the attempts of the abolitionists to influence public opinion and politicians directly through papers, pamphlets, brochures, public meetings and lectures.³³

Another constitutional right that influenced the debate was the freedom of assembly and association. A number of associations were founded in the second half of the nineteenth century that discussed certain women's issues. From 1870 several women's associations were founded to denounce the issue of women's rights diverging from labour to suffrage.³⁴ In 1879 the *Nederlandsche Vereeniging tegen de Prostitutie* (NVP), the Dutch Association against Prostitution, was founded by Hendrik Pierson.³⁵ A few years later, in 1884, the *Nederlandsche Vrouwenbond tot Verhoogen van het Zedelijk Bewustzijn* (NVVZB), the Dutch Women's Union for Increasing the Moral Consciousness, was also founded.³⁶ These associations were founded in a Christian philanthropist spirits to support 'fallen women' on a local level in the first place. But they also meant to put political pressure on local and national scale.

The abolitionists succeeded in putting the issue on the political agenda resulting eventually in the ban on brothels in 1911. Annemarie Houkes and Maartje Janse argue that the idea of the politicizing of the philanthropist and Christian works of Pierson and the abolitionists was highly influenced by developments elsewhere in Europe.³⁷ It can be argued as well that due to the new constitution and the slowly growing number of eligible voters the political debate was held in a broader section of the population, therefore it did not only reach 'learned liberals' but also a large group of religious people used to viewing at issues from a moral standpoint. Both argumentations do not have to exclude each other of course.

In conclusion one can say that prostitution in the nineteenth century certainly was an important issue both socially and politically, especially because the debate took place against a background of political and social change. Pragmatic and hygienist views were brought to us by the French and honoured by both kings and the first liberal politicians, arguably still a small elitist ruling class. When the debate was brought into the parliament and influenced through new possibilities made possible by the constitution of 1848 Christian values and feminist morality entered the scene, resulting in the ban on brothels in 1911. It is interesting to notice that this ban was supported by a great majority in the parliament, thus including liberal politicians. Why did they change their minds?

³³ Houkes and M. Janse, 'Foreign Examples as Eye Openers and Justification, 332.

³⁴ Aerts e.a., *Land van kleine gebaren*, 161.

³⁵ Bossenbroek and Kompagnie, *Het Mysterie*, 139.

³⁶ De Vries, *Kuisheid voor mannen*, 93.

³⁷ Houkes and M. Janse, 'Foreign Examples as Eye Openers and Justification, 330.

2. The liberal ideology

In order to do a discursive analysis in the following chapters it is needed to establish what the liberal ideology is and on what it is based, to know what we are looking for. The term ideology itself is multi-interpretable and needs to be specified before an analysis of the liberal ideology is possible.

2.1 Ideology

Ideology is a word which is often used in different ways. Most people would agree that liberalism, socialism, feminism and multiculturalism are ideologies, but would agree that there are great differences between those 'isms' as well. And how should we define populism? A grand scientific debate is held on what is or is not an ideology. Different positions have been taken. Stemming from the positivist movement in nineteenth-century France, the term was coined by Antoine Destutt de Tracy with the aim of naming a tool which could be used to empirically study society. Later Marx would state that ideology was a tool of the ruling class in order to explain away contradictions of the material world.³⁸ The linguistic turn also influenced the debate on ideology. Because ideologies are based on language the discourse of an ideology can be seen as 'contingent norms of conduct and of thought, masquerading as normal and even universal rules of human interaction'.³⁹ The aim of the discursive analysis is to expose these norms of conduct and thought. In this case I will analyse to what extent these norms were structurally applied by the liberal politicians in the debate on prostitution.

In order to have some tools to work with, a pragmatic approach is needed in order to define the liberal ideology. In his introduction on political ideologies Andrew Heywood provides two useful tools for the study of ideologies.⁴⁰ The first tool is that there are three interlocking features common to an ideology, the first feature being a critique of the existing order based on a certain image of mankind. Secondly there is a vision or a goal, derived from that image of human nature. That goal should be accomplished by the third feature which consists of a theory of political change. The second tool is the idea to treat ideologies as Kuhnian paradigms, where ideology is seen as a changeable framework in which the through the use of political discourse the search for political knowledge takes place. This enables us to differentiate between classical and modern liberalism. Classical liberalism is a dominant in the nineteenth century; therefore the notions of classical liberalism and its varieties will be discussed hereafter.

³⁸ Freedon, *Ideology*, 5.

³⁹ *Ibidem*, 105.

⁴⁰ A. Heywood, *Political Ideologies: An Introduction* (Basingstoke 1992) 13

2.2 Liberalism

As we have seen before the liberal politicians changed their minds on the subject of prostitution in the second half of the nineteenth century as they first wanted. First I will discuss classical liberalism itself, using the three features of Heywood, before taking a closer look to the situation of the liberal politics in the Netherlands in the period between 1848 and 1911.

Classical liberalism can be framed within the three features described by Heywood. First of all there is the critique of the existing situation. Classical liberalism rooted in a situation where the *Ancien Regime* controlled the monarchical society in an absolute fashion, based on the doctrine of divine rights of kings. These divine rights were passed on to the heir of the king. This feudal notion was no longer in place in times of industrialization. Classical liberalism challenged this absolute power.⁴¹ The liberal image of human nature was based on individuality and rationality, the influence of the Enlightenment is clearly visible.⁴² The second feature, the vision of the liberals was based on freedom. They envisioned a society in which the government intervened only in order to protect the freedom of people against acts that derived from the freedom of other people. Such a society would flourish due to the rational nature of mankind, giving liberals a firm believe in continual progress.⁴³ It is important to notice that the perception of freedom in the nineteenth century was what we would now call negative freedom, which implies mainly that you are free of government interference or other kinds of constraints whereas positive freedom, contributed to modern liberals, consists of being facilitated to self-development.⁴⁴ The third feature, the theory of political change was manifested by a liberal state in which the power of the state over the individual was divided and constrained by means of democracy and a constitution.⁴⁵ If freedom would be a right, under certain conditions, the society made up of rational individuals could only become an ever-improving society. John Locke and Thomas Jefferson, both influential liberal thinkers of the seventeenth and eighteenth century, argued that a liberal society should be based on three natural rights, which were natural or God-given. These rights are inalienable and cannot be taken away. Both argued that life and liberty were two of those rights. On the third right they disagreed as Locke named property whereas Jefferson named the pursuit of happiness.⁴⁶

⁴¹ Heywood, *Political Ideologies*, 24.

⁴² Ibidem, 27.

⁴³ Freedden, *Ideology*, 81.

⁴⁴ Heywood, *Political Ideologies*, 31.

⁴⁵ Ibidem, 34.

⁴⁶ Heywood, *Political Ideologies*, 46.

Casus: Liberalism in the Netherlands, 1848 – 1911

In 1848 the Netherlands became a constitutional monarchy, which it remained to this day. The following years, until 1870, would be devoted politically mainly to the elaboration and the implementation of the constitution of 1848 as we have seen before. The key writer of the constitution Thorbecke, a jurist and liberal, was mainly interested in state-structure. His constitution focused on the self-reliance and responsibility of civilians and aimed at the end of paternalism of the king and the oligarchy of administrators.⁴⁷ The freedom of civilians was protected and the doors were opened for the society to shift in the direction of a meritocracy. The state became even more secular, even though Thorbecke was a Lutheran Protestant, as it was before. This implied above all that the privileged position of the Dutch Reformed Church disappeared and that the Catholic Church was now allowed to appoint bishops. This led to the *Aprilbeweging* (April movement) in 1853, which was a Protestant protest against this freedom of religion.⁴⁸ Because of his uncompromising attitude as for instance on the religious question Thorbecke is seen as a doctrinaire liberal.⁴⁹

In the years between 1860 and 1870 the liberal ideology was tested by the case of the colonies of the Netherlands. A number of liberals argued that in order to gain maximal prosperity from the colonies economic liberties should be granted. The minister of Colonies at the day agreed, Thorbecke did not and the minister had to step down.⁵⁰ A contradiction was shown because liberty apparently meant liberty for the Dutch Civilians, not the inhabitants of the colonies who weren't thought to be ready to own property and profit from certain economic freedoms. This standpoint seems pragmatic as it did not fit in the contemporary classical liberalist views we have seen before, but rather in a view of the White Men's Burden. Also the liberal notion of democracy in the 1860s seems quite ambivalent, Thorbecke himself argued that democracy was not to do what the voters wanted but to do what the voters should have wanted if they would do the right thing.⁵¹ As we have seen before ideologies can change over time, as can paradigms. Apparently liberalism in the Netherlands was slowly drifting away from the former doctrinaire liberalism.

In the seventies of the nineteenth century Thorbecke passed away and schisms arose within liberalism due to different views on certain issues as education. The new left-wing liberals, led by Johannes Kappeyne van de Coppello, argued that the government should focus more on (state-) education as that was the key to progress.⁵² This schism was also reflected in the liberal debate on

⁴⁷ J. Drentje, 'Thorbecke Revisited: De rol van het doctrinaire liberalisme in de Nederlandse politiek', *BMGN – LCHR* 4 (2011) 3-28, 18.

⁴⁸ Aerts e.a., *Land van kleine gebaren*, 105.

⁴⁹ H. te Velde, 'The Organization of Liberty: Dutch Liberalism as a Case of the History of European Constitutional Liberalism', *European Journal of Political Theory* 7 (2008) 65-79, 68.

⁵⁰ Aerts e.a., *Land van kleine gebaren*, 117.

⁵¹ Te Velde, 'The Organization of Liberty', 67.

⁵² Aerts e.a., *Land van kleine gebaren*, 120.

democracy, as the left-wing liberals wanted extended suffrage combined with better education whereas the conservative liberals wanted to rely on a small elite group of financially and intellectually independent voters. It became clear that the left-wing liberals argued that state intervention was needed in order to create what they saw as the perfect liberal society.⁵³

In the last two decades of the nineteenth century the liberals were divided even more due to the subjects of suffrage and social legislation. The new social liberalists, led by Johannes Tak van Poortvliet and Hendrik Goeman Borgesius, both members of parliament, went even further on these subjects. Tak van Poortvliet pleaded for practically universal male suffrage which led to new opposing political groups, who were no longer divided only between 'left' and 'right' but were now also divided between progressive and conservative wings.⁵⁴ Goeman Borgesius pleaded for social legislation based on statistical facts. He wanted to combat the social abuses which had arisen during the industrialization process, focusing mainly on the *personae miserables*, those who could not support themselves; infants and females. His conviction that the state should regulate certain areas of labour derived from pragmatic views and resulted in what we would now call a technocratic style, opposed to the moral standards of faith which were the basis of the confessional parties.⁵⁵

⁵³ Te Velde, 'The Organization of Liberty', 69.

⁵⁴ Aerts e.a., *Land van kleine gebaren*, 151.

⁵⁵ *Ibidem*, 154.

3. Discursive analysis

Though the Netherlands got a new constitution in 1848 the Penal Code initially stayed in place. As we have seen the local authorities were held responsible for the regulation of prostitution. This led to a much decentralized policy on prostitution making it hard to analyse the used discourse as that would require an analysis of proceedings of all local authorities, which should be interpreted according to different local relationships and circumstances. Research done by Martin Bossenbroek and Jan Kompagnie learned that the hygienists were very successful in their quest to regulate prostitution.⁵⁶ In the period between 1848 and the 1880 the constitution matured through debate and the power relation between the national government and local authorities was contested and eventually settled over issues such as the regulation of prostitution.

Debate on the New Criminal Code, 1880

In the following period, the Napoleonic Penal Code was replaced by a Criminal Code. The discourse used in the debates on moral law in parliament in 1880 that preceded the eventual introduction of the Criminal Code lends itself well in order to understand the views of liberal politicians on moral issues like prostitution. First of all the debate on prostitution was centralized, as opposed to the debate in the preceding period. Also the liberal politicians were confronted with a new subject that needed legislation. The subject was new to the extent that this would be the first successful attempt since 1848 by the parliament to make national legislation concerning prostitution after a period in which the constitution itself was subject of political strife. These debates are also used by de Vries who focusses on how gender was manifested in the political discourse.⁵⁷ The use of these debates has limitations as it gives us an insight of the discourse used by a small elite group of politicians, instead of a cross sectional insight of opinions on prostitution of all liberals in the Netherlands. However, as the debates of the parliament in its role as a legislative body form the ultimate political arena of the Netherlands the discourse used there should largely reflect the discourse used in political debates elsewhere in the Netherlands. Also it has been argued that the main opponent in the debate, Alexander de Savornin Lohman, represented the NVP regarding its views on the subject which strengthens the idea that the underlying public debate was raised in parliament.⁵⁸

The liberal politicians I will focus on are Samuel van Houten and Hendrik Goeman Borgesius, both seen as left-wing or social liberals. The debate was set in parliament and took place on the 2nd November 1880; the goal was to determine the Criminal Code which should replace the Napoleonic

⁵⁶ Bossenbroek and Kompagnie, *Het Mysterie*, 70.

⁵⁷ De Vries, *Kuisheid voor mannen*, 34.

⁵⁸ Bossenbroek and Kompagnie, *Het Mysterie*, 151.

Penal Code. The Minister of Justice was Anthony Modderman, a liberal politician who was known for his dissenting opinion in the field of moral issues compared to other liberal politicians.⁵⁹ The cabinet at that time was made up of a coalition of liberals and confessional conservatives.⁶⁰

Van Houten started the debate by clearly stating his position. He explained that it was the role of the parliament as legislator for the new Criminal Code to determine what was seen as criminal, and thus punishable, and that moral sides of issues were not to be dealt with. He attested that the Criminal Code should protect primarily the public order and secondly the freedom of the individual which should be protected from violence, threats of violence and dishonest subterfuges employed to gain unwanted behaviour. His position reflected in his remarks concerning the proposed article of law 250, which proposed to increase the minimum age for men to enter brothels and for women to work in brothels to 23. Concerning the visiting men he warned that the increase of age will result in an increase of hidden street prostitution. Regarding to the minimum age of prostitutes in brothels he remarked that he saw no reason, as legislator, to intervene to 'that which occurs in total freedom' in case of those of age. He added that the age of twenty-three was in his view too high and would sort a contra productive effect as the younger women would become prostitutes either way.⁶¹ His liberal conceptions are clearly seen in his discourse; the Criminal Code should only intervene when someone was threatened or his freedom was at stake. Also the pragmatic notion that prostitution will not cease to exist when made illegal can be translated to the liberal idea of the role of the state. By banning brothels, prostitution would exist unchecked, disabling the state to fulfil its duties to protect civilians from prostitution. This is interesting as van Houten apparently deemed prostitution as a threat worth to be protected from. If he did not see it as a threat he would not mind whether it took place in a brothel or on the streets. That he did not only see prostitution as a threat for medical reasons but also on moral grounds is strengthened by the fact that he used words as 'luring' women into working in brothels and that even entering a brothel would not only raise 'blame' on a woman but would also 'threaten her future'.⁶² Nevertheless, he refused to let his moral standings intervene with his idea of the Criminal Code that should function in the interest of protecting people from threats and he supposed that overt prostitution in brothels would give the legislator the best chance to do so.

Another liberal politician, Hendrik Goeman Borgesius, complemented van Houten in the debate. Goeman Borgesius pointed out, also in no uncertain terms, that street prostitution was the real danger in his opinion. He spoke of 'victims of prostitution' and 'ill reputed' girls who had the similar 'low position' as prostitutes in brothels and had a 'demoralizing influence'. The victims he

⁵⁹ Ibidem, 150.

⁶⁰ Aerts e.a., *Land van kleine gebaren*, 376.

⁶¹ *Handelingen*, II, 1880-1881, November 1880, p. 208.

⁶² Ibidem, p. 209.

spoke of were young men, mostly students who were 'plucked' and got 'physically and mentally ill'. Goeman Borgesius advocated controlled prostitution so 'at least some form of control was possible'.⁶³ Petra de Vries argues that this gives an insight into contemporary conceptions of sexuality as she notes that citizens in these debates on moral laws were suddenly split into men and women, which was deemed necessary because sexuality was coupled to gender and gender determined biological differences.⁶⁴ Looking at it from a pure ideological view it can also be noted that Goeman Borgesius strictly stuck to the liberal doctrine, as he apparently felt that the main reason to put an end to street prostitution was because it would protect young men of 'wretched' venereal diseases. He, indeed, spoke condescendingly about the prostitutes themselves but his solution was not to stop them in any way in their doings, but to let young men into brothels. For under-aged girls he made an exception; they should not be allowed into prostitution. Even though he did not believe banning them would sort an effect, he felt that sometimes 'forced protection' was in place.

It is striking to see that both van Houten and Goeman Borgesius stuck to the liberal ideology regarding to the setting up of the Criminal Code, though it is clearly noticeable that both politicians did not hide their moral judgement on the topic of prostitution. Still, they advocated a pragmatic approach aimed at protecting possible victims from venereal diseases instead of banning brothels.

Debate on the ban of brothels, 1911

In 1911 the political landscape compared to 1880 had changed, and not in the favour of the liberals who had lost their majority in parliament. The Minister of Justice Regout had proposed two articles, 250bis and 250ter as part of the '*Bestrijding der zedeloosheid*' (combating of immorality), based on Christian values. The combat was used as a pretext to interfere, where possible, in the public life.⁶⁵ This took place under a confessional cabinet which combined the protestant and catholic confessional parties.⁶⁶ The article 250bis entailed the criminalization of the act of brothel keeping while the article 250ter involved *de facto* that the act of *koppelaarij*, matchmaking, was seen as trafficking and therefore also criminalized. The articles passed on the second of March of 1911 with ease without a head count being necessary.⁶⁷ The liberals who were involved in the debate were Willem Treub, of the left wing liberal party *Vrijzinnig-Democratische Bond* (VDB), the Liberal-Democratic League and Gerard van Hamel of the progressive *Liberale Unie* (LU), the Liberal Union.

On the twenty-first of February Willem Treub joins the debate, mostly about legal vocabulary until then, with a plea in which he says that he will agree on the articles but he sees some juridical

⁶³ Ibidem, p. 213.

⁶⁴ De Vries, *Kuisheid voor mannen*, 33.

⁶⁵ De Vries, *Kuisheid voor mannen*, 261.

⁶⁶ Aerts e.a., *Land van kleine gebaren*, 376.

⁶⁷ *Handelingen*, II, 1910-1911, Maart 1911, p. 1581

difficulties ahead. On the general idea of the combating of immorality he argued, referring to the earlier mentioned van Houten and his plea of 1880, that 'the determination of what is moral or immoral is depending on subjective views' therefore 'the state should make do with what is the least required and perform with caution'. Although he does not agree he accepts that this is the 'spirit in which the laws will be made'.⁶⁸ Here his liberal thoughts are obviously seen, the reference to van Houten strengthens this. Treub also was of the opinion that the state should not decide what is morally accepted or not. He did, however, approve of the ban on brothels. Though he stated that this article 'might make it look like prostitution would disappear but that the only effect it would sort was the disabling of one variation of prostitution'. Still, he approved because 'this variation of prostitution is the worst kind, especially for women, because it is accompanied with deprivation of liberties'. This deprivation was caused by the debt the prostitute had to make and pay back to the brothel keeper and also implied coerced unnatural lechery.⁶⁹ This is remarkable because in the debate in 1880 the liberals also stated that a ban on brothels would not solve prostitution but that, even though it was immoral, prostitution should be in brothels in order for the government to protect the 'victims of prostitution' from the threat of prostitution properly. Now the liberal views are also applied, but on another person; the prostitute. She is seen as the victim now, as she is bereft of her freedom by the brothel keeper, who is the perpetrator, and thus in need of protection by the state according to liberal views.

Gerard van Hamel, member of the Liberal Union, also criticised the proposed article. He argued that the goal of the article was to 'combat immorality' and not to 'punish immorality'. Therefore he preached a 'moderate attitude' of the state on the subject.⁷⁰ He obviously implies here that the punishment of certain deeds would not necessarily mean that they are combated. This corresponds to the earlier seen and ever-present pragmatic views of liberals. He continued by reminding everyone that their task was not to 'question what was morally disapproved of' but only 'whether one may put a certain ban in the Criminal Code'. Here he also took a liberal standpoint in accordance with the contemporary views on freedom, being in the first place free of state intervention.

Van Hamel gave two reasons why he thought moderation on the matter was needed. First of all he argued that 'the terrain of sexual morals explicitly handles the passion which is the life force of the entire organic world' and that 'this passion is innate for reasons of the continued existence of life on earth' and therefore it should be taken into account that it is a 'salutary and inconsumable element of life against which one cannot act as one would do in case of other human passion or

⁶⁸ *Handelingen*, II, 1910-1911, Februari 1911, 1446.

⁶⁹ De Vries, *Kuisheid voor mannen*, 262.

⁷⁰ *Handelingen*, II, 1910-1911, Februari 1911, 1452.

characteristic'.⁷¹ This is striking because he actually addressed the debate on the morality of prostitution itself and its legal implications, something his liberal predecessors barely did. The notion that it is inconsumable is not new; we have seen that in the debate before. But that the passion that supposedly leads to prostitution is 'salutary' and an 'element of life' certainly is a novelty. Also the notion that the passion is 'innate' according to van Hamel is of significance regarding van Hamel's views on humanity. As we have seen before other liberals in the debate usually agreed on the notion that prostitution, and thus brothel keeping, was immoral but nevertheless they opted for no or minimal intervention from the state because of the liberal political ideas we have seen in chapter two. But the liberal view of humanity, also noted in chapter two, is based on individualism and rationality, the role of the state is to protect natural rights. The fact that it is in van Hamel's view an innate passion for reasons of the continued existence of life refers to those natural rights, of which life is the first and foremost. Pursuing these rights corresponds to the notion of atomistic individualism where all people are egoistical and self-seeking. This does not appear to be rational as it is called 'innate' but if you accept the natural or God-given rights such behaviour is indeed rational as it is the survival of 'your' life (by propagation) that is pursued. Therefore the visiting man is not to blame, let alone punished. The second reason van Hamel gave for a moderate stance of the government is that he thought that 'the great battle against the excesses of passion should go out from the great spiritual cultural powers' by which he intended 'the church, the clergy, schools, physicians and unions'.⁷² He preferred mutual checks over police intervention as that had great influence on the private life of people.

Nonetheless he ended his plea by giving his vote to the article that would ban brothels. He argued that 'the sexual life is private and should be checked by the cultural powers' but 'taking action against unnecessary and parasitic businesses, those who make profits of the sexual life of others can be needed provided that this action combats the form of prostitution that brings forth slavery and repression for the woman'.⁷³ Here he goes along with Treub, choosing the side of women as the ones in need of protection. The fact that he uses 'unnecessary' when describing brothels contradicts the earlier liberal policy of regulation.

We have seen that both van Hamel and Treub agree on the ban on brothels arguing that the state thereby protects the women, who are now seen as victims of trafficking and as being bereft of their freedom. Politically speaking they maintain the liberal notion that the state should protect people from other people who try to take advantage of them. Van Hamel distinguishes between normal prostitution of which he approves because of the idea of natural rights and therefore should

⁷¹ Ibidem, 1452.

⁷² *Handelingen*, II, 1910-1911, Februari 1911, 1452.

⁷³ Ibidem, 1453.

be spared of legislation, and prostitution that involves abuse against which should be acted by the government. This abuse was in his view the profiting of prostitution and therefore inherent to the brothel.

4. Conclusion

As we have seen the nineteenth century brought about changes in the fields of law, politics and prostitution. The legislative powers were transferred from Napoleon to the kings of the *Ancien Regime* who ultimately gave the power, under international and national public pressure, to a parliament in 1848 and a new constitution was put in place. Regarding to legislation on prostitution there was no uniform national policy. In these first years after 1848 the constitution itself was mainly the topic of the debate. Since the 1870s the public, sometimes grouped into increasingly influential associations, had been more and more involved into political debates surrounding moral issues. In order to create a new Criminal Code all moral issues had to be questioned in parliament. The time was ripe for the political arena, after a period of maturing, to make statements on these issues. How did the liberals manage?

The liberal ideology can be treated as a scientific paradigm, which has the ability to change over time. I have determined three handles which can be used to analyse an ideology. First there is a view of humanity. From this view a critique of the contemporary society is made together with an ideal situation. In order to achieve that ideal situation a theory of change is required. In chapter two we have seen how the contemporary liberal political views, the theory of political change, were based on a firm trust in the rationality of the individual. The political system only had to intervene when expressions of freedoms of individuals crossed each other and natural rights had to be guarded. But what if you, as a liberal lawmaker, personally condemned certain behaviour? It seems that a true liberal was not able to truly condemn personal behaviour in the first place. After all, how would that correspond with liberal views on humanity? But as we have seen a change took place in the liberal voting behaviour on prostitution in the period between 1880 and 1911. The discursive analysis I have done exposes the norms of conduct and thought that underlie the ideology of liberalism. A comparison can be made.

In the debates in 1880 we have seen van Houten and Borgesius Goeman who morally disapproved of all types of prostitution but nevertheless kept to the liberal notion that 'victims' needed to be protected from perpetrators legally. Here the victims were the, mostly young, men who visited the prostitute. The prostitute was the perpetrator whose actions were looked down on morally but were not seen as prosecutable. The brothel was a way for the government to implement checks on the prostitutes in order to protect the men as good as possible keeping them healthy.

In 1911 however, that same brothel was banned and the liberals of the time agreed, as did nearly all members of parliament. A head count was not needed to accept the article that would ban brothels. This time the liberals, represented by Treub and van Hamel, did not look down morally on the prostitute and her actions. She was seen as the victim in the context of the brothel. Also the men

who visited the prostitutes were, except for some excesses, not morally condemned. Van Hamel even argued that the passions that led to prostitution were an inalienable part of human nature and therefore should be approached reluctantly by the legislating state. His plea for reluctance seemed to be in the spirit of the parliament and its majority of confessionals that he spoke to as he also named the passion salutary. In other words, the act of prostitution was not at all morally condemned. Still both liberals agreed that the brothel should be banned arguing that the affairs of brothel keeping inherently included slavery and deprivation of freedom. Also profiting of the sexual life of others, indeed a natural right, was by definition not to be allowed. Even more, a brothel was deemed unnecessary; another way of saying that prostitution itself was no problem. The prostitute needed protection from brothels.

We have seen that changes took place on what was morally and legally accepted by liberals and what was not. The prostitutes went from perpetrator to victim whereas the male visitors went from victim to men who by virtue of their natural rights should be allowed to go to the prostitutes. Petra de Vries argues that 'the first feminist wave had successfully changed the image of women from frivolous, seductive and unreliable to women as victims of male sexual lusts'.⁷⁴ Though that may be true looking at the whole parliament, dominated by a confessional majority, it is not necessarily true as to liberals. They saw women indeed as victims, but not of male sexual lusts. Instead they saw women as victims of the brothel keepers. How can this be explained on part of the liberals? To go back to the three handles that make up an ideology we can conclude that liberals have based their policy in both 1880 and 1911 on defending individual freedom. The trust in human rationality can be seen as a constant factor. So we can conclude that the basis of their ideology, their view on humanity, did not change. The same is true for their vision of the liberal state and the theory of political change. Liberals continued to strive for a state that would defend the freedoms and did so by minimizing legislation where possible. So what did change? In 1880 the legal argument regarding brothels was based on the threat of venereal diseases, the individual had to be protected. In 1911 however, that argument was overruled by the argument that brothels were guilty of trafficking and profiting of the sexual lives of others. The result of the liberal weighing of these arguments changed between 1880 and 1911. As the act of brothel keeping itself had not changed the origin of the change of liberal discourse had to lie in the absence of the threat of venereal diseases, preached by the hygienists, as well as the emphasis in the political and public debate that shifted to the rights of women. The liberal ideology had not changed in its basis, but was indeed influenced by the public debate.

⁷⁴ De Vries, 'De ketenen', 147.

Bibliography

Literature

- Aerts, R., e.a., *Land van kleine gebaren: Een politieke geschiedenis van Nederland 1780-1990* (Amsterdam 1999)
- Bossenbroek, M. en Kompagnie, J.H., *Het Mysterie van de Verdwenen Bordelen: Prostitutie in Nederland in de negentiende eeuw* (Amsterdam 1998).
- Boutellier, J.C.J., 'Prostitution, criminal law and morality in the Netherlands', *Crime Law and Social Change* 15 (1991) 201-211.
- Drentje, J., 'Thorbecke Revisited: De rol van het doctrinaire liberalisme in de Nederlandse politiek', *BMGN – LCHR* 4 (2011) 3-28
- Freedon, M., *Ideology: A Very Short Introduction* (Oxford 2003).
- Halpérin, 'L'histoire de la fabrication du code le code: Napoléon?', *Pouvoirs* 107 (2003/2004) 11-21.
- Heywood, *Political Ideologies: An Introduction* (Basingstoke 1992).
- Houkes, A. and Janse, M., 'Foreign Examples as Eye Openers and Justification: The Transfer of the Anti-Corn Law League and the Anti-Prostitution Movement to the Netherlands', *European Review of History* 12 (2005) 321-344.
- Meer, van der, T., 'Sodomy and Its Discontents: Discourse, Desire, and the Rise of a Same-Sex Proto-Something in the Early Modern Dutch Republic', *Historical Reflections* 33 (2007) 41-67.
- Outshoorn, J., 'Pragmatism in the Polder: Changing Prostitution Policy in the Netherlands', *Journal of contemporary European Studies* 12 (2004) 165-177.
- Outshoorn, J. 'The Political Debates on Prostitution and Trafficking of Women', *Social politics* 12 (2005) 141-155.
- Pol, van der, L., *Het Amsterdams hoerdom: Prostitutie in de zeventiende en achttiende eeuw* (Amsterdam 1996).
- Velde, H. te, 'The Organization of Liberty: Dutch Liberalism as a Case of the History of European Constitutional Liberalism', *European Journal of Political Theory* 7 (2008) 65-79.
- Vries, de, P., 'De ketenen van de blanke slavin en het belastbare inkomen van de sekswerker: Honderd jaar feminisme en prostitutie in Nederland', *Eeuwige kwesties: honderd jaar vrouwen en recht in Nederland*, (Deventer 1999) 140-153.
- Vries, de, P., *Kuisheid voor mannen, vrijheid voor vrouwen: reglementering en bestrijding van prostitutie in Nederland, 1850-1911* (Hilversum 1997).

Published Sources, Reports and Proceedings.

- *Handelingen der Staten-Generaal* (Proceedings of Parliament)
 - *Handelingen*, II, 1880-1881, November 1880.
 - *Handelingen*, II, 1910-1911, Februari 1911.
 - *Handelingen*, II, 1910-1911, Maart 1911.