

# Access to Justice: Legal Aid to the Poor at Civil Law Courts in the Eighteenth-Century Low Countries

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Medieval and early modern rulers commonly proclaimed that protecting the legal entitlements of the *personae miserabiles*, who included widows, orphans, the chronically ill and “the poor,” was among their principal duties.<sup>1</sup> The entitlement of the poor to legal services was not a matter of grace but was in fact their “good right.” For example, widows, orphans, and other *personae miserabili* had the privilege of being heard in first instance before high courts, so as to save time and costs in pursuing

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1. Marie-Hélène Renaut, “L’acces à la justice dans la perspective de l’histoire du droit,” *Revue historique du droit français et étranger* 78 (2000): 473–95; Woodrow Borah, “Assistance in Conflict Resolution for the Poor and Indians in Colonial Mexico,” in *Assistance in Conflict Resolution*, Transactions of the Jean Bodin Society for Comparative Legal History, vol. 63 (Brussels: De Boeck Université, 1996): 217–37; Richard L. Kagan, *Lawsuits and Litigants in Castile, 1500–1700* (Chapel Hill: University of North Carolina Press, 1981), 66–67, 98–99, 103, 105; Ferdinand Elsener, “Der ‘arme man’ (pauper) im Prozessrecht der Grafen und Herzoge von Savoyen,” *The Legal History Review* 44 (1976): 93–113; and Simona Cerutti, *Giustizia sommaria. Pratiche e ideale di giustizia in una società di Ancien Régime (Torino XVIII secolo)* (Milano: Feltrinelli, 2003).

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their legal claims.<sup>2</sup> Another example of manifest commitment to legal entitlement for the poor was the refusal of Philip II of Habsburg to consent to measures that would limit the jurisdiction of his Castilian chanceries; the measures had been proposed so as to limit the chanceries' ever-increasing workload, but, because they could also restrict indigents' access to such courts, were rejected by the monarch.<sup>3</sup> At first glance, such inclusiveness appears to have been achieved, particularly in view of the large numbers of petty conflicts brought before formal law courts during the long sixteenth century, leading to a so-called "legal revolution."<sup>4</sup> Historians generally acknowledge that broad layers of early modern society made abundant use of civil adjudication in arranging their social and economic relations and interests.<sup>5</sup>

2. Kagan, *Lawsuits and Litigants*, 103; Arthur Gaillard, *Le Conseil de Brabant. Histoire, organisation, procédure, Tome 2, Organisation et procédure* (Brussel: J. Lebègue, 1901), 31, 33–34; and M.J.H.A. Lijten, *Het burgerlijk proces in stad en meierij van 's-Hertogenbosch 1530–1811* (Assen: Van Gorcum, 1988), 46.

3. Kagan, *Lawsuits and Litigants*, 98–99.

4. The phrase "legal revolution" was used by Richard Kagan to describe the enormous increase of court activity during the long sixteenth century. Kagan, *Lawsuits and Litigants*. However, the term can be applied to other regions in Western Europe as well; Craig Muldrew, *The Economy of Obligation. The Culture of Credit and Social Relations in Early Modern England* (New York: St. Martin's Press, 1998); Christian Wollschläger, "Civil Litigation and Modernization: The Work of the Municipal Courts of Bremen, Germany, in Five Centuries, 1549–1984," *Law and Society Review* 24 (1990): 261–82; James A. Sharpe, "'Such Disagreement Betwix Neighbours': Litigation and Human Relations in Early Modern England," in *Disputes and Settlements. Law and Human Relation in the West*, ed. John Bossy (Cambridge: Cambridge University Press, 1983), 167–87; Samuel Berner, "Florentine Society in the Late Sixteenth and Early Seventeenth Centuries," *Studies in the Renaissance* 18 (1971): 227–35; and Marie-Charlotte Le Bailly, "Langetermijntrends in de rechtspraak bij de gewestelijke hoven van justitie in de Noordelijke Nederlanden van ca. 1450 tot ca. 1800," *Pro memorie* 13 (2011): 30–67.

5. Julie Hardwick, *Family Business. Litigation and the Political Economies of Daily Life in Early Modern France* (Oxford: Oxford University Press, 2009); Fabrice Maclair, *La Justice au Village. Justice seigneuriale et société rurale dans le duché-pairie de La Vallière (1667–1790)* (Rennes: Presses Universitaires de Rennes, 2008); Hervé Piant, *Une justice ordinaire. Justice civile et criminelle dans la prévôté royale de Vaucouleurs sous l'Ancien Régime* (Rennes: Presses Universitaires de Rennes, 2006); James E. Shaw, *The Justice of Venice: Authorities and Liberties in the Urban Economy, 1550–1700* (Oxford: Oxford University Press, 2006); Aries Van Meeteren, *Op hoop van akkoord. Instrumenteel forumgebruik bij geschilbeslechting in Leiden in de zeventiende eeuw* (Hilversum: Verloren, 2006); Martin Dinges, "The Uses of Justice as form of Social Control in Early Modern Europe," in *Social Control in Europe (1500–1800)*, I, ed. Herman Roodenburg and Pieter Spierenburg (Columbus: Ohio State University Press, 2004), 159–75; Christopher Brooks and Michael Lobban, eds., *Communities and Courts in Britain 1150–1900* (London: The Hambledon Press, 1997); Christopher W. Brooks, "Interpersonal Conflict and Social Tension: Civil Litigation in England, 1640–1830," in

However, there are indications that raise doubts about whether these ideals of a socially inclusive judicial infrastructure were fulfilled. Although the social composition of early modern law courts requires closer analysis, it has been established that indigent families in cities in France and the Low Countries resorted to litigation far less often than did more moneyed citizens.<sup>6</sup> In mid-eighteenth century Leiden, even the markedly inexpensive Peacemakers court, a small claims court that used a decidedly transparent procedure, attracted few plaintiffs from among the lower 60%: the less wealthy households.<sup>7</sup>

Moreover, the increasing fees for waging lawsuits likely restricted the access to official processes of justice throughout the early modern period for households of modest means.<sup>8</sup> And although not all urban courts stipulated that litigants were to use a legal spokesperson, it is likely that assistance from such experts became indispensable, especially as legal services became increasingly professionalized and, correspondingly, more complex. Such increased complexity and costs of litigation must have been part of the reason for the so-called “great litigation decline” experienced by a wide range of law courts across Western Europe in the late seventeenth and eighteenth centuries.<sup>9</sup>

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*The First Modern Society. Essays In English History in Honour of Lawrence Stone*, ed. Augustus L. Beier, David Cannadine, and James M. Rosenheim (Cambridge: Cambridge University Press, 1989), 357–99; John Bossy, “Postscript,” in *Disputes and Settlements. Law and Human Relation in the West*, ed. John Bossy (Cambridge: Cambridge University Press, 1983), 287–93; and Craig Muldrew, “Credit and the Courts: Debt Litigation in a Seventeenth-Century Urban Community,” *The Economic History Review* 46 (1993): 29–31.

6. Hardwick, *Family Business*, 63; and Van Meeteren, *Op hoop*, 344–46.

7. Griet Vermeesch, “The Clientele of an Eighteenth-Century Law Court. An Analysis of Plaintiffs and Defendants at a Small Claims Court in the Dutch City of Leiden, 1750–1754,” article currently under review.

8. William A. Champion, “Recourse to the Law and the Meaning of the Great Litigation Decline, 1650–1750: Some Clues from the Shrewsbury Local Courts,” in *Communities and Courts*, 184–85; Brooks, “Interpersonal Conflict,” 375, 377–82; Dinges, “The Uses,” 168.

9. For the Low Countries: Le Bailly, “Langetermijntrends”; Bart Willems, *Leven op de pof. Krediet bij de Antwerpse middenstand in de achttiende eeuw* (Amsterdam: Amsterdam University Press, 2009), 220–24; and Harald Deceulaer, “Guilds and Litigation: Conflict Settlement in Antwerp (1585–1796),” in *Individual, Corporate and Judicial Status in European Cities (Late Middle Ages and Early Modern Period)*, ed. Marc Boone and Maarten Prak (Leuven: Garant, 1996), 171–208. For France: J. Dickinson, “L’activité judiciaire d’après la procédure civile. Le baillage de Falaise, 1668–1790,” *Revue d’histoire économique et sociale* 54 (1976): 145–68; and Colin Kaiser, “The Deflation in the Volume of Litigation at Paris in the Eighteenth Century and the Waning of the Old Judicial Order,” *European Studies Review* 10 (1980): 309–36. For England: Champion, “Recourse”; and Robert Shoemaker, “The Decline of Public Insult in London 1660–1800,” *Past and Present* 169 (2000): 97–131. For Germany:

This article examines the provision of legal aid for the poor, to enable understanding of how early modern local and “national” governments in the Low Countries addressed the accessibility of their law courts during a period when judicial infrastructures were marked by increased costs and complexity. The article argues that law courts aimed to provide free legal aid only to a limited subset of the poor, namely, the “deserving poor,” and thereby generally excluded the larger group of so-called “undeserving poor” from having access to justice. That comparatively few lawsuits were waged free of charge is attributable to the limited attraction that law courts offered to the large group of poor households, as well as to the liabilities such free legal aid could potentially incur. Legal aid to the poor was always granted provisionally: if judgement was rendered against the party litigating free of charge, then the party became liable for payment of legal costs. Therefore, notwithstanding the putative attentions paid to such ideals by state authorities and monarchs alike, the provision of legal aid to the financially disadvantaged did not aim at increasing the courts’ accessibility for all inhabitants. Rather, such provisions were structured so as to include only a particular socioeconomic segment of all impoverished households, and were intended to confirm social hierarchies rather than to remedy social inequalities.

The Low Countries have been chosen as a focal point because they offer an interesting case study in legal-historical terms. Law in the Low Countries drew upon a mixture of three European sources of law: learned law, customary law, and legislative law. Moreover, the Low Countries were characterized by legal diversity, reflecting the high levels of urbanization and the relative autonomy of cities in resolving disputes among their citizens.<sup>10</sup> Therefore, analysis of legal aid for the poor in the Low Countries is especially relevant to a wider European perspective.

This analysis consists predominantly of an examination of legal aid provided to the poor in the urban law courts of Leiden, Antwerp, and Brussels. The main source material consists of petitions for legal aid filed to the respectively magistrates of Leiden and Antwerp, and documents in the city archives of Brussels and the national archives in Brussels relating to deliberations about the provisioning of free legal aid.<sup>11</sup> To broaden the

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Wollschläger, “Civil Litigation and Modernization.” For Spain: Kagan, *Lawsuits and Litigants*, especially part 2.

10. Raoul C. Van Caenegem, “Reflexions on the place of the Low Countries in European Legal History,” in *Europäische Rechtsdenken in Geschichte und Gegenwart. Festschrift für Helmut Coing zum. 70. Geburtstag* (München: C.H. Beck’sche Verlagsbuchhandlung, 1982), 3–17.

11. Regionaal archief Leiden, Oud Rechterlijk Archief (hereafter RAL, ORA), inv. nr. 144A–O, Dispositiën op rekwesten, 1659–1811; Felixarchief, Privilegekamer, inv. nrs.

significance of the findings, additional evidence has been gathered from archives of the High Courts of the provinces of Brabant, Flanders and Holland (generally considered to have been the “core provinces” of the Low Countries) and of the urban courts of Rotterdam and Amsterdam and the High Court of Utrecht, which also served as a local, urban court. Legal aid for the poor was termed *pro deo* in the consulted documents. This term was also used in other kinds of official documents, including petitions, and signified that taxes (typically seals) on such documents had been waived in consideration of the poverty of the person involved. This article will alternately use the terms “free legal aid” and “*pro deo*” assistance in referring to legal aid to the poor. As will be discussed, the lack of normative sources on such legal aid compels researchers to examine it from the angle of daily practice. This article presents such an enquiry.

### Leiden, Antwerp, and Brussels in the Eighteenth Century: Context and Sources

During the early modern period, Leiden was—by Dutch standards—a large town, with an economy dominated by textile manufacturing. In the Dutch Golden Age, the local textile manufactures attracted workers on a large scale, resulting in the population reaching approximately 70,000 inhabitants. However, during the eighteenth century, massive shrinkage afflicted Leiden’s textile industry and its population had contracted to approximately 30,000 inhabitants by mid-century. Steep inflation and economic decline saw wide segments of the population fall into poverty. The census of 1749 recorded more than 1,500 households of the total population of 9,200 households as being recipients of poor relief. However, many more of the town’s households should be considered as “poor,” for more than half of the population was taxed quite modestly owing to their limited resources.<sup>12</sup>

The judicial infrastructure of the city of Leiden stemmed largely from the sixteenth century, when economic growth and large-scale immigration

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787–889, Rekwestboeken 1701–1792; Stadsarchief Brussel, Oud archief, Liasse 606, Procédure, 1699–1794; and Algemeen Rijksarchief Brussel, Geheime Raad (hereafter ARAB, GR), inv. nr. 552/A-B, Renvois en justice, 18th century.

12. Gerardus P.M. Pot, *Arm Leiden. Levensstandaard, bedeling en bedeeden, 1750–1854* (Hilversum: Verloren, 1994); and Herman A. Diederiks, “Beroepsstructuur en sociale stratificatie in Leiden in het midden van de achttiende eeuw,” in *Armoede en sociale spanning. Sociaal-historische studies over Leiden in de achttiende eeuw*, ed. Herman A. Diederiks, Dirk J. Noordam and Heiko D. Tjalsma (Hilversum: Verloren, 1985), 53–55.

of refugees from the south had strongly increased the necessity for the city government to regulate conflict resolution. Leiden inaugurated a tribunal of Peacemakers in 1598. The costs of such tribunals were deliberately kept low, so as to guarantee accessibility.<sup>13</sup> Similar facilities existed in numerous other locations, including Amsterdam, The Hague, Rotterdam, Haarlem, Gouda, Nijmegen, and Middelburg.<sup>14</sup> In the years 1664–68, when Leiden’s population numbered roughly 60,000 inhabitants, the tribunal heard approximately 6,000 cases annually.<sup>15</sup> Litigants who were dissatisfied with the Peacemakers’ verdict or whose claims exceeded the tribunal’s jurisdiction could take their cases to the bench of aldermen.

The bench of aldermen was already functioning in the Middle Ages, but underwent important changes during the sixteenth century. The so-called roll procedure, an open process in which plaintiffs and defendants exchanged written “conclusions” and pleaded their respective cases at a session of the court, had been introduced by mid-century. Roman or canon law also found its way into judicial proceedings. However, despite the Peacemakers court being—at least in theory—easily accessible even for poor households, litigation at the bench of aldermen became somewhat expensive.<sup>16</sup>

The introduction of learned law and written procedures into the proceedings of the benches of aldermen entailed that litigants increasingly avail themselves of legal spokesmen, notably *advocaten* and *procureurs*. An *advocaat* (“advocate”) held a university degree in Roman or canon law and advised his clients on legal matters, delivered oral arguments, and wrote and signed petitions and conclusions. Likewise, litigants commonly employed, via written authorization, a *procureur* (“procurator”) to pursue their legal business at court. A *procureur*, although not holding a law degree, was an official associated with the court and was familiar with all necessary steps in formal court procedure. He ensured that enough copies of all documents were available, and deposited the documents at the court registry.<sup>17</sup>

13. Van Meeteren, *Op hoop*, 226, 236–37.

14. Christiaan M.G. Ten Raa, *De oorsprong van de kantonrechter* (Deventer: Kluwer, 1970), 158–72.

15. Van Meeteren, *Op hoop*, 19, 227.

16. *Ibid.*, 274–81.

17. Philippe Godding, *Le droit privé dans les Pays-Bas méridionaux du 12<sup>e</sup> au 18<sup>e</sup> siècle* (Brussels: Académie Royale de Belgique, 1987); Raoul C. Van Caenegem, “History of European Civil Procedure,” in *International Encyclopedia of Comparative Law, XVI, Civil Procedure*, ed. Mauro Cappelletti (Tübingen: Mohr, 1972), 66–69; and Georges Martyn, “Les avocats au Conseil de Flandre (1386–1795): à la recherche d’une déontologie,” in *Les acteurs de la justice, magistrats, ministère public, avocats, huissiers*

The extent to which poor inhabitants of Leiden sought legal aid during the eighteenth century can be derived from the 402 petitions for free legal aid that they filed with the bench of aldermen during the years 1751–1810. These petitions could be directly traced via an extensive index card collection created by volunteers at the Leiden Regional Archives; these records include the names of the parties in each case, the case matter, the appeal for being allowed to litigate *pro deo*, and the decision taken thereupon by the bench of aldermen. A selection of the actual registered petitions was also consulted, especially to uncover why certain requests to litigate *pro deo* had been rejected.<sup>18</sup> Lastly, the incidence of *pro deo* cases was checked in a selection of roll registers for the bench of aldermen and the Peacemakers court, so as to control for the comprehensiveness of the registered and indexed petitions.<sup>19</sup>

Similar sources have been examined for eighteenth-century Antwerp. Several hundred petitions were submitted to the city magistrates each year and then registered in so-called petition books, which are fully conserved in the Antwerp city archives. Because of the vast numbers of petitions, it was not practicable to include them all in the research design. To efficiently find petitions for free legal aid, only those petitions filed *pro deo* or for free (for which the charges for document seals and for registering the petition were waived on account of the petitioner's poverty) have been examined for 19 sample years in the eighteenth century. For these 19 years, ninety-seven such petitions were registered.<sup>20</sup> Also consulted for this analysis were the so-called *furnissemensboeken*, which present an overview of official fees paid by litigants, including for *pro deo* cases.<sup>21</sup>

Eighteenth-century Antwerp provides an interesting supplemental case study. One of the most populous cities of the Southern Low Countries, it had, since the blockade of the river Scheldt in the late sixteenth century, become a regional textile centre, with a population of approximately

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*et greffiers (XIIe-XIXe siècle)*, ed. René Robaye (Namur: Presses Universitaires de Namur, 2002), 103–19.

18. RAL, ORA, inv. nr. 144A-O, Dispositiën op rekwesten, 1659–1811.

19. RAL, ORA, inv. nrs. 44 V-AA, Dingboeken van grote zaken, 1746–1794; inv. nrs. 47HHH-MMM, Vredemakersboeken, 1750–1769. A limited number of parties made use of a *procureur* at the court of the Leiden Peacemakers. More often than not, this was to obtain approval for having the case heard at the bench of aldermen.

20. The large collection of petitions that were not filed *pro deo* must have contained requests to obtain free legal aid also. However, in view of the many thousands of petitions conserved for early modern Antwerp, it was not feasible to study these petitions. Felixarchief, Privilègekamer, inv. nrs. 787–889, Rekwestboeken 1701–1792. The sample years were: 1701, 1706, 1711, 1716, 1721, 1726, 1731, 1736, 1741, 1746, 1751, 1756, 1761, 1766, 1771, 1776, 1781, 1786, and 1791.

21. Felixarchief, Vierschaar, inv. nr. 1561–63, Furnissemensboecken, 1685–1793.



50,000 inhabitants. During the first half of the eighteenth century, the city experienced economic and demographic decline. This was especially because of foreign competition, which debilitated the once flourishing export-oriented textile industries. After 1750, however, Antwerp experienced expansion with the emergence of new types of textile manufacturing, although only limited sections of the population benefited from the economic boom that accompanied the industry's restructuring. The new, non-guild-based manufacturers of mixed fabrics and cotton paid very low wages and contributed to accelerated impoverishment of small master guildsmen. Pauperism became a large and growing problem in eighteenth century Antwerp. In 1770 only 10% of the city's population relied on governmental relief; by 1805, the figure had grown to 18%.<sup>22</sup> As with Leiden, the actual share of destitute people was probably higher, as only limited sections of the poor were eligible for poor relief.

The judicial infrastructure of the city of Antwerp experienced comparable evolutions as had the one in Leiden, including introduction of the roll procedure, in 1532. Different rolls were maintained on particular weekdays when certain cases were to be heard. For example, the so-called Monday roll and Wednesday roll were reserved for small claims, which were settled orally and without *advocaten* or *procureurs*. Generally, however, the emergence of Roman or canon law as a source of law and of written procedures increased the costs of litigation in Antwerp, especially because (just as in Leiden) legal spokesmen and report fees now had to be paid.<sup>23</sup>

Such developments also occurred in Brussels, the capital of the Habsburg Low Countries. Apart from its political and administrative functions, Brussels boasted a significant textile sector, although compared with Antwerp it employed a smaller portion of the working population.<sup>24</sup> Like Antwerp, however, the Brussels economy declined during the first half of the eighteenth century, but recovered in the latter half. Industrial restructuring similarly concentrated local workers into large-scale manufactures where they earned markedly low wages.<sup>25</sup> According to a census of

22. Catharina Lis, "Sociale politiek in Antwerpen (1979). Het controleren van de relatieve overbevolking en het reguleren van de arbeidsmarkt," *Tijdschrift voor Sociale Geschiedenis* 2 (1976): 146–66; Catharina Lis, *Social Change and the Labouring Poor: Antwerp 1770–1860* (New Haven and London: Yale University Press, 1986), 5–38, 110–111.

23. Charles Laenens, *De geschiedenis van het Antwerps gerecht* (Antwerp: Van de Velde, 1953), 262; Dave De Ruyscher, *Naer het Romeisch Recht alsmede den stiel mercantiel'. Handel en recht in de Antwerpse rechtbank (16de–17de eeuw)* (Kortrijk–Heule: University of Georgia, 2009), 100–105.

24. Roger De Peuter, *Brussel in de achttiende eeuw. Sociaal-economische structuren en ontwikkelingen in een regionale hoofdstad* (Brussel: VUBPress, 1999), 96.

25. André Vanrie, "Le XVIIIe siècle," in *Histoire de Bruxelles*, ed. Mina Martens (Toulouse: Privat, 1976), 233–70.



1755, Brussels hosted almost 60,000 inhabitants<sup>26</sup>; by 1783, the population had grown to almost 75,000.<sup>27</sup> As in Leiden and Antwerp, the city's economic recovery did not improve the circumstances of all inhabitants. In 1755, almost 3,500 households received poor relief and 125 households were registered as "beggars"; these households totalled 7% of the total population.<sup>28</sup> By 1784, however, the proportion of "beggars" had increased from 0.5 to 2.7% of the population, and now totalled almost 2,000 households. It is not clear which segments of the Brussels population were then receiving poor relief.<sup>29</sup> Despite this widespread pauperism, which had become especially exacerbated during the economic crisis of the first half of the eighteenth century, the urban government did not embark on comprehensive social reforms.<sup>30</sup>

Brussels had boasted a bench of aldermen since the mid-twelfth century. As with the other examined cities, the sixteenth century brought important changes to Brussels' judicial infrastructure, heralded by many adjustments in the preceding century. The roll procedure was adopted as early as the late fifteenth century and written Roman Canon procedures were introduced. The "burgomasters roll" was instituted, in 1585, to address the innumerable petty conflicts brought before the alderman. This roll adopted an oral summary procedure, which did not utilize legal spokesmen. However, such spokesmen became necessary for cases on the other rolls, thereby increasing the costs of litigation.<sup>31</sup>

The Brussels city archives contain an interesting correspondence between the city's bench of aldermen and central governmental institutions regarding the granting of legal aid to the poor. The letters mostly contain justifications from the aldermen for refusing certain petitioners free legal aid. These petitioners had subsequently implored the Privy Council to intervene, whereupon its officials requested the Brussels aldermen to provide an opinion about the supplications. Copies of the aldermen's often elaborate letters of advice regarding non-granting of legal aid have hence

26. Joseph Verbeemen, "Bruxelles en 1755. Sa situation démographique, sociale et économique," *Bijdragen tot de Geschiedenis* 45 (1962): 205.

27. Eddy Van de Voorde and Jan Verbesselt, "De volkstelling van 1783 te Brussel," *Eigen Schoon de Brabander* 72 (1989): 8.

28. Verbeemen, "Bruxelles en 1755," 220.

29. Van de Voorde and Verbesselt, "De volkstelling van 1783 te Brussel," 8, 11.

30. Paul Bonenfant, *Le problème du paupérisme en Belgique à la fin de l'ancien régime* (Brussels: Palais des Académies, 1934), 19–20.

31. Philippe Godding, "Comment la justice échevinale a pu faire face aux besoins de villes en expansion: le cas du Brabant (XIIe–XVIIIe siècles)," in *Les acteurs de la justice*, 7–13; Renée Pierard-Gilbert, "Les procès devant le magistrat de Bruxelles au XVIIIe siècle. Leur rapport à l'histoire de la ville," *Annales de la société royale d'archéologie de Bruxelles fondée à Bruxelles en 1887*, 51 (1962–1966): 201–17.

been conserved in the Brussels city archives.<sup>32</sup> These sources offer an extraordinary glimpse into the attitudes of a local government concerning legal aid for the poor.

Similarly illuminating is a collection of correspondence found in the archives of the central governmental institutions of the Southern Low Countries, containing letters and memoranda from officials of the Privy Council in response to petitions for free legal aid. This source also contains relatively extensive considerations about legal aid for the poor, and helps in uncovering the profile of litigants eligible for such aid.<sup>33</sup> Together, these sources provide a strong basis for ascertaining the procedure and aims of how three particular cities in the Low Countries—a waning textile center, a transforming textile centre, and a capital city—administered legal aid for the poor.

### The Origins of Legal Aid to the Poor

In medieval and early modern Europe, the entitlement afforded to the poor (of the *personae miserabiles* category) for free legal services pertained to natural and divine rights. Medieval religious practices constituted the basis for early modern facilities of legal aid to the poor. Ever since the premodern juridical infrastructure had emerged in the twelfth century, churchmen had held that *personae miserabiles* should be able to protect their claims in the same way as could more affluent members of the community. Legal aid to the poor is a recurring theme in the Bible and was considered by Saint Augustine to be among the works of mercy. The church resolved in the twelfth century that clerics were to defend the poor for free in church courts. Commentators on canon rights considered any litigation involving the poor and oppressed to be subject to the jurisdiction of church courts.<sup>34</sup> Clearly, the emergence of the category of *personae miserabiles* related to tensions between the medieval church and state concerning jurisdiction and authority.<sup>35</sup>

32. Stadsarchief Brussel, Oud archief, Liasse 606-A, Procédure, 1699–1794.

33. ARAB, GR, inv. nr. 552/A, Renvois en justice, Pro deo, 1734–1786, 1791–1794.

34. James A. Brundage, “Legal Aid for the Poor and the Professionalization of Law in the Middle Ages,” *The Journal of Legal History* 9 (1988): 170–72, 176, footnote 12; James A. Brundage, “Widows as Disadvantaged Persons in Medieval Canon Law,” in *Upon My Husband’s Death. Widows in the Literature and Histories of Medieval Europe* ed. Louise Mirrer (Michigan: University of Michigan Press, 1992), 193–206.

35. See, for an overview of the legal origins of the term *persona miserabiles*: Thomas Duve, *Sonderrecht in der Frühen Neuzeit. Studien zum ius singulare und den privilegia miserabilium personarum, senum und indorum in Alter und Neuer Welt* (Frankfurt am Main: Vittorio Klostermann GmbH, 2008).

In canon law, *personae miserabiles* were entitled to procedures that were primarily oral, in which legal advisors were absent. Such privilege was included in the *Corpus Iuris Canonici* and was later adopted by urban legal administrations.<sup>36</sup> These special procedures were informed by considerations that *personae miserabiles* were less able to assume legal fees, and the fact that their conflicts generally related to minor issues.<sup>37</sup>

Churchmen were not the only authorities to have considered the issue of legal entitlements to the poor. Since the thirteenth century, the Spanish royal chanceries had employed *abogados de pobres*,<sup>38</sup> and cities elsewhere began to provide similar services, for example in fifteenth-century Northern Italy and in the Savoy.<sup>39</sup> The first extensive ordinance that Charles V decreed pertaining to the arrangement of civil procedure in the Low Countries, in 1531, included a stipulation regarding legal aid to the poor. Article 21 of the ordinance stated that all employees, *advocaten*, and *procureurs* of the princely courts were expected to assist poor subjects “for the love of God”—that is, free of charge—and to do so in the same way that they served the rich. Those who failed to do this would face punishment. Subsequent ordinances from 1558 and 1604 on juridical procedures reiterated this stipulation, although the warning about punishment was omitted. *Advocaten* were forbidden to refuse poor clients and were required to serve them free of charge.<sup>40</sup> Various local regulations regarding civil procedure and oaths sworn by urban *procureurs* and *advocaten* upon assuming office contained similar phrases as those in the 1531 ordinance.<sup>41</sup>

Thus the “good right” of the weak to obtain legal aid was included in sixteenth century regulations restructuring civil procedures. However, until the eighteenth century, the only official regulation about legal services to the poor concerned the fairly vague obligation for officers and servants of law courts to serve such people. Formal regulations usually included

36. Elsener, “Der ‘arme man’,” 93–113; and Cerutti, *Giustizia sommaria*.

37. Elsener, “Der ‘arme man’,” 101; and Richard H. Helmholz, *The Spirit of Classical Canon Law* (Athens, Georgia: University of Georgia Press, 1996), 128–32.

38. Kagan, *Lawsuits and Litigants*, 13, 66–7.

39. Brundage, “Legal Aid for the Poor,” 174; Elsener, “Der ‘arme man’”; and Alice Briod, *L’assistance des pauvres au moyen âge dans le Pays de Vaud du commencement du moyen âge à la fin du XVIe siècle* (Lausanne: Editions Spes, 1926), 26.

40. Jules Nauwelaers, *Histoire des avocats au souverain Conseil de Brabant*, vol. 1 (Brussels: E. Bruylant, 1947): 334–35; Gaillard, *Le Conseil de Brabant*, vol. 2, 122.

41. Antwerp: Felixarchief, Vierschaar, inv. nr. 24, Rechten en Costumen der Stad Antwerpen, Maniere van procederen, enz. Commentaria, early 17th century; ’s-Hertogenbosch: Lijten, *Het burgerlijk proces*, 309; Amsterdam: Dini Helmers, ‘*Gescheurde bedden*’. *Oplossingen voor gestrande huwelijken, Amsterdam 1753–1810* (Hilversum: Verloren, 2002), 172; and Diest: Nauwelaers, *Histoire des avocats*, 336.

only minor or intangible sanctions for noncompliance with this guideline. The seventeenth century author de Wynants, for example, opined that practitioners who refused to serve the poor would have to justify themselves before God.<sup>42</sup> However, as evidenced by a late seventeenth century litigant's testimony about the utter disinclination of Brabantine rural courts and their practitioners to provide poor litigants with legal aid,<sup>43</sup> few practitioners were much troubled by such repercussions. Joanna Catharina Huijbrechts, a single mother of five young children in Antwerp, similarly lamented in 1726 that even an impoverished woman in her circumstances could find no support from any *advocaat* or *procureur* although "according to law and because of Christian love they are required to help the poor."<sup>44</sup>

However, in many law courts across the early modern Low Countries, poor litigants could and did acquire free legal aid that had developed through practice, although they did so in limited numbers, as will be explained. Generally, litigants did not depend (solely) on the willingness of individual *advocaten* and *procureurs* to provide legal aid. More often than not, the law court assigned the *advocaat* and *procureur* who would serve the poor litigant. In Leiden, Antwerp, and Brussels, the city government—which also acted as a local law court—decided, upon receiving a formal petition for such aid, whether the petitioning party was entitled to assistance.<sup>45</sup> Some law courts—for example, in Diest—assigned their most junior *advocaten* and *procureurs* to serve poor litigants. Other courts—such as the Court of Holland—randomly delegated such services to the *advocaten* and *procureurs* it employed.<sup>46</sup> Performance on behalf of poor litigants was monitored by colleagues and by the judges of the law courts.<sup>47</sup>

42. Nauwelaers, *Histoire des avocats*, 334.

43. Georges Martyn, "Tussenkomsten van de Geheime Raad in rechtbedelingsperikelen (17de–18de eeuw): op zoek naar leidende beginselen (enkele bedenkingen)," in: *Voortschrijdend procesrecht. Een historische verkenning*, ed. Remco Van Rhee, Fred Stevens and Ernest Persoons (Leuven: Leuven University Press, 2001), 177–78.

44. Felixarchief, Privilegekamer, inv. nr. 815, Rekwestboek 1726–1727, folio 204v–205r.

45. For Leiden: RAL, ORA, inv. nrs. inv. nr. 144A–144O, Registers van dispositiën of requesten, 1659–1810. For Antwerp: Felixarchief, Privilegekamer, inv. nrs. 787–889, Rekwestboeken, passim. For Brussels: Stadsarchief Brussel, Oud archief, Liasse 606, Procédure, 1699–1794.

46. Nationaal Archief, Hof van Holland, inv. nr. 5943, Register van de namen van bij het Hof geadmitteerde advocaten, 1593–1796 en procureurs, 1569–1794; inv. nr. 5946, Advocaten en procureurs; and Nauwelaers, *Histoire des avocats*, 336.

47. See, for an example from eighteenth-century Amsterdam: Stadsarchief Amsterdam, Collectie handschriften (5059), inv. nr. 55, Aantekeningen van M. Weveringh Anton betreffende het verhandelde in de schepenbank (...), 1765–1777, folio's 59 and 127.

In addition to the efforts undertaken by law courts to provide free legal aid, numerous cities in the Southern Low Countries also witnessed, in the sixteenth and seventeenth centuries, the emergence of legal confraternities devoted to Saint Yves.<sup>48</sup> Saint Yves had been a lawyer in the thirteenth century; he was canonized in 1347 by merit of having devoted his life to providing legal aid to the poor.<sup>49</sup> Generations of law practitioners henceforth followed his example, and, at least in Antwerp, Mons, and Ghent, the Saint Yves confraternities actively engaged in such activities. The renewed vigor in the veneration for Saint Yves should be considered part of the Counter-Reformation's revitalizing of faith and religion-inspired community building. For example, in 1630, the Antwerp bishop Johannes Malderus urged local practitioners to provide legal aid to the poor. In 1677, the *advocaten* of the Council of Flanders petitioned the Pope to establish a confraternity whose explicit purpose would be organizing legal aid to those who could not afford it.<sup>50</sup> The resultant confraternity assigned ten *advocaten* and eight *procureurs* for these purposes.<sup>51</sup> To what extent did poor households draw upon these facilities?

### The Limited Use of Legal Aid for the Poor

Ascertaining an overview of the number of *pro deo* litigants at early modern law courts is a problematic undertaking. In theory, the lawsuits waged

48. Georges Martyn, "Een Oudenaards stadsreglement op de 'nering' van advocaten en procureurs (1662)," *Handelingen van de Koninklijke Commissie voor de uitgave der oude wetten en verordeningen van België* 50 (2012): 133–45; Hilde de Ridder-Symoens, "The Growth of Civil Society: The Emergence of Guilds of Lawyers in the Southern Low Countries in its European Context (The Sixteenth And Seventeenth Century)," in *The Reach of the Republic of Letters. Literary and Learned Societies in Late Medieval and Early Modern Europe*, ed. Arjan Van Dixhoorn and Susie Speakman Sutch (Leiden: Brill, 2008), 340; Sien Van Seeveren, 'Voor tghemeene welvaart'. *De Sint-Ivogilde van het Brugse Vrije (1591–1791)*. (Masters diss., University of Ghent, 2005); and M. Gaillard, "La confrérie de St-Ivon et le bureau de consultation gratuite à Gand," *Bulletin de l'Académie royale de Belgique* 20 (1853): 1–27.

49. Anette Rieck, *Der Heilige Ivo von Hëlory (1247–1303). Advocatus pauperum und Patron der Juristen* (Frankfurt am Main: Peter Lang, 1998).

50. De Ridder-Symoens, "The Growth of Civil Society," 345–48; and Guido Van Dievoet, "De H. Ivo, advocaat van de armen, en het collegium utriusque iuris van de oude universiteit Leuven," *Jaarboek van de Geschied- en Oudheidkundige Kring voor Leuven en Omgeving* 34 (1994): 187.

51. Peter Van Peteghem, "De broederschap van de heilige Ivo en de Gentse advocaten tijdens het Ancien regime. Op zoek naar sporen van de cultus van de heilige Ivo in het graafschap Vlaanderen, maar vooral te Gent," *Tijdschrift voor privaatrecht* 45 (2008): 1398–99.

*pro deo* should be identifiable from the roll registers, which recorded the names of parties for each day's court proceedings. However, these registers contain hundreds of entries per year. Moreover, in cataloguing the litigants, each registered name must be accurately entered into a database, so as to prevent overlapping counting of parties who appeared in multiple court cases.

Another research strategy, applied only to Leiden, was adopted: this involved checking the temporal distribution of the 402 petitions for free legal aid that were submitted to that city's bench of aldermen over the years 1751–1810.

*Table 1.* Temporal Distribution of the 402 Petitions for Free Legal Aid that were Submitted to The Bench of Aldermen of the City of Leiden over the Years 1751–1810.

Years	No. of Petitions
1750–1759	39
1760–1769	64
1770–1779	73
1780–1789	77
1790–1799	90
1800–1809	59
Total	402

*Source:* Regionaal Archief Leiden (ORA), Oud Rechterlijk Archief (ORA), inv. nrs. 144A–144O, Registers van dispositiën op rekwesten, 1659–1810.

These figures show the strikingly small extent to which households sought free legal aid to settle their conflicts. Only between three and eighteen requests for free legal aid were filed yearly, from among a population ranging from 38,105 inhabitants in 1750 and 31,676 inhabitants in 1809.<sup>52</sup> The limited number of *pro deo* litigants is all the more surprising in view of the sizable numbers of poor households in eighteenth-century Leiden.

Although no exact figures are available for how many *pro deo* litigants were seen at other law courts, archival evidence suggests that these numbers were also generally low. Documents containing overviews of fees payable by litigants at the Council of Flanders<sup>53</sup> and in Rotterdam<sup>54</sup> yield only a few *pro deo* cases yearly. The so-called *furnissemingsboeken* of

52. Pot, *Arm Leiden*, 308.

53. Rijksarchief Gent, Raad van Vlaanderen, inv. nrs. 8076–8289, Rapportboeken, 1558–1789. These documents were consulted at random.

54. Gemeentearchief Rotterdam, Oud Rechterlijk Archief, inv. nrs. 341–405, Civiele rol, 1702–1810.

eighteenth century Antwerp also offer an overview of such fees, and, likewise, record few *pro deo* cases.<sup>55</sup>

Despite the clear benefits that free legal aid afforded to them, poor households appear to have made relatively little use of the option. This can be explained by factors on the demand side (reluctance of poor households to make use of legal aid), as well as by factors on the supply side (reluctance to provide legal aid to the poor). I will first discuss possible factors on the demand side. Factors on the supply side will be discussed in the next section of this article.

Apart from the cost of litigation, there are three major reasons why poverty-stricken households would have been discouraged from turning to law courts to settle disputes. First, such parties may not have owned adequate possessions to trigger disputes. For example, households with limited resources entered into fewer contractual agreements than did wealthier ones, and were thereby less often involved in the sorts of conflicts that led to lawsuits. Second, the complexity and lack of transparency of legal procedures possibly hampered inclination to consider judicial action.

Third, there may have been a sociocultural gap between potential litigants and those who dispensed the law, which was daunting for those of lower social groups. Recent research on the social composition of the plaintiffs (and defendants) of the mid eighteenth century Leiden Peacemakers court provides indirect evidence for such gap. The Peacemaker court was a small claims court that boasted a strikingly quick, inexpensive, and transparent oral procedure that was based on “good judgment” rather than formal law. Therefore, all inhabitants of mid eighteenth century Leiden could easily afford litigation at the Peacemaker court, even for very small claims, and even if they were illiterate. Nonetheless, those among the lower 60% of households (the less wealthy) scarcely used this particular small claims court. Only 2% of all plaintiffs belonged to the (poorest) bottom quintile of the households of Leiden’s population, whereas at least 84% of the plaintiffs were from the most affluent 40% of households. The Leiden Peacemakers court was, therefore, a distinctly elitist institution, even in light of its low cost and markedly transparent procedure.<sup>56</sup> For mid eighteenth century Leiden at least, this provides indirect evidence that the limited use of free legal aid can be explained to some extent by a sociocultural gap between, on one hand, poor households and lower middling groups and, on the other, the elite groups who staffed the law courts and starkly predominated among plaintiffs and defendants alike. Direct research into the attitudes of the

55. Felixarchief, Vierschaar, inv. nr. 1561–63, Furnissementboecken, 1685–1793.

56. Vermeesch, “The Clientele.”



lower social groups toward the law should be conducted, to further corroborate this interpretation of the low participation of those groups in litigation.

Nonetheless, some poor people did find their way to the law courts. Some of these households may have made use of law courts and disbursed the requisite report fees and seals, as most lawsuits served primarily to pressure the defendant into reaching an out-of-court settlement. Often, fees had to be paid only upon conclusion of the lawsuit; as such, people who anticipated winning their case would often accept the financial risks involved, being confident that the opposing party would pay the legal expenses. Therefore, people who initiated lawsuits did not necessarily expect to bear the related costs, and this helped significantly to render lawsuits a financially viable option for households of little means. For example, in 1734, Jan Vermeulen, a poor inhabitant of the Flemish village Etikhove, sought legal aid at the Saint Yves confraternity, but not until he had already commenced a lawsuit at the Council of Flanders. He clearly intended this legal action to function as a forceful threat by which to compel the opposing party to execute a particular mutual contract; Vermeulen was astonished, however, when his adversary refused to recognize his own signature on the contract in question, thereby entailing that the lawsuit would have to be pursued until the matter was fully adjudicated.<sup>57</sup> Some litigants petitioned for *pro deo* assistance during the course of a trial, their poverty having been caused by the many legal costs they had to bear for the ongoing case.<sup>58</sup>

Therefore, the limited extent to which poor households found their way to law courts (even the inexpensive ones), despite the fact that they could initiate lawsuits without incurring immediate expenses, goes far in explaining why so few litigants sought free legal aid. However, there are elements at the supply side of the legal system as well, that help to explain the limited use poor households made of legal aid. Therefore, the procedure for obtaining legal aid for the poor is revealing as well, both as concerns the low numbers of litigants who opted to use it and as concerns the attitudes of local and “national” governments regarding the public accessibility of their judicial infrastructures.

57. Griet Vermeesch, ‘Een achttiende-eeuws *pro deo* proces voor de Raad van Vlaanderen. Een sociaal-historische analyse van rechtspraak in de vroegmoderne Lage Landen’, in *Het gelijk in de Gouden Eeuw. Recht, onrecht en reputatie in de Republiek (1550–1750)*, ed. Hans Cools, Michiel van Groesen, and Judith Pollman (Hilversum: Verloren, 2014), 127–39.

58. ARAB, GR, inv. nr. 552/A, Renvois en justice, 18th century.

### Obtaining Legal Aid

To obtain free legal aid in the eighteenth century, litigants typically had to first submit a request to the law court where they wished their case to be heard. These requests were intended to function not as a process for obtaining special favors, but rather as a means to exercise a natural right. Central government officials in Brussels forwarded petitions for free legal aid to the appropriate law courts, as petitioners were mistaken in thinking such authorization was simply an automatic matter of grace: if the request failed to meet the stipulated criteria, a judge could deny the petitioner all “benefices” of free legal aid.<sup>59</sup>

The natural right of the poor to free legal aid did not imply that such aid was routinely granted. Several conditions had to be met for a litigant to be eligible for *pro deo* consideration. First, the case had to be justified. Litigants, therefore, sometimes solicited initial assistance from one or more *advocaten*, who examined the available evidence and provided an endorsement for the defensibility of the case. Numerous litigants in eighteenth century Antwerp found *advocaten* prepared to deliver such statements, which they attached to their petitions.<sup>60</sup> Otherwise, the law court assigned two or even three *advocaten* to examine the case. The bench of aldermen in Brussels, for example, followed such a procedure. The aldermen expected *advocaten* to be discreet about such statements, and it was considered highly inappropriate for litigants to be notified of favorable advice when the aldermen had in fact refused to grant legal aid.<sup>61</sup> In Leiden, the magistrate also asked one or two *advocaten* to assess the legitimacy of the petitioner’s claim.<sup>62</sup>

The second prerequisite for obtaining free legal aid was that the litigant be “genuinely destitute.” In Brussels and Antwerp, litigants often submitted a certificate of poverty, granted by a clergyman.<sup>63</sup> Litigants from Brabantine villages who sought to file *pro deo* lawsuits at the Council of Brabant also obtained certificates from local clergymen or from their

59. Ibid.

60. Felixarchief, Privilegekamer, inv. nrs. 787–889, Rekwestboeken, passim. For Brussels: Stadsarchief Brussel, Oud archief, Liasse 606, Procédure, 1699–1794.

61. Stadsarchief Brussel, Oud archief, Liasse 606, Procédure, 1699–1794.

62. RAL, ORA, inv.nr. 146, Rekesten tot het procederen pro deo. Register van dispositiën op requesten om brieven van voorschrijving tot het verkrijgen van akten van admisssie, 1764–1811. The same procedure was followed in Amsterdam: Stadsarchief Amsterdam, Schout en schepenen, inv. nr. 943, Schepenen minuut register, 1756; and Helmers, ‘*Gescheurde bedden*,’ 176.

63. Felixarchief, Privilegekamer, inv. nrs. 787–889, Rekwestboeken, passim; and Stadsarchief Brussel, Oud archief, Liasse 606, Procédure, 1699–1794.

local bench of aldermen.<sup>64</sup> However, there were other ways of ascertaining the poverty of petitioners. In certain cases in Antwerp, a commissioner from the bench of aldermen was assigned to review the petition and assess the litigant in person to corroborate that the party was genuinely poor.<sup>65</sup> In Leiden, the *advocaat* tasked with checking the justifiability of the petitioner's claim was also expected to corroborate the petitioner's adverse circumstances.<sup>66</sup> A third condition for granting free legal aid was that the other party involved in the case be heard. This allowed for verifying the first two conditions, as well as for trying to reconcile the parties, so as to render the proposed lawsuit unnecessary.<sup>67</sup>

Therefore, in Brussels and Antwerp the petitions for free legal aid were often accompanied with additional certificates verifying the petitioners' claims. In Leiden, this was generally not the case: the Leiden magistrate alone checked whether the request met the stipulated conditions. Only when litigants wished to pursue a lawsuit at a court outside their hometown or at the Court of Holland would the litigant include a letter of endorsement (*brief van voorschrijvinge*) from the local aldermen, in which it was declared that free legal assistance would have been granted had the case been tried locally.<sup>68</sup>

Who did clergymen and aldermen consider "genuinely destitute," and what sort of poverty justified endowment of legal aid? The relatively small number of requests for *pro deo* assistance implies that only limited segments from among the great numbers of poor households found their way to the law courts as a result of having been granted legal aid. The rich historiography on poor relief in early modern communities allows for postulating the social identity of *pro deo* litigants. After all, assisting the poor in their legal dealings was, in the Catholic Southern Low Countries, considered a work of mercy. The invigoration of the Saint

64. Nauwelaers, *Histoire des avocats*, 336; and Gaillard, *Conseil de Brabant*, Vol 2, 123.

65. For example, the petition of Guillaume Vanden Houte to the Antwerp aldermen in 1731: Felixarchief, Privilegekamer, inv. nr. 820, Rekwestboek 1731, folio 80v–81r.

66. RAL, ORA, inv. nr. 144E, Registers van dispositiën op requesten, 1659–1810, 1758–1768; inv.nr. 146, Rekesten tot het procederen pro deo. Register van dispositiën op requesten om brieven van voorschrijving tot het verkrijgen van akten van admisse, 1764–1811. Such procedure has also been described for the city of Amsterdam: Stadsarchief Amsterdam, Archief van de familie van Lennep, inv. nr. 125, Ordonnantie op de maniere van procederen voor den Gerecht der stad Amsterdam, 1779; and Helmers, *Gescheurde bedden*, 176.

67. ARAB, GR, inv. nr. 552/A, Renvois en justice, 18th century; Utrechts archief, Hof van Utrecht (239-1), inv. nr. 342-a-4, Stukken betreffende de kleine rol, 1743–1792.

68. For example: ORA, RAL, inv.nr. 146, Rekesten tot het procederen pro deo. Register van dispositiën op requesten om brieven van voorschrijving tot het verkrijgen van akten van admisse, 1764–1811.

Yves confraternities as part of the Counter-Reformation likewise evidenced such reasoning.<sup>69</sup>

In the early modern period, a moral distinction was made between so-called “deserving” and “undeserving” poor. The latter comprised a sizeable group of vagrant and itinerant poor people; these persons were considered a threat to order and stability and enjoyed few entitlements to relief. The former—the “respectable,” “deserving,” or “house poor”—consisted largely of households from the local community; their poverty was considered to have been caused by misfortunes for which they were not at fault.<sup>70</sup> The provision of relief to these latter categories of the poor and its general denial to others constituted an important element of early modern community building.<sup>71</sup>

Charity was, therefore, not necessarily bestowed on the households who most needed it, nor did subsistence poverty automatically entitle households or individuals to relief. Sandra Cavallo has developed the clearest exposition for this, specifically for eighteenth century Turin; however, it also applies to the Low Countries.<sup>72</sup> Cavallo stressed that it was expected that poor relief would be directed to “normal” households who had fallen victim to natural disasters such as illness, death of the head of the family, or difficulties of a temporary or seasonal nature. As such, relatively affluent households who suffered sudden disaster enjoyed better prospects for obtaining relief than did households whose basic socioeconomic structures (including low household income, for example) rendered it difficult to make ends meet over extended periods. Such views on charity mirrored ideological perspectives that evidenced consideration of a rigid social order. Poor relief, in this respect, was intended to confirm social hierarchies rather than to remedy social inequalities.<sup>73</sup>

Such an outlook is exemplified by the social category of the so-called “shamefaced poor” in early modern cities. This group encompassed poor

69. De Ridder-Symoens, “The Growth of Civil Society”.

70. Robert Jütte, *Poverty and Deviance in Early Modern Europe. New Approaches to European History* (Cambridge: Cambridge University Press, 1994), 158–65.

71. Katherine Lynch, *Individuals, Families, and Communities in Europe, 1200–1800: The Urban Foundations of Western Society* (Cambridge: Cambridge University Press, 2003), 103–35.

72. Lis, *Social Change*, 116–127, 132–133; Ingrid van der Vlis, *Leven in armoede. Delftse bedeeiden in de zeventiende eeuw* (Amsterdam: Prometheus/Bert Bakker, 2001): 277–9.

73. Sandra Cavallo, “Conceptions of poverty and poor relief in Turin in the second half of the eighteenth century,” *Domestic strategies. Work and family in Italy and France (17th–18th centuries)*, ed. Stuart J. Woolf (Cambridge: Cambridge University Press, 1991), 148–99; Sandra Cavallo, *Charity and power in early modern Italy. Benefactors and their motives in Turin, 1541–1789* (Cambridge: Cambridge University Press, 1995), 69–80.

households who had formerly belonged to more affluent middling groups among the urban citizenry, but who were now, owing to misfortunes such as disease or the death of a family's main income earner, unable to financially maintain their earlier status. The "shamefaced poor" referred to such people who, being too discomfited and humiliated by their reduced status to openly approach charity institutions, were allowed to receive alms surreptitiously. Urban authorities thereby protected the secret of these people's actual socioeconomic conditions and, therefore, their reputations.<sup>74</sup>

The literature on the so-called *personae miserabiles* indicates that similar considerations were fundamental in granting privileges to poor households for their legal affairs. Richard Helmholz has detailed criteria that emerged in Canonical Law regarding the poverty suffered by *personae miserabiles*: poverty was judged by the party's current means; assets that did not yield ready cash were disregarded. For example, a widow who possessed real estate but had insufficient money to purchase necessities was, therefore, considered poor. Also, poverty was judged on a sliding scale, such that even people with considerable assets could be deemed "poor" if they became unable to live according to their station.<sup>75</sup>

Simona Cerutti's findings for eighteenth century Turin show that similar considerations informed early modern practices of poor relief.<sup>76</sup> In Turin, the category of *miserables* who were entitled to summary procedure comprised a diverse set of people, including widows, orphans, minors, and the "poor," as well as merchants, soldiers, pilgrims, and foreigners. These diverse social groups shared a common characteristic not of material dispossession but rather of scarcity of relational and social resources. Such groups could not be expected to effectively press their cases through legal claims, especially as their "misery" was primarily related to "incompetence" regarding local norms and laws and a lack of relational resources. A more suitable summary procedure for such litigants was one that leaned more toward natural law than towards positive law. Also, the "poor" in this category were not necessarily the community members most deprived of

74. Van der Vlis, *Leven in armoede*, 277–79; Cavallo, *Charity and power*, 15, 57, 69, 111–2, 220; Olwen Hufton, *The poor in eighteenth-century France* (Oxford: Clarendon Press, 1974), 214–5; Lis, *Social Change*, 156–7.

75. Helmholz, *The Spirit*.

76. Thus far, the *personae miserabiles* have not been described for the Low Countries. The author is currently preparing an article in which she assesses the social profile of litigants who sought free legal aid in Leiden in the period 1745–1811 via cross-linking the names of such parties with databases containing demographic, fiscal, and other data. This research will help to assess what sorts of people belonged to the category of *personae miserabiles* in eighteenth century Leiden.

means of subsistence, but rather those who had suffered sudden and unusual deprivation.<sup>77</sup>

In all probability, similar ideas about the nature of poverty and the entitlement of the poor to legal aid existed in the Low Countries. This can be derived from the narratives offered in the consulted petitions for free legal aid in eighteenth century Leiden and Antwerp and from the source material examined for Brussels. These sources contain ample and often explicit explanations of how sudden misfortune had caused the poverty of the petitioners. Strikingly, some of the petitioners' litigation concerned substantial possessions and assets, testaments to their former wealth.<sup>78</sup> For example, in Leiden in 1781, a certain Alida van der Linden successfully petitioned for free legal aid at the bench of aldermen in the matter of a conflict concerning sale of a house she had inherited.<sup>79</sup>

These contemporary perspectives on "poverty" should caution legal historians against straightforward assumptions that eligibility for legal aid was considered a fundamental right of every person. Despite rulers and monarchs paying lip service to the importance of justice being accessible to all subjects, only limited segments of the poor were in fact considered *personae miserabiles*. Therefore, from the supply side of legal services, the most destitute could not necessarily presume reliance on legal aid.

Admittedly, only a limited number of petitions for *pro deo* assistance were summarily rejected. Most petitions received provisional approval, as will be explained in the next section. A number of rejected requests for *pro deo* assistance are easily traceable in legal records. The Brussels archives offer a number of grim examples of the attitude of the local government. In 1758, for example, Lovinus Soffray, a Brussels citizen and master saddler, sought legal assistance at the Brussels court of aldermen, in an attempt to overturn a fine of 25 guilders imposed by his guild. Soffray attached a certificate of poverty from a local clergyman to his petition, and two *advocaten* endorsed the justifiability of his case. However, the city government refused to confer the requested assistance, but did allow the guild to use its own funds to take legal action against Soffray. The city government stated that Soffray had evidently trespassed guild regulations, rendering his defence superfluous. The statements of the

77. Simona Cerutti, "Les 'misérables' en droit Italien au XVIIIe siècle," in *Gens de passage en Méditerranée de l'Antiquité à l'époque moderne. Procédures de contrôle et d'identification*, ed. Claudia Moatti and Wolfgang Kaiser (Paris: Maisonneuve & Laroise, 2007), 228.

78. RAL, ORA, inv. nrs. inv. nr. 144A–144O, Registers van dispositiën of requesten, 1659–1810; Felixarchief, Privilegekamer, inv. nrs. 787–889, Rekwestboeken 1701–1792.

79. RAL, ORA, inv. nrs. inv. nr. 144H, Registers van dispositiën of requesten, 1778–1786, fol. 59–60.

*advocaten* were of little significance against the conclusions of the judges. According to the aldermen, the bestowal of the *pro deo* implied a provisional verdict. Moreover, the city government “had been informed” that Soffray was financially competent to assume the costs in question, regardless of the certificate of poverty provided to him by a priest. In short, the authorities argued that they could not allow him to “pressurize” his opponents “without risk,” that is, without his facing the costs for taking legal action.<sup>80</sup>

Nonetheless, the great majority of the petitions for free legal aid that were found in the archives of Antwerp and Leiden were provisionally approved.<sup>81</sup> This tendency has also been more generally established for petitions filed to urban governments. In all probability, petitions that were unlikely to be approved were discarded earlier in the petitioning process. Petitioners who filed to governmental institutions at local or “national” levels more often than not employed intermediaries and even professional lobbyists. Such agents ensured that petitions were drafted correctly and reached the appropriate desk.<sup>82</sup> Conceivably, such intermediaries were familiar with the relative prospects of the various types of requests and notified applicants whose requests stood little chance of success. As such, it is feasible that the large collection of approved petitions is somewhat biased. Moreover, it is possible that rejected petitions were customarily returned to the petitioner, thereby leaving no traces in the archives. Therefore, the provisional approval of most petitions for *pro deo* assistance does not exclude the possibility that legal aid was restricted to particular subsections among the poor, notably the so-called “deserving poor.”<sup>83</sup>

### Benefits and Hazards of Legal Aid to the Poor

Obtaining the right to litigate *pro deo* could serve as a highly effective means by which poor litigants could try to persuade alleged offenders to address the contention in question, before the incident was heard in

80. Stadsarchief Brussel, Oud archief, Liasse 606, Procédure, 1699–1794.

81. Felixarchief, Privilegekamer, inv. nrs. 787–889, Rekwestboeken; RAL, ORA, inv. nr. 144A-O, Dispositiën op rekwesten, 1659–1811.

82. Griet Vermeesch, “Professional Lobbying in Eighteenth-Century Brussels: The Role of Agents in Petitioning the Central Government Institutions in the Habsburg Netherlands,” *Journal of Early Modern History* 16 (2012): 95–119; Johanna Roelevink, “‘t Welck doende etcetera.’ Lobby bij de Staten-Generaal in de vroege zeventiende eeuw,” *Jaarboek Geschiedkundige Vereniging ‘De Haghe’* (1990): 153–67.

83. In-depth analysis of a limited number of case studies of the social position of *pro deo* litigants in the local community will help to test this scenario.



court, and even to temporarily remedy their own precarious personal circumstances. A case at the Court of Utrecht in 1767 provides a clear example of the potential benefit of obtaining free legal aid. Anthonia van de Linden had pursued legal recourse at the Court of Utrecht after having failed to peaceably retrieve a sum of 30 guilders she had advanced to her father and stepmother. Her stepmother was summoned to face the complaints, but refused to yield or acknowledge any wrongdoing. However, when Van de Linden subsequently obtained the right to wage a lawsuit *pro deo*, her stepmother returned the loan forthwith.<sup>84</sup> Households made use of the *pro deo* procedure to obtain overdue wages, and young impecunious women applied it as a means to forcefully hold fathers of illegitimate children to their responsibilities. Some litigants took *pro deo* legal action as part of attempts to claim (often substantial) inheritances, which offered potential means to escape from poverty.

Litigants who undertook formal legal actions faced a broad range of attendant costs. In the eighteenth century, all court documents were required to bear a seal that cost a few pennies. Furthermore, fees were to be paid to various officials, including messengers and clerks, whose incomes depended largely upon receipt of such payments. The parties also financially compensated witnesses who testified during the lawsuit. There were also fees for *procureurs* and *advocaten*; their charges could include various services, such as writing and submitting court documents, or attending court sessions. Therefore, in theory, litigants who obtained free legal aid could wage their lawsuit free of charge, such that payments for the services of *procureurs* and *advocaten* and for seals and various remunerations to court officers were exonerated.<sup>85</sup>

However, *pro deo* assistance did not automatically waive all litigation-related costs. For example, litigants at the Council of Flanders who obtained *pro deo* assistance enjoyed exemption only from having to pay for seals affixed to documents. If such litigants wished to have free assistance from a *procureur* and *advocaat*, they needed to address the Ghent confraternity of Saint Yves. It took the aforementioned Jan Vermeulen a full year before he was able to obtain the latter kind of aid, although the Council of Flanders had granted him exoneration from the cost of seals

84. Utrechts archief, Hof van Utrecht, inv. nr. 342-a-4, Stukken betreffende de kleine rol.

85. Rijksarchief Gent, Raad van Vlaanderen, inv. nr. 7995, Staten van gerechtskosten "Pro deo et Sancto Ivone," 1744–1761; and Gaillard, *Conseil de Brabant*, Vol 2, 123. The costs for the urban courts in Antwerp are mentioned in the local customs: *Ordonnantie ende Verhael vanden Stijl ende Maniere van Procederen voor Aemptman, Borghemeester ende Schepenen der Stadt van Antwerpen*, <https://www.kuleuven-kulak.be/facult/rechten/Monballyu/Rechtlagelanden/Brabantsrecht/antwerpen/style.html>. (accessed 8 June 2014). On the cost of litigation at the Leiden bench of aldermen, see, Van Meeteren, *Op hoop*, 280.

from the start.<sup>86</sup> The urban benches in Brussels, Antwerp, and Leiden offered *pro deo* litigants exemption from report fees (or at least the payment of seals) and from the services of legal spokespersons.<sup>87</sup>

However, there are many indications that costs were nonetheless charged. The documents examined for eighteenth century Brussels contained several examples. In 1770, Barthelemi Hartogh obtained legal aid for a testamentary cause, yet subsequently learned, to his chagrin, that he would have to pay report fees before he could obtain the verdict. Not surprisingly, he was unable to pay these fees, not least considering that he already had to beg for bread to feed his seven children. Stephanus Bianchini and Claudine Hughs faced a similarly precarious financial situation in 1771 when they petitioned the central government to order the Brussels bench of aldermen to acquit them of these costs. The latter body objected to the claim that this procedure had been followed “within living memory.”<sup>88</sup>

Other examples relate to the High Court of Utrecht and the Court of Flanders. Litigants for small claims who reached a favorable agreement at the High Court of Utrecht saw part of their awarded sums applied to procedural costs, even when they had applied for *pro deo* assistance. In 1767, the former employer of the farmhand Jan Putters agreed, in the presence of a judge, to pay Putters 7 guilders of 11 guilders in outstanding wages. However, Putters had to immediately pay 1.6 guilders of the awarded sum to the *procureur* who had helped him at court.<sup>89</sup> This was hardly a substantial amount of money, although for Putters—who had thought it worthwhile to pursue legal action for a claim of 11 guilders—it was a significant price to pay for remuneration of his income.

*Pro deo* litigants at the Council of Flanders also faced numerous expenses, even after exoneration of the costs of seals and legal representatives. In 1733, the Ghent Saint Yves Confraternity petitioned the central government to order the Council of Flanders not to charge the usual array of report fees to litigants who had obtained the *pro deo* procedure. A decree to this end was published in 1733.<sup>90</sup> However, the list of expenses

86. Rijksarchief Gent, Raad van Vlaanderen, inv. nr. 21.077, Jan Vermeulen (Etikhove), hr. bev., c. François Devos (Munkzwalm): terugbetaling van geleend geld, 1737–1738.

87. As summarized in an *Extrait du Protocole* of the Privy Council in Brussels dated August 22, 1778. For Leiden, the acquittal of the costs of seals and the payment of legal spokesmen could be derived from the *apostilles* on consulted petitions.

88. Stadsarchief Brussel, Oud archief, Liasse 606, Procédure, 1699–1794.

89. Utrechts archief, Hof van Utrecht, inv. nr. 342-a-4, Stukken betreffende de kleine rol, 1743–1792.

90. “Décret de Charles VI ordonnant à tous magistrats, collèges de justice, secrétaires, greffiers, huissiers, d’expédier gratis les actes requis pour les procès des personnes misérables

for at least one *pro deo* lawsuit waged at the Council of Flanders between 1733 and 1741 shows that the officials of the Council nonetheless received all due payments.<sup>91</sup> In 1791, three defendants who had obtained free legal aid at the Council of Flanders (so as to contest criminal charges against them) were subsequently required to pay 12 guilders in so-called “report fees” and remuneration to the three *advocaten* who had declared their case admissible.<sup>92</sup>

*Pro deo* litigants also risked incurring even further liabilities. Such assistance was always and explicitly granted provisionally; however, as noted, an important condition in obtaining such aid was that the case was in fact warranted. If, in the course of the lawsuit’s proceedings, the position of the opposing party gained conclusive leverage, the *pro deo* support could be re-evaluated or withdrawn. Such a situation faced a German *pro deo* litigant who, in 1761, had waged a lawsuit at the Council of Brabant to obtain payment for provisions delivered to the French army.<sup>93</sup> Likewise, a *pro deo* party who was ruled against could be held accountable for legal costs. For example, in 1758, Johanna Latterman was allowed to pursue charges *pro deo* at the Amsterdam bench of aldermen against another party for alleged “defloration”; the defendant, however, swore that he had never had sexual relations with her, and she was subsequently required to pay the case’s legal fees.<sup>94</sup>

In the Southern Netherlands, eighteenth century officials of the Privy Council distinguished between the *pro deo* procedure and the right to take legal action *sous notice*. In *pro deo* procedures all costs were (in theory, at least) acquitted; in *sous notice* cases, however, careful note was taken of any suspended report fees and unsettled remuneration to *advocaten* and *procureurs*. The losing party was required to pay all such costs, even if the litigant had obtained the right to wage the lawsuit *sous notice*, because losing such a case indicated that the conditions of the claim being valid and justified had not actually been satisfied. Similarly, the right to the *sous notice* could be withdrawn during the proceedings (before the verdict) if the position of the opponent appeared to become irrefutable.<sup>95</sup>

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faisant partie de la clientèle de la confrérie de Saint-Ivon, à Gand, 28 novembre 1733,” in *Recueil des ordonnances des Pays-Bas Autrichiens, troisième série – 1700–1794*, ed. Louis-Prospér Gachard (Brussels: Fr. Gobbaerts, 1877), 528–29.

91. “Costen omme Jan Vermeulen”; inv. nr. 21.077, Jan Vermeulen (Etikhove), hr. bev., c. François Devos (Munkzwalm): terugbetaling van geleend geld, 1737–1738.

92. ARAB, GR, inv. nr. 552/A, Renvois en justice, 18th century.

93. ARAB, GR, inv. nr. 552/B, Renvois en justice, 18th century.

94. Stadsarchief Amsterdam, Schout en schepenen, inv. nr. 943, Schepenen minuut register, januari 1756–juli 1756, folio 194–195.

95. ARAB, GR, inv. nr. 552/B, Renvois en justice, 18th century.

The widow Dolvis of Brussels was confronted with such situation in 1749. Poverty had compelled her to cancel a rental agreement with a certain Le Francq, another widow, who consequently undertook legal action for unlawful breach of contract and rent arrears. In the ensuing lawsuit, Dolvis first obtained the right to defend herself *sous notice*, but this right was withdrawn a few months later, and she was required to pay a caution of 30 Ecu. Unable to provide such a sum and having nobody to stand surety for her, Dolvis used her few possessions as surety.<sup>96</sup> In 1757, Philippe Devuyt, another citizen of Brussels, unlawfully left his wife but obtained the right to defend himself *sous notice* in the ensuing court proceedings. However, after a commissioner of the city government heard testimony from Devuyt's neighbours and close friends, the permission was withdrawn, on grounds that his petition to the city government had presented a clearly "fantasized" version of the conflict.<sup>97</sup>

Although Brussels officials at local and central levels stressed the distinction between *pro deo* and *sous notice*, the evidence suggests that outside Brussels the appellations were fairly synonymous, with the *pro deo* being as provisional and conditional as the *sous notice*. A closer look at the examined ninety-seven petitions for legal aid in eighteenth century Antwerp reveals that the litigants always applied for *pro deo* assistance, and typically received the explicitly provisional right to litigate *pro deo ou sous notice* until the opposing party had submitted a "rescription," an official response to the petitioner's grievance.<sup>98</sup> In the legal records of Amsterdam, Leiden, the Court of Holland, and the court of Utrecht, only the term *pro deo* is included; however, it appears to have stipulated the same conditions as did *sous notice*. However, in Brussels, there were instances of litigants petitioning for the right to wage a lawsuit *pro deo* or at least *sous notice*;<sup>99</sup> as such, the distinction appears to have remained in force there.

The provisional nature of the dispensation to pursue litigation at no financial cost may have been an important reason why poor households were reluctant to seek *pro deo* assistance. That the assistance could be withdrawn in the course of the lawsuit evidently represented a significant risk. Moreover, even if their case was deemed to be justified, such litigants could still lose the suit for procedural reasons. In 1736, Cathérine Melaen waged a *pro deo* lawsuit at the Council of Brabant against a former debtor of her deceased father, seeking to obtain a sum of no less than 20,000

96. Stadsarchief Brussel, Oud archief, Liasse 606, Procédure, 1699–1794.

97. Ibid.

98. Felixarchief, Privelegkamer, inv. nrs. 787–889, Rekwestboeken, 18th century.

99. Stadsarchief Brussel, Oud archief, Liasse 606, Procédure, 1699–1794.

guilders. In endeavoring to convince the judge of the lawfulness of her claim, she provided sworn testimonies from a range of people knowledgeable about the case. However, civil procedure at the Council of Brabant determined that such proof was not authorized for such a large claim. Melaen lost her case and the judge was left to decide which party would pay the incurred legal costs of more than 600 guilders. Fortunately for Melaen, the judge considered her case justified and, to the shock of the opposing party, consigned all the case's legal expenses to him.<sup>100</sup> She was fortunate in this respect, as a less lenient judge would have saddled her with the costs, regardless of her financial circumstances.

However, other evidence suggests that such leniency for *pro deo* litigants was generally quite limited. Notwithstanding the myriad opinions voiced in favour of the poor not being excluded from obtaining their "good right" in the law courts, contemporary officials and observers exhibited little tolerance for those who opted to pursue such rights. In the early modern period, there was fairly widespread intolerance for people who, in excessively exploiting their access to the law courts, supposedly instigated conflicts and deliberately threatened the peace and harmony of the community. However, such prejudices did not impede massive reliance on law courts on the part of people from all walks of life, especially during the long sixteenth century.<sup>101</sup>

Poor people who used law courts to settle their conflicts were common targets of these prejudices and, therefore, were more likely to suffer the disadvantageous effects of such intolerance. Joos De Damhouder's famous late sixteenth century work on civil procedure includes passages characterizing the poor as more "fervent to plead" than the rich.<sup>102</sup> Commenting on the 1604 Ordinance on civil procedure in the Catholic Netherlands, the previously mentioned observer de Wynants stated that poor litigants were generally "troublesome, wicked folks and pleaders of bad faith. (...) They often start lawsuits to subject their opponent to their claims, they often act out of vengeance and they seek to impose excessive costs on their adversary that cannot be recuperated after they lose their trial, in view of their state of poverty."<sup>103</sup>

These observations about how law courts were allegedly misused by the poor are echoed in the occasional writings of various officials who were regularly confronted with poverty-stricken litigants. In 1765, the Brussels

100. Nauwelaers, *Histoire des avocats*, 339.

101. This has been described for England in Christopher W. Brooks, *Pettyfoggers and Vipers of the Commonwealth. The "Lower Branch" of the Legal Profession in Early Modern England* (Cambridge: Cambridge University Press, 1986) 108–11.

102. Cited in Gaillard, *Le Conseil de Brabant*, Vol 2, 122.

103. Cited in Gaillard, *Le Conseil de Brabant*, Vol 2, 123.

city government claimed that the majority of litigants were people who faced financial hardship in taking legal action; the city government insisted, however, that such hardship was not a valid reason for randomly allowing individuals the right to wage lawsuits free of charge, not least as these proceedings imposed great strains on the opposing parties. According to the city government, only litigants who were absolutely unable to shoulder the costs of a lawsuit should be granted this right. In the view of the Brussels aldermen, haphazardly or otherwise inefficiently conferring *pro deo* counseling on those who requested it would soon lead to respectable people being daily disturbed in matters regarding their possessions and peace of mind; such harassment would be undertaken by *pro deo* litigants, who would quickly grow in number because of the impunity regarding the costs of waging lawsuits. The Brussels aldermen deemed it essential to be highly skeptical of the “false pretences” often maintained by poor litigants petitioning for legal aid.<sup>104</sup>

*Pro deo* litigants were especially disadvantaged in seeking to repeal unfavorable sentences, particularly in Brabant, even despite the fact that plaintiffs eligible for free legal aid were entitled to be heard in first instance at courts of appeal. For example, the customary law of the Bailiwick of Bois-Le-Duc upheld the privilege of widows, orphans and other *personae miserabiles* to bring their cases to the court of aldermen of Bois-le-Duc. Similar privileges were granted at High Courts.<sup>105</sup> However, using High Courts as courts of appeal was difficult for poor litigants, as legal aid was rarely granted for appeals. De Wynants, observing the workings of the Council of Brabant in the early seventeenth century, opined that those who could not cover the costs of an appeal should content themselves with having lost their case only once and with having forced the other party to pay useless expenses for a vexatious lawsuit.<sup>106</sup> This stance reiterates the view that obtaining *pro deo* legal aid implied a provisionally favourable judgment, which could hardly be maintained for cases that were lost in first instance.

However, even litigants who won their *pro deo* case in the first instance but had to defend it further at a court of appeal also experienced difficulties in obtaining legal aid for the subsequent proceedings. In 1753, widower Christophorus Philippi won a *pro deo* case at the bench of aldermen of Ruisbroek, a small village in the vicinity of Brussels. The case related to

104. Stadsarchief Brussel, Oud archief, Liasse 606, Procédure, 1699–1794.

105. Ariadne Schmidt, *Overleven na de dood. Weduwen in Leiden in de Gouden Eeuw* (Amsterdam: Prometheus/Bert Bakker, 2001), 179; Kagan, *Lawsuits and Litigants*, 103; Gaillard, *Conseil de Brabant*, Vol. 2, 31, 33–34; and Lijten, *Het burgerlijk proces*, 46.

106. Gaillard, *Conseil de Brabant*, Vol 2, 123–24.

taxes on a piece of land claimed by a local lord, who subsequently appealed the ruling to the bench of aldermen in Brussels. The Brussels aldermen refused to grant Philippi legal aid for the appeal, as he did not meet the condition of poverty. He possessed land, and litigants had to pay legal costs if they held possessions that could be used for that purpose. The aldermen, although they acknowledged that Philippi's land yielded minimal produce and that it "could seem odd that the supplicant should lose the property the lawsuit was waged for, only to be able to cover legal costs," nonetheless insisted that he pay his part of the report fees, amounting to 560 guilders. This ruling surprised Philippi, especially as he had received *pro deo* assistance at the Ruisbroek bench of aldermen.<sup>107</sup>

Litigants who appealed to the High Court of Holland likewise assumed that being granted *pro deo* assistance at a lower court was assurance of receiving such legal aid at the court of appeal. In contrast to the previously noted cases from Brabant, in Holland such expectations were usually satisfied. Johanna Latterman, after losing a case at the bench of aldermen in Amsterdam, appealed to the Court of Holland by using *pro deo* assistance.<sup>108</sup> In 1756, Lijntje Wavers appealed a case (against the alleged father of her illegitimate child) that had been decided against her at the bench of aldermen of Schiedam. She attached the "act of authorization" for free legal aid in Schiedam with her request to the Court of Holland, which subsequently granted her request for legal aid.<sup>109</sup>

Although legal aid to the poor bore many similarities in courts of various institutional levels across the Low Countries, the degree of leniency regarding poor litigants varied. Whereas the court of aldermen of Ruisbroek found no objection to providing Christophorus Philippi with legal aid, despite his holding land, the Brussels bench of aldermen judged his situation differently. According to de Wynants, the Council of Brabant refused to consider requests for *pro deo* assistance for ongoing lawsuits, so as not to undermine the legal position of the opposing party.<sup>110</sup> However, the Antwerp bench of aldermen saw no harm in such a course of action. In June 1731, it granted the miller Gerard van Lathem *pro deo* assistance after a year of unending legal disputes with the Millers guild.<sup>111</sup> Also, the Brussels city government considered provision of *pro deo* assistance to be a provisional judgement in favor of the *pro deo* litigant. In Antwerp and Leiden, however, there are numerous instances of both parties

107. Stadsarchief Brussel, Oud archief, Liasse 606, Procédure, 1699–1794.

108. Nationaal archief, Hof van Holland, inv. nr. 3140, Rekwesten om mandement.

109. *Ibid.*

110. Gaillard, *Conseil de Brabant*, Vol 2, 124.

111. Felixarchief, Privilegekamer, inv. nr. 820, Rekwestboeken, folios 92–93.



receiving *pro deo* assistance, which evidenced a different interpretation.<sup>112</sup> Litigants who had successfully requested *pro deo* assistance from lower courts were understandably surprised when they were subsequently held responsible for payment of report fees at the bench of aldermen in Brussels. Elsewhere, such fees were not charged to *pro deo* parties.

These variations are indicative of how the *pro deo* procedure evolved in practice and that, at least until the eighteenth century, it was scarcely subject to formal regulation. Customary law rarely addressed the accessibility and viability of local law courts to poor people.<sup>113</sup> The extensive ordinances promulgated in 1531, 1558, and 1604 regarding civil procedure contained only the previously described vague stipulation that *advocaten*, *procureurs*, and officials of the law courts were to serve the poor for free. There were occasional stipulations regarding court accessibility for the poor, but no bylaw was ever published in the Southern Low Countries or in the Dutch Republic that stipulated precisely what the *pro deo* procedure comprised. Revealingly, the decree promulgated in 1733 at the request of the Ghent Saint Yves confraternity addressed only *pro deo* assistance to clients of that particular confraternity.<sup>114</sup> Otherwise, the granting of *pro deo* assistance was left to the discretion of judges.

There is evidence, however, that regulations for the *pro deo* procedure emerged during the eighteenth century. In February 1703, for example, the city government of Antwerp submitted a letter to the Council of Brabant, querying whether poor people who availed themselves of *pro deo* entitlements were obliged to pay for the newly introduced “small seal” for official documents. After seeking the opinion of the States of Brabant, the Council of Brabant allowed for poor litigants to be exempted from such taxes, and seized the opportunity to establish rules regarding the *pro deo* procedure, so as to prevent abuse of it. Henceforth litigants could receive *pro deo* assistance at Brabantine courts only after having filed a petition with a certificate of poverty and after one or more *advocaten* had confirmed the justifiability of the case; only then would written approval be granted for taking *pro deo* legal action. A letter announcing

112. Felixarchief, Vierschaar, inv. nr. 1561, Furnissementboecken, 1685–1728; and Regionaal archief Leiden, Oud Rechterlijk Archief, inv. nr. 44 W, Dingboeken van grote zaken, sept. 1755-oktober 1766.

113. A search of the terms *poor*, *widows*, *orphans*, *miserabiles*, and *gratis* in the available online customary law of Aarschot, Asse (1569), Diest (1696–1701), Baronie Grimbergen (1606), Leuven (1622), Brussels (1570 and 1606), and Eeklo, yielded few stipulations. <https://www.kuleuven-kulak.be/facult/rechten/Monballyu/Rechtlagelanden/Bronnenindex.htm> (February 26, 2012).

114. “Décret de Charles VI”.

these rules was sent to the authorities of local courts in Brabant.<sup>115</sup> This memorandum, prompted by a new administrative tax, was, for Brabant at least, the first formal and general directive regarding the *pro deo* procedure.

Although similar provincial stipulations have not been found regarding legal aid for the poor in the Dutch Republic, it appears that increased formalization of the procedure occurred there as well. For example, in 1779 and 1785, two Amsterdam regents described in great detail the myriad specifics for how litigants obtained *pro deo* assistance at the bench of aldermen in Amsterdam.<sup>116</sup> Also, the sizable collection of petitions submitted to the Leiden bench of aldermen ranges from the years 1659 to 1811. Beginning with the submissions from 1751, the collection systematically contains formal petitions for obtaining access to *pro deo* assistance. This is a strong indication that increased formalization emerged from the mid-eighteenth century onward. Granting of the *pro deo* procedure had probably been done more informally before 1750. This development corresponds to a wider progression of increased formalization in the process of petitioning during the early modern era.<sup>117</sup> Formalization did not diminish the barriers for the poor to draw on legal aid. Granting the right to litigate *pro deo* still was at the discretion of the individual law courts and judges, who largely used their own interpretation of the criteria.

### Conclusions

Whereas early modern rulers ostensibly expected their judicial officials to serve the poor in the same way that they served the rich, those rulers exerted little effort to guarantee the accessibility of their law courts. Analysis of legal aid for the poor in the early modern Low Countries indicates that accessibility to law courts was restricted for poor households, although there are many examples of poor, often illiterate litigants who successfully navigated their way through the law courts so as to settle disputes and make claims. However, the numbers of *pro deo* cases heard at a range of law courts in the Low Countries were low, particularly in relation to the local demographic weights of the poor.

This article has argued that early modern rulers and their law courts only targeted limited sections of the “the poor” to be eligible for legal aid. The

115. Rijksarchief in Anderlecht, Raad van Brabant, Archief van de Griffies, inv. nr. 5222, Consulten, 1702–1705, folio 90–91; and Gaillard, *Conseil de Brabant*, Vol 2, 123.

116. Stadsarchief Amsterdam, Archief van de familie van Lennep, inv. nr. 125, Ordonnantie op de maniere van procederen voor den Gerecht der stad Amsterdam, 1779; and Helmers, *Gescheurde bedden*, 176.

117. Roelevink, “t Welck doende,” 163.

“deserving poor” were common candidates for legal aid, unlike the itinerant poor, although the latter faced the greatest hardships. The petitions for free legal aid consulted for this article reveal that *pro deo* litigants often pertained to households who had previously enjoyed secure financial status but had become impoverished as a result of sudden misfortune. This indicates that rulers, their courts, and court officials granted legal aid first and foremost to limited sections of impoverished households in the community, so as to confirm social hierarchies and reinforce the division between who was included in the community and who was not. Granting legal aid to the poor was, therefore, not aimed at lowering the entrance bar of the judicial infrastructure for the poor, or at helping the poor to use judicial infrastructure to improve their circumstances. However, as with other forms of poor relief to the deserving poor, it was a major factor in practices of community building.

Although the policies of law courts were intended to grant legal aid to the poor only to limited extents, there appeared to be relatively little demand for such assistance. This article has argued for further research into the likely existence of a sociocultural gap between the large social segments of poor households, on one hand, and the elites and higher middling groups, who dominated the law courts, on the other hand. However, the limited use of the *pro deo* procedure can also be attributed to its characteristics. Availing oneself of the procedure posed risks, especially financial ones, because it was always granted provisionally. Legal aid could be withdrawn, even before a verdict had been rendered, if a *pro deo* litigant’s case began to appear less justified than first assumed. Moreover, litigants who were entitled to *pro deo* assistance could still find themselves facing unexpected costs. The fact that relatively few people pursued the *pro deo* option was, perhaps, self-reinforcing. The fact that most poor people had few, if any, peers who had opted to turn to the courts heightened the threshold against their resorting to legal actions.

The examination of law courts in three cities, extended with research into a selection of additional law courts at urban and regional levels, has illustrated variations in the nature of the *pro deo* procedure across the Low Countries. This nonuniformity stemmed primarily from the fact that only the judges of the relevant law courts were considered qualified to assess whether litigants were eligible for free legal aid, such that central regulations regarding legal aid for the poor were hardly promulgated. There is one striking difference in how legal aid was provided in the Dutch Republic versus in the Habsburg Low Countries, notably that *pro deo* litigants in the north faced fewer difficulties in obtaining further legal aid to proceed with appeals. Otherwise, legal aid to the poor was as provisional, and therefore as risky, as in the south.