ARTICLES

DUTCH INFLUENCES ON LAW AND GOVERNANCE IN NEW YORK

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When we talk about Dutch influences on New York we might begin with a threshold question: What brought the Dutch here and how did those beginnings transform a wilderness into the greatest commercial center in the world? It began with spices and beaver skins. This is not about what kind of seasoning goes into a great soup, or about European wearing apparel. But spices and beaver hats are a good starting point when we consider how and why settlers came to New York—or more accurately—New Netherland and New Amsterdam.¹ They came, about four hundred years ago, and it was the Dutch who brought European culture here.² I would like to spend some time on these origins and their influence upon us in law and culture.

In the 17th century, several European powers, among them England, Spain, and the Netherlands, were competing for commercial markets, including the far-east.³ From New York’s perspective, the pivotal event was Henry Hudson’s voyage, when he sailed from Holland on the *Halve Maen*, and eventually encountered the river that now bears his name.⁴ Hudson did not plan to come here.⁵ He was hired by the Dutch

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² See Russell Shorto, *Forward to Dutch New York*, supra note 1, at vii, ix.
³ See Sandler, *supra note 1*, at 15, 18, 140; George Miller, *Introduction to To the Spice Islands and Beyond*, at xi, xv (George Miller ed., 1996) [hereinafter Miller, *Spice Islands*].
⁵ Sandler, *supra note 1*, at 148.
East India Company to outpace the competition and find a shortcut from Europe to the far-east. This would enable the company’s investors to tap into the lucrative treasures of the orient, including exotic condiments like pepper, clove, nutmeg, and cinnamon.

On September 2, 1609, he sailed into what would be New York harbor and proceeded up what is now called the Hudson River, believing it led to Asia. Instead, he got as far as Albany and turned back. Although he is sometimes referred to, inaptly, as Hendrick Hudson, he was not Dutch: he was English. No one, however can be sure what he looked like. One of his principal biographers, Thomas Janvier, tells us that “[n]o portrait of Hudson is known to be in existence. What has passed with the uncritical for his portrait—a dapper-looking man wearing a ruffled collar—frequently has been, and continues to be, reproduced. Who that man was is unknown. That he was not Hudson is certain.”

After what we call the voyage of 1609, Hudson made another voyage—his fourth and final—sailing off on April 17, 1610, again in search of a short route to Asia. Did he ever find it? The short answer is no. The slightly longer answer is fascinating.

After a winter of severe privation in a region known today as Hudson Bay/James Bay, Canada, his crew mutinied. According to the testimony of an eye witness, crew members abandoned Hudson on June 22, 1611, setting him adrift in a small shallop with minimal provisions, along with his young son, John, and several others who were either loyal to Hudson or too sick to be of any use to the mutineers. What became of the conspirators? Eight returned to England and were brought before the Trinity House Masters, who promptly concluded that they should be hanged. But they remained at large for several years after six of them were indicted, not for mutiny, but for leaving Hudson and the others to die.

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6 See id. at 144, 146.
8 See Sandler, supra note 1, at 158.
9 See Jacobs, supra note 4, at 31.
10 See Sandler, supra note 1, at 144, 146.
12 See Sandler, supra note 1, at 255–57.
13 See Janvier, supra note 11, at 140; Sandler, supra note 1, at 273–74.
14 See Janvier, supra note 11, at 139–40; Sandler, supra note 1, at 281.
15 See Janvier, supra note 11, at 128.
Historians did not know what became of the mutineers until Thomas L. Powys, in the 1927 preface to his biography of Hudson, told of how he had acquired additional records, including the “lost verdict” of 1618, in which the Admiralty Court had fully acquitted all of the mutineers. Why did the government permit the mutineers to remain at large for several years and ultimately spare them? Researchers have suggested that, in the eyes of the English authorities, the survivors, “because of their knowledge of navigation in Hudson Strait,” “were apparently worth more alive than dead.” “There were trading routes and riches [yet] to be found.” As another researcher put it, “[t]he guilt or innocence of the men seemed less important than the claim that they [had] discovered the Northwest Passage” to the far-east.

So, it was still all about spices . . . .

As far as the spice trade was concerned, Hudson’s 1609 voyage was a failure, and that would be the end of the story. But the Dutch soon capitalized on an existing trading network along the Hudson and Mohawk rivers, particularly the beaver skin trade with the Native Americans.

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N.Y. PENAL LAW § 125.25(2) (McKinney 2018); People v. Kibbe, 321 N.E.2d 773, 774 (N.Y. 1974) (quoting N.Y. PENAL LAW § 125.25).
18 See POWYS, supra note 16, at viii, 186.
19 Sandler, supra note 1, at 297.
20 Id. at 299. No one can say for certain what became of Henry Hudson. There are myths, including one that Hudson survived and joined a Native American community, where he produced red-headed or pale-faced Indian offspring—even though we do not know his hair color. See generally G.M. ASHER, HENRY HUDSON: THE NAVIGATOR 176 (1860) (concluding that no human is able to convey Hudson’s ultimate fate); JANVIER, supra note 11, at 145 (establishing that no one knows what ultimately happened to Hudson); PETER C. MANCEALL, FATAL JOURNEY: THE FINAL EXPEDITION OF HENRY HUDSON—A TALE OF MUTINY AND MURDER IN THE ARCTIC 170 (2009) (describing an unsuccessful search for Hudson); RICHARD WOODMAN, A BRIEF HISTORY OF MUTINY 41 (2005) (“Hudson and his party were never seen or heard of again.”); Burpee, supra note 17, at 406 (theorizing that Hudson spent his last days on the eastern side of Charlton Island); Carl Cramer, The Man—Hudson’s Triumph and Tragedy, N.Y. TIMES, June 7, 1959, at 69 (questioning what, if any, conclusions can be drawn regarding Hudson’s later life); Millman, supra note 16 (suggesting Hudson lived for years after the mutiny and fathered light-skinned natives); Ian Chadwick, HENRY HUDSON: THE AFTERMATH OF HUDSON’S VOYAGES AND RELATED NOTES, 1611–On, http://www.ianchadwick.com/hudson/hudson_05.htm# (last visited Oct. 28, 2018) (providing legends and oral history regarding what happened to Hudson).
“By the second decade of the [17th] century, Europe[an] demand for animal skins and furs was insatiable.”

And so, in our infancy, we were Dutch until 1664, when the English took over, later ratifying their de facto assumption of sovereignty in the Treaty of Westminster in 1674.

About a century later our nation was born, so to speak, on July 4, 1776. As New Yorkers and as Americans, we tend to think of ourselves as cultural and political descendants of the English. After all, we were an English colony for more than a century: we saw England as the “mother country” and speak English as our “mother tongue.” More to the point, within a year after the American Revolution, New York produced its first Constitution, in which we declared ourselves generally to be adherents of the English common law (subject to future revision and rejecting English religious establishment).

It takes nothing away from our colony’s English roots to remember that while we were subjects of the English crown for over a hundred years, we had an earlier identity, in which for almost half a century the colony was New Netherland, Manhattan was New Amsterdam, Albany was Beverwijk (or beaver district), and just up the road, the Dutch in 1624 built Fort Orange. Brooklyn is a Dutch word, as is Gravesend, Flushing, Red Hook, the Bowery, Staten Island, Coney Island, and Harlem. Not to mention cookies, coleslaw, and waffles, all of which, for many New Yorkers are just hunky-dory—another
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Dutch-origin term. Psychologists tell us that infancies are formative, and we might say the same for political development. New Netherland’s neighbors to the north, in Massachusetts, and to the south, in Virginia, were English. The three sibling colonies grew up side by side, but New Netherlanders were different from the English colonists in Massachusetts and Virginia. Settlers came to Massachusetts principally for religious freedom, as Puritans set up what might fairly be called a theocracy. In Virginia, settlers arrived and planted tobacco for export.

New Netherland was unique. Most settlers arrived not primarily for religious reasons, or to grow crops, although some did. Most came under the aegis of a Dutch trading company. From our first breaths we were members of a commercial enterprise that shaped our earliest laws and our civilization. Petrus Stuyvesant, New Netherland’s best known Governor/Director was essentially an employee of the Dutch West India Company, a for-profit enterprise. It is no coincidence that this small outpost in the middle Atlantic, sandwiched between New England and the South, and designed to do business in the New World, grew to become the greatest commercial center on earth.

Today we see the Netherlands as a quaint country, known to many Americans as a charming place to tour during tulip season; a good spot to snap pictures of windmills and canals and bicycles. In the late 16th century, however, the Netherlands was emerging a military and world power, vying with England for colonial and international

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34 See JACOBS, supra note 4, at 2.
35 Id.
38 See generally JACOBS, supra note 4, at 2 (“Although New Netherland started as a trading post, it gradually developed into a settlement colony, which made it unique . . . .”).
40 See id. at 50, 53.
commercial power.\textsuperscript{42}


A mere forty years before Henry Hudson arrived here, the Dutch had been ruled by King Philip II of Spain.\textsuperscript{43} The provinces of the Netherlands passed into the possession of the Hapsburg monarchy in 1477 as part of the Holy Roman Empire.\textsuperscript{44} That is a long way from the founding of New Netherland.\textsuperscript{45} Seven Northern provinces of the Netherlands, including Holland, revolted against Spanish rule and formed the Union of Utrecht in 1579 as the founding document of the Dutch Republic.\textsuperscript{46} This remarkable document is an ancestor of our own ideas of political governance.\textsuperscript{47} As one scholar pointed out, the founding document of the Dutch Republic “divided policymaking authority between a representative assembly and an independent executive.”\textsuperscript{48} This, more than a century and a half before Montesquieu wrote about separation of power.\textsuperscript{49} Under the Treaty of Utrecht (1579), “new taxes and declarations of war and peace would require the unanimous consent of the [Dutch] provinces.”\textsuperscript{50}

Consider the words of John Adams, writing from Holland on April 19, 1781, describing America’s debt to the Netherlands and the similarity of the American Republic to the earlier Dutch model:

The first planters of the four northern States found in [the Netherlands] an asylum from persecution . . . a grateful remembrance of that protection and . . . religious liberty they

\textsuperscript{42} See Congleton, supra note 39, at 35, 41.
\textsuperscript{43} See id. at 35; see also Dutch Revolt (1568-1648), ENCYCLOPEDIA.COM, https://www.encyclopedia.com/history/encyclogenias-almanaces-transcripts-and-maps/dutch-revolt-1568-1648 (last visited Oct. 9, 2018) (explaining the fight for Dutch autonomy in the “Eighty Years’ War”).
\textsuperscript{44} See Congleton, supra note 39, at 4; Hermann Wiesflecker & Danielle Mead Skjelver, Maximilian I Holy Roman Emperor, ENCYCLOPEDIA BRITANNICA, https://www.britannica.com/biography/Maximilian-I-Holy-Roman-emperor (last visited Oct. 28, 2018) (“Maximilian was the eldest son of the emperor Frederick III and Eleanor of Portugal. By his marriage in 1477 to Mary, daughter of Charles the Bold, duke of Burgundy, Maximilian acquired the vast Burgundian possessions of the Netherlands and along the eastern frontier of France.”).
\textsuperscript{45} See Congleton, supra note 39, at 50.
\textsuperscript{46} See EVAN HAEFFELI, NEW NETHERLAND AND THE DUTCH ORIGINS OF AMERICAN RELIGIOUS LIBERTY 20 (2012); Dutch Revolt, supra note 43.
\textsuperscript{47} See Congleton, supra note 39, at 38.
\textsuperscript{48} See id.
\textsuperscript{50} See Congleton, supra note 39, at 38.
found [in the Netherlands], having sought them in vain in England.

The first inhabitants of two other States, New York and New Jersey, were immediate emigrants from [the Netherlands], and have transmitted their religion, language, customs, manners, and character . . . [and] whose history, and the great characters it exhibits . . . have been particularly studied, admired, and imitated in every State.

There are no two nations, whose worship, doctrine, and discipline are more alike, than those of the [United States and the Netherlands].

In . . . the freedom of inquiry, the right of private judgment, and the liberty of conscience . . . the two nations resemble each other more than any others.

The originals of the two republics are so much alike, that the history of one seems but a transcript from that of the other.51

Another scholar, James R. Tanis, considers the Union of Utrecht “a symbol to many Americans, first of unity, and then of unity and liberty.”52

II. THE INFLUENCE OF DUTCH FREEDOM OF RELIGION

Article 13 of the Netherlands’ Union of Utrecht provides that “each person shall remain free [especially] in his religion and that no one shall be investigated or persecuted because of his religion.”53 This language applied only to private beliefs and not public worship, and so it did not approach our own interpretation of religious freedom.54 It is, however, a milestone for the Dutch over 200 years before we promulgated our religious freedom guarantees in the Bill of Rights of 1791.55 Indeed, when the religious minorities in New Netherland sought religious tolerance, they appealed to the Dutch under their

51 Memorial to Their High Mightinesses, The States-General of The United Provinces of the Low Countries in 7 THE WORKS OF JOHN ADAMS: SECOND PRESIDENT OF THE UNITED STATES, 396, 399, 400 (Charles Francis Adams ed. 1852).
54 See HAEFELI, supra note 46, at 22.
Constitution, invoking the language that prohibited religious persecution.\textsuperscript{56}

Therefore, when we speak of our Dutch legacy, it is right to bear in mind that we were settled by people who had concepts of religious tolerance that were, to say the least, advanced.\textsuperscript{57} James Madison recognized these early Dutch expressions of religious tolerance, noting that:

Until Holland ventured on the experiment of combining a liberal toleration with the establishment of a particular creed, it was taken for granted, that an exclusive \textit{[and]} intolerant establishment was essential, and notwithstanding the light thrown on the subject by that experiment, the prevailing opinion in Europe, England not excepted, has been that Religion could not be preserved without the support of Gov[ernment] nor Gov[ernment] be supported with an established religion that there must be at least an alliance of some sort between them.\textsuperscript{58}

This “Dutch Experiment” was a step along the path toward the Constitution’s First Amendment—the freedom of religion.\textsuperscript{59} In 1822, in arguing against religious establishment and in favor of religious toleration, Madison emphasized the Dutch connection:

It was the belief of all sects at one time that the establishment of Religion by law, was right \textit{[and]} necessary; that the true religion ought to be established in exclusion of every other; And that the only question to be decided was which was the true religion. The example of Holland proved that a toleration of sects, dissenting from the established sect, was safe \& even useful.\textsuperscript{60}

\textsuperscript{56} See HAEFELI, supra note 46, at 141, 146; David W. Voorhees, The 1657 Flushing Remonstrance in Historical Perspective, 81 DE HALVE MAEN 11, 11 (2008).

\textsuperscript{57} See Voorhees, supra note 56, at 11 (“Although [religious freedom] applied only to private beliefs and not public worship, its embodiment in the sixteenth-century Dutch constitution as a cornerstone in the foundation of their state makes the Dutch truly unique. It is important to understand, then, that it is to the Dutch constitution New Netherland’s religious minorities . . . appealed when requesting toleration.”).


\textsuperscript{59} See U.S. CONST. amend. I.

\textsuperscript{60} See MADISON, supra note 58, at 102.
Although the Netherlands had a tradition of religious freedom, there was friction in the colony of New Netherland; particularly between Petrus Stuyvesant and certain religious groups, most notably Quakers, Lutherans, and Jews. There were few Catholics in New Netherland, and ironically, after the English takeover, the English crown expanded religious liberty to all but Catholics. On January 31, 1689 the Crown instructed Governor Sloughter: “And you are to permit a liberty of Conscience to all Persons (except Papists) so they be contented with a quiet and Peaceable enjoyment of it, not giving offence or scandal to the Government.”

III. THE DECLARATIONS OF INDEPENDENCE: THE NETHERLANDS (1581) AND THE UNITED STATES (1776)

In 1581, two years after they created their republic, the Dutch provinces proclaimed independence from Spain, in an Act of Abjuration, or Plakkaat van Verlatinge. It is also known as the Dutch Declaration of the Rights of Man: “a pioneer utterance [that] set the model for [later] declarations” of independence including our own. Reading the Dutch Declaration of Independence we find language so similar to ours that we would not be out of line in imagining that Thomas Jefferson had a copy of the Plakkaat at his elbow. One commentator has examined the two documents, concluding that the structure and argument of the two state papers are almost identical.

62 See Finkelman, supra note 61, at 545.
64 THE NEW YORK IRISH 50 (Ronald H. Bayor & Timothy J. Meagher eds., 1996); JOHN ROMYN BRODHEAD, DOCUMENTS RELATIVE TO THE COLONIAL HISTORY OF THE STATE OF NEW-YORK 689 (E.B. O’Callaghan ed., 1853) [hereinafter BRODHEAD, DRCHSNY].
66 See ROBERT ERGAN, EUROPE FROM THE RENAISSANCE TO WATERLOO 296 (1939).
67 See Congleton, supra note 39, at 40 tbl.1 (comparing the language in the Act of Abjuration with that in the American Declaration of Independence).
Both contain a long list of grievances about the monarch of tyranny.69 Both describe the repeated, unsuccessful attempts by the monarch’s subjects to gain redress by peaceable, civil means.70 Most importantly, both see the only recourse as revolution and independence.71

The Dutch opening statement reads: “[W]hereas God did not create the people slaves to their prince, to obey his commands, whether right or wrong, but rather the prince for the sake of the subjects (without which he could be no prince) . . . . And when he does not behave thus, but, on the contrary, oppresses them, seeking opportunities to infringe their ancient opportunities and privileges, . . . [T]hen he is no longer a prince, but a tyrant.”72 And further on, in justifying revolt, “this is what the law of nature dictates for the defense of liberty, which we ought to transmit to posterity, even at the hazard of our lives.”73

Compare that with Jefferson’s phrasing, when he writes of our entitlements under the “law of nature,”74 and that to gain liberty we pledge “our Lives, our Fortunes, and our sacred Honor.”75

The Dutch, in their pioneering document, provided a political model from which we took a major step forward. Jefferson abandoned the Dutch notion of a contract between the monarch and the representatives of the people, replacing it with the concept of full autonomy of the people.76

A. After Henry Hudson

Following Hudson’s explorations along the River region, then called the Mauritius River, others, including Adriaen Block, came to explore trading possibilities.77 In 1614, Hendrick Christiaenssen built Fort Nassau, a trading house with military defense, on Castle Island

Plakkatt with the American Declaration of Independence, see Congleton, supra note 39, at 7.
69 See Congleton, supra note 39, at 40 tbl.1.
70 See id.
71 See id.
72 Id.
73 PLAKKAAT VAN VERLATINGHE [Dutch Act of Abjuration] July 26, 1581 (Neth.).
74 THE DECLARATION OF INDEPENDENCE para. 1 (U.S. 1776).
75 Id. at final para.
77 See JOHN ROMEYN BRODHEAD, HISTORY OF THE STATE OF NEW YORK 45–46 (1853) [hereinafter BRODHEAD, HISTORY]; MARTINE GOsselink, NEW YORK NEW AMSTERDAM: THE DUTCH ORIGINS OF MANHATTAN 42 (2009).
That year, the Dutch government passed an ordinance authorizing further “discovery” of the region and named the middle Atlantic region “New Netherland.” The English were displeased and in 1620 challenged the Dutch for sponsoring settlements that the English claimed were within the jurisdiction of English patents. After the explorers came the settlers, arriving under the wing of the Dutch West India Company, to which the Dutch States General in 1621 had granted a monopoly that included all the coasts of America. The charter allowed the WIC to appoint officials and, in effect, set up a government in New Netherland. An early group of settlers arrived on Governor’s Island in 1624, in the service of the WIC, carrying with them a set of instructions: the founding documents of our forebears here. The writing helped shape the character of New York.

It begins with introductory language reminding the settlers that they are in the service of the WIC, and that they may:

[P]ractice no other form of divine worship than that of the Reformed religion as [presently here] in this country and thus by their Christian life and conduct seek to draw the Indians and other blind people to the knowledge of God and His Word, without however persecuting any one on account of his faith, but leaving to every one the freedom of his conscience.

Blasphemy, however was not to be tolerated. For its time, this was a remarkable edict, considering that elsewhere the norm was forced beliefs, murderous persecution, or...
expulsion. As historian James Truslow Adams wrote: “[a]t that time, Holland was, in . . . all respects, far ahead of England intellectually. In the matter of religious toleration she was immeasurably in advance of the rest of Europe—and Massachusetts. Indeed, in 1659-1661, four Quakers, including Mary Dyer, were hanged in Massachusetts for their religious beliefs. As advanced as it was, it would be a mistake to believe that the WIC instructions approached today’s understanding of religious freedom, or that it was transported easily to New Netherland. As one writer points out, the “call for toleration [came from the WIC] officials in Amsterdam” but “[t]he history of religion in New Netherland is one of constant conflict between” them and the local leadership in New Netherland. “[W]ith a few exceptions, the leadership on the scene in New Amsterdam resisted and ignored their superiors in Amsterdam.” Lutherans, Jews, and Quakers experienced particular difficulties. Stuyvesant referred to

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87 See Paul Finkelman, supra note 61, at 525–27 (“Virtually all political leaders of the sixteenth and seventeenth centuries accepted the idea that religious diversity undermined the stability of any government. Most people believed that in any kingdom a ruler and his or her subjects should have the same religion. . . . The Massachusetts Puritans sought religious liberty for themselves, but had little patience for those who did not agree with their theology. . . . Nineteen convicted witches were hanged in Salem in 1692. . . . four Quakers [were hanged] between 1659 and 1661. . . . In the French colonies Catholicism was not only established, but, after King Louis XIV revoked the Edict of Nantes in October 1685, Protestants were barred from Old and New France alike.”).
89 JAMES TRUSLOW ADAMS, THE FOUNDING OF NEW ENGLAND 89 (1921).
91 See Finkelman, supra note 61, at 537.
92 Id.
93 See, e.g., FREDERICK J. ZWIERLEIN, RELIGION IN NEW NETHERLAND: A HISTORY OF THE DEVELOPMENT OF THE RELIGIOUS CONDITIONS IN THE PROVINCE OF NEW NETHERLAND 188 (1910) (explaining the movement by Lutherans to “organize a separate congregation” in New Netherland which was resisted by Stuyvesant and other officials); id. at 213 (“Director General and Council regarded [Quakers] as anarchists, whose doings tended not only to the subversion of the Protestant Religion, but also the abolition of law and order and to the contempt of civil authority.”); id. at 247 (explaining the religious and economic reasons for the persecution of Jews by the Protestants of New Netherland).

As crucial as were the tests provided by Lutherans and Jews for the Reformed ideal of society’s organic unity, the most significant test of all was that presented by the Quakers. . . . These people were . . . viewed by civil magistrates on both sides of the Atlantic as seditious anarchists, and by ecclesiastical authorities as “machinations of Satan.”
Quakers as a “new unheard of abominable heresy,” as to which Patria told Stuyvesant to shut his eyes. His actions in dealing with Quakers led to the Flushing Remonstrance.

Patria also recognized that the settlers would be entering the world of Native Americans, with whom they would do commerce, and must therefore “take [] special care, whether in trading or in other matters . . . to fulfill their promises to the Indians or other neighbors and not to give them any offense without cause as regards their persons, wives . . . on pain of being rigorously punished therefor.”

As if to emphasize the point, the WIC ordered Willem Verhulst, the director in charge of the settlers, to:

[S]ee that no one do the Indians any harm or violence, deceive, mock, or contemn them in any way, but that in addition to good treatment they be shown honesty, faithfulness, and sincerity in all contracts, dealings, and intercourse, without being deceived by shortage of measure, weight, or number, and that throughout friendly relations with them be maintained.

In 1626, Peter Minuit replaced Verhulst as Director of New Netherland. That year “the Dutch bought the island of Manhattan from the Indians for the sum of sixty guilders, presumably in the form of some trading commodities.” There is a debate over who on behalf of the Dutch made the purchase.

Did the Dutch pull one over on the Indians – as junior high school texts might suggest? Historian Paul Otto maintains that the seemingly one-sided nature of the transaction between the Munsee Indians and the Dutch has been grossly exaggerated and

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94 See Procter-Smith, supra note 93, at 220, 245 (“When the directors rebuked Stuyvesant for his strong ordinance against conventicles in 1656, they urged him that the best policy toward dissent would be to ‘sweetly let it pass.’”)


96 A.J.F. Van Laer, Provisional Regulations, supra note 85, at 17.

97 Id. at 39.

98 See id. at 176.

99 Jacobs, supra note 4, at 43.

100 See Charles Ghering, Peter Minuit’s Purchase of Manhattan Island — New Evidence, 55 De Halve Maen 6, 7 (1980); C. A. Weslager, Did Minuit Buy Manhattan Island from the Indians?, 43 De Halve Maen 5 (1968).
misunderstood. To begin with, there is no true deed, no date of transfer, and no specification as to the exact identity of the parties to the exchange. More importantly, however, Otto asserts that the Munsees did not recognize the concept of land ownership or permanent alienation of parcels. When Indians “sold” land, they were contemplating joint occupancy and peaceable relations.

This is borne out by cotemporary writings. Adriaen van der Donck, based on his interactions with the Native Americans in New Netherland wrote: “wind, stream, bush, field, sea, beach, and riverside are open and free to everyone of every nation with which the Indians are not embroiled in open conflict.”

1. Slavery

The 1620’s brought us more than Manhattan Island. Almost from the inception, America has been beleaguered by the institution of slavery. Given the three-fifths compromise, the abolitionist movement, and the Civil War, Americans tend to associate slavery exclusively with the South. The first slaves arrived in Virginia in the early 1620’s.

In a draft of the Declaration of Independence, Jefferson wrote that England’s King George III has: “waged cruel war against human nature itself, violating its most sacred rights to life and liberty in the

101 See Paul Otto, Real Estate or Political Sovereignty?: The Dutch, Munsees, and the Purchase of Manhattan Island, in OPENING STATEMENTS: LAW, JURISPRUDENCE, AND THE LEGACY OF DUTCH NEW YORK 74 (Albert M. Rosenblatt & Julia C. Rosenblatt eds., 2013) (stating that through the sale of Manhattan, the natives did benefit). The natives used the sixty guilders to buy European goods which the natives viewed as superior to their own. Id. Also, this transaction created a trade relationship between the natives and the Dutch. Id. The Dutch would ask the Natives to acquire furs in exchange for more goods which the natives deemed valuable. Id.

102 See id. at 67.

103 See id. at 76.

104 See id. at 75.


106 See BETTY WOOD, SLAVERY IN COLONIAL AMERICA, 1619-1776 9 (2005) (describing that in the 1620s, the first elements of slavery were born in Virginia).

persons of a distant people who never offended him, captivating and carrying them into slavery in another hemisphere, or to incur miserable death in their transportation thither.”

But it would be wrong to ignore the role of New Netherlands. Slaves arrived there in the mid-1620’s. We have no census figures, so we do not know for certain how many people of African origin made up New Netherland. Most writers report that the first slaves, eleven men, arrived in 1625 or 1626, with three women arriving in 1628.

In 1628 New Amsterdam’s first minister, Jonas Michaelius, spoke derisively of local slave women.

In Article XXX of the WIC Charter of Freedoms and Exemptions of 1629, officials of the Company were charged with supplying the colonists “as many Blacks as they conveniently can, on the conditions hereafter to be made, in such manner, however, that they shall not be bound to do it for a longer time than they shall think proper,” thus documenting the time frame, if not the specific dates for the origins of the colony’s slavery.

According to Graham Russell Hodges, in 1630, there were 300 Europeans and a few blacks, the latter being the “core laborers.” Hodges reports that in 1635, five black men went to the Netherlands to petition for pay equal to that of whites for the building of Fort Amsterdam. In 1639, the WIC paid them.

Authors vary as to how much slave labor went into building New

110 Id. at 75, 81. In an attempt to track down these assertions Robert Swan failed to find any original documents describing these persons. Id. at 80. He concluded this was a matter of secondary sources’ citing each other. Id. at 76. Poring over documents, he noted that detailed descriptions of laborers, noting their origins, documents as late as September 1626, failed to mention anyone of black or African origin. Id. at 81.
112 LAWS AND ORDINANCES OF NEW NETHERLAND, 1638-1674, at 10 (E.B. O’Callaghan trans., 1868) [hereinafter LAWS AND ORDINANCES].
114 See id. at 10.
115 See id.
Amsterdam. Russell Shorto states that during the early New Netherland period there were only about a dozen slaves and he disputes the account that slaves were instrumental in building the infrastructure of New Amsterdam.

At first, slaves came from the Caribbean: imported from Brazil, sold by pirates, or from captured Spanish or Portuguese ships. On January 20, 1648, after Brazil fell to the Portuguese, the New Netherland Director and Council passed a resolution opening trade to Brazil and Angola and authorizing the importation of slaves into New Netherland.

In April of that year, the Directors at Amsterdam agreed that when ships have completed their trade in Angola, they “may carry Negroes to your place to be employed in the cultivation of the soil.” The West India Company began to import slaves directly from Africa as authorized by an August 6, 1655 ordinance.

The first shipment of approximately 300 arrived that year on the Witte Paert, and by around 1660, New Amsterdam had become a major port for the slave trade in contrast to the presence of slaves there.

By 1700, New York City had the largest African-American population of any North American City and a ratio similar to that of Maryland and Virginia.

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117 See id.
119 LAWS AND ORDINANCES, supra note 112, at 81.
120 Id. at 81–82.
121 Id. at 191.
122 See Harris, Shadow, supra note 118, at 15.
123 Joyce Goodfriend states that by the time of the English take-over in 1664 there were about 300 slaves in New Netherland. Joyce D. Goodfriend, Before the Melting Pot: Society and Culture in Colonial New York City, 1664-1730 13 (1992) [hereinafter Goodfriend, Melting Pot]; Joyce D. Goodfriend, The Souls of New Amsterdam’s African American Children, in OPENING STATEMENTS, L. & JURIS. IN DUTCH N.Y 27–35 (Albert Rosenblatt & Julia Rosenblatt, eds., 2007). New York’s gradual abolition began in 1799 with an act (L.1799, ch. 62) that provided that a child born to a slave after July 4, 1799 would be considered free. See Act of Mar. 29, 1799, ch. 62, 1799 N.Y. Laws 388. The children would, however, continue to serve the mother’s owner until age twenty-eight for a male or twenty-five for a female. See id. The legislature also passed other statutes allowing for voluntary manumission. See, e.g., Act of Mar. 31, 1817, ch. 137, 1817 N.Y. Laws 136. In 1817, the legislature (ch. 137) provided that everyone born before July 4, 1799 would become free by July 4, 1827. See Arents v. Long Island R.R. Co., 50 N.E. 422, 423 (N.Y. 1898).
124 Harris, Shadow, supra note 118, at 12; Leslie M. Harris, Slavery, Emancipation, and Class Formation in Colonial and Early National New York City, 30 J. URB. HIST. 339, 339 (2004) [hereinafter Harris, Slavery]; see generally, Ira Berlin, From Creole to African: Atlantic
2. Women

Hugo Grotius (1583-1645), a Dutch jurist, whose name is associated with lofty concepts of natural law, and whose texts were relied on by New Netherland magistrates, asserted that: “the power of husbands over their wives, which is almost peculiar to Holland,” and that husbands exercise a very great control over his wife’s property. Most historians agree, however, that women in New Netherland had greater political and economic rights than in the English era that followed.

In contrast to English primogeniture, for example, Dutch legal customs relating to inheritance prohibited parents, in the absence of good cause, from favoring one child over another regardless of gender. Also, in cases of intestacy, widows received at least half of the marital estate, irrespective of her initial contribution.

Records also show that testators in the Netherlands and New Netherland left most of the marital estate to the surviving spouse, based on the Dutch custom of boedelhouderschap by which the survivor retains the estate. Contrastingly, in the English period, testator-husbands generally reduced the widow’s share.

Moreover, married couples in New Netherland typically executed joint wills; a practice rejected under English common law. There were also fewer instances in which husbands named their wives as sole executors. Also in contrast to English practice, the Dutch, and in turn, New Netherland couples, shared equally in each other’s

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126 See HUGO GROTIUS, THE INTRODUCTION TO DUTCH JURISPRUDENCE OF HUGO GROTIUS 27 (Charles Herbert trans., 1845).
128 See Susan Shaw, New Light on Old Sources: Finding Women in New Netherland’s Courtrooms, 74 DE HALVE MAEN 9, 10 (2001).
129 See id.
131 Id. at 17.
132 Id. at 17, 53.
133 Id. at 107.
profits and losses, contemplating a “community of goods”
\(\text{gemeenschap van goederen}.\)\textsuperscript{134}

Further, women played a prominent role in the Leisler Rebellion of 1689.\textsuperscript{135} Documents paint a picture of New Netherland women different from the portrayal of the Dutch housewife, spending her life cleaning and polishing while wearing a “wing-tipped lace cap and wooden shoes.”\textsuperscript{136}

Records show women to be undocile and conspicuous in a New Netherland society governed by Dutch Roman Law that: “represented them as individuals, granting women the same rights and privileges as their male counterparts.”\textsuperscript{137} New Netherland women were at the center of the family’s religious and spiritual lives, and even in the financial support of the church.\textsuperscript{138}

A wife had a vested interested in the proper handling of her husband’s business, being made a joint contributor in the marriage, and thus equally responsible for its debts.\textsuperscript{139} Biemer reports that unlike the 17th century English woman, the 17th century Dutch woman had a legal history rooted in Roman law, and that under the Roman–Dutch law, women in both the Netherlands and New Netherland were permitted to keep “her own surname when married, own real and personal property, own and operate her own business without her husband’s permission or co-signature, engage in trade on her own, and sue and be sued in court.”\textsuperscript{140}

Although it would be wrong to deny that Holland was patriarchal, visitors there were shocked to see women unescorted, running businesses, expressing opinions, selecting mates, and retaining their maiden names upon marriage.\textsuperscript{141}

While a New England man would seek a wife of “incomparable

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\textsuperscript{134} See J.W. Wessels, History of the Roman-Dutch Law 453 (1908); Neth. Comparative Law Ass’n, Introduction to Dutch Law for Foreign Lawyers 46 (J.M.J. Chorus et al. eds., 2d ed. 1993).


\textsuperscript{136} See id. at 41 n.7.

\textsuperscript{137} See id. at 42.


\textsuperscript{139} See Neth. Comparative Law Ass’n, supra note 134, at 46; Simon Schama, The Embarrassment of Riches: An Interpretation of Dutch Culture in the Gold Age 400, 403 (1987); Voorhees, Leisler’s Rebellion, supra note 135, at 47.

\textsuperscript{140} Linda Briggs Biemer, Women and Property in Colonial New York: The Transition from Dutch to English Law, 1643–1727 x (1979); see Jean Zimmerman, The Women of the House: How a Colonial She-Merchant Built a Mansion, a Fortune, and a Dynasty 7–9 (2006).

\textsuperscript{141} See Schama, supra note 139, at 404.
meekness of spirit,” a New Netherland man sought a “house friend.” As the Dutch song goes, *Het Klein Hollands Goud-Vinkje*,

A house-guardian and his house friend
May be likened
Unto a King and Queen
For their home is like a kingdom
And the children their happy subjects

It would, however, be an exaggeration to say that by today’s measure, women’s rights flourished in New Netherland, and suddenly reversed course when the English took over in 1664. When the English assumed control they were, by and large, politically astute enough to refrain from imposing provocative and abrupt changes.

The laws and legal culture, however gradually changed under English rule, “result[fing] in a loss of economic energy in New York women.” After the English assumed sovereignty of New York, a woman could no longer institute legal action, but instead needed a male guardian.

After twenty years of English rule in New York, and by an act of the Assembly of 1684, a woman could not buy land or conduct business in her own name.

We are left with the impression that while the written law was somewhat better for women in New Netherland as compared with New York, it was the mores of a frontier society and its shared tasks that produced an appreciably more equitable partnership in New Netherland than elsewhere.

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142 See id. at 421, 422; Thomas Shepard, *A Character of Mistress Joanna Shepard*, in A LIBRARY OF AMERICAN LITERATURE 220 (Edmund Clarence Stedman & Ellen Mackay Hutchinson eds., 1892) (detailing an account of an English settler describing the loss of his wife, Mistress Joanna Shepard).
143 SCHAMA, supra note 139, at 422.
144 See id. at 190.
145 See BIEMER, supra note 140, at xiii.
146 See id. at x; see also LINCOLN, CONSTITUTIONAL HISTORY, supra note 79, at 104. Art. 23 of the Charter of Liberties and Privileges (1683) made a woman a “feme covert” while Art. 25 restricted her property ownership by limiting the period a widow “may tarry in the Cheife house of her husband forty dayes.” See LINCOLN, CONSTITUTIONAL HISTORY, supra note 79, at 104.
147 See LINCOLN, CONSTITUTIONAL HISTORY, supra note 79, at 104.
148 See BIEMER, supra note 140, at xiii.
3. Governance

New Netherland’s jurisprudence was based on the law of the Dutch Republic. Under Article 20 of the April 22, 1625, instructions from the Directors of the Amsterdam Chamber of the WIC mandate that, “[i]n the administration of justice, in matters concerning marriages, the settlement of estates, and contracts, the ordinances and customs of Holland and Zeeland and the common written law qualifying them shall be observed and obeyed in the first place.”

“In addition . . . administration of parts of [the] criminal law also fell under the [jurisdiction] of [the] director and council,” with more severe punishment (e.g. capital crimes and corporal punishment subject, during the earliest period and until 1629) to Patria’s approval.

In 1652 the Amsterdam Directors in the Netherlands established a “bench[es] of justice” in New Amsterdam, to be formed as much as possible after the laws of Amsterdam, Holland. The judiciary was to consist of two Burgermeesteren, five Schepenen, and one Schout.

The Schout in New Netherland undertook the duties of what today would be District Attorney, Sheriff, and Attorney General, and would sometimes preside at the meetings of the Burgermeesteren and Schepenen.

By ordinance passed April 9, 1660 the Directors of the Chamber at Amsterdam, defined the powers and duties of the Schout as the: “[d]irector General and Council’s guardian of the law in the district of the city of New Amsterdam.” He was to “protect and maintain . . . the preëminences and immunities of the privileged West India Company . . . without any dissimulation, or regard for any private favor or displeasure.” He had the power to prosecute, to make arrests under certain circumstances, and to carry out the judgments of the Burgermeesteren and Schepenen, “according to the style and custom of [the] Fatherland, and especially the city of

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150 See JACOBS, supra note 4, at 103.
151 See id. at 151.
152 Id.
154 LAWS AND ORDINANCES, supra note 112, at 374.
155 Id.
Amsterdam.” Pursuant to that ordinance, the Schout also had the power to issue something resembling what we today call an order of protection. Upon learning that any persons “have injured each other or quarreled” the Schout could command them “to observe the peace, and to forbid them [from] committing any assault, on pain of arbitrary correction at the discretion of the [Bergermeesteren] and Schepenen.” The Schout was expressly forbidden to accept gifts. His income, however, came from a percentage of fines, half in civil cases and a third in criminal offenses.

Scholars have noted the Dutch role in introducing the concept of public prosecution to America; noting that the Schout functioned not only in New York, but in other Dutch settlements in Pennsylvania, New Jersey, and Delaware. By way of contrast, the English—from whom we adopted the common law; did not have a tradition of public prosecutors.

One commentator has pointed out that the English, after taking over the colony in 1664, continued the adjudicative system in New Amsterdam in much the same way as the Dutch; changing the name of the court from Schout, Burgermeesteren, and Schepenen to the Court of Mayor and Aldermen, with the Sheriff acting as prosecutor. When the Dutch re-took the colony in 1673, they restored the name of the court, until the English regained the colony

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156 Id. at 376.
157 Compare N.Y. CRIM. PROC. LAW § 530.13 (New York’s modern order of protection), with LAWS AND ORDINANCES, supra note 112, at 375 (outlining the historical New Netherland’s equivalent).
158 LAWS AND ORDINANCES, supra note 112, at 375.
159 See Jacobs, supra note 4, at 160; LAWS AND ORDINANCES, supra note 112, at 374.
160 See Jacobs, supra note 4, at 160; see also Julius Goebel Jr. & T. Raymond Naughton, LAW ENFORCEMENT IN COLONIAL NEW YORK: A STUDY IN CRIMINAL PROCEDURE (1664-1776) 329 (1970) (describing the role and responsibilities of the Schout).
by the Treaty of Westminster in 1674, and once again established the Mayor’s Court, with the Sheriff acting as prosecutor.\textsuperscript{164}

The English Governor’s Council decreed:

\begin{quote}
Upon some misunderstanding of the place and power of the Sheriffe at the Esopus, Ordered, That Capt. Chambers and Mr. Hall have notice, that the Sheriff is the person, who is to see the Law putt in Execuçon and to apprehend & prosecute any Transgressors, as hee shall see cause, though not to bee judge in the Case. (August 4, 1676.).\textsuperscript{165}
\end{quote}

In 1796, the New York legislature created the office of Assistant Attorney General to prosecute “crimes and offences,”\textsuperscript{166} and in 1801 provided for the appointment of district attorneys.\textsuperscript{167} The title has stuck, but those who carry it perform many of the same functions as their grandparent, the Schout.

\textsuperscript{164} See id. at 132–33.
\textsuperscript{165} 13 Documents Relating to the Colonial History of the State of New York 498 (Berthold Fernow ed. & trans., 1881).
\textsuperscript{166} See Act of Feb. 1796, ch. 8, 1796 N.Y. Laws 643–44.
\textsuperscript{167} See Act of Apr. 4, 1801, ch. 146, 1801 N.Y. Laws 362.