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As an institution, the success of the Dutch East India Company (VOC) is often attributed to its very innovative and deliberate approach to the Asian trade network: enormous capital investments in Asia, long-term business planning, monopolizing the supply chain and the like. While true and important components to VOC pre-eminence, another understated yet overarching ideal is vital in explaining the operations and behaviours of the Company. Perhaps the most central organizing principle to the Dutch East India Company was the principle without principles – pragmatism.

This paper shows that spirit animating the VOC approach to Company wives, families and colonial law itself. In an examination of the Company's approach to mixed marriage and a dual court system, we find that the VOC constructed a local legal framework in its Southeast Asian territories around two important considerations: the first being, the desire to protect and promote VOC employees and their mostly Asian dependents, and the second, to discriminate not by race but Company/non-Company, which again privileged VOC families and also excluded their European rivals, namely the British. The same pragmatic spirit animating the VOC's approach to colonial law, also conditioned the Company's response to the demographic and economic forces defining its jurisprudence. The VOC found its recipe for success in eschewing ideology in the regulation of marriage, family and household economics and the design of its legal architecture.

Defining Dutch colonial law

Roomsch-Hollandsch Recht (Roman-Dutch law) was the legal system that obtained (to varying degrees) in the provinces of the Netherlands and her colonies in the early modern period until it was replaced by the *Franse Wetgeving* (the Napoleonic Code) in 1810. As its name implies, Roman-Dutch law is an amalgam of several legal traditions. In the sixth century AD, Justinian, the ruler of the Byzantine Empire, codified the body of Roman law into what became known as the *Corpus Juris Civilis* or Justinian's

Code. Justinian's Code represented the institutionalization of a thousand years of Roman legal practice and juridical thought. By at least the twelfth century, Justinian's Code began to be studied seriously in Europe's universities and formed *the* civil law corpus for European jurists. In late medieval and early modern Northern Europe, countries began using Roman law and Canon law to augment Germanic customary legal traditions.[1]

During the fifteenth and sixteenth centuries in much of the area that is today the Netherlands, Roman law was gradually incorporated into Dutch jurisprudence, hence Roman-Dutch law. Under French-Burgundian and especially under Spanish-Habsburg rule in the Netherlands, university-trained jurists in Roman law began supplementing the Germanic code with the Roman one.[2] This was the most important function of Roman law in early modern Europe.[3] Parts of the Roman statutory canon could be cannibalized as needed and many legal texts in both the Netherlands and its colonies stated that where local law and custom fell short or were silent, the Roman law was to be followed.[4] A later Dutch jurist, Johannes van der Linden commented on this process:

> In order to answer the question what is the law in such and such a case we must first inquire whether any general law of the land or any

[1] R.W. Lee, *An introduction to Roman-Dutch Law* (London 1925).

[2] Johannes van der Linden, *Institutes of Holland*; translated by Henry Juta (Cape Town 1884) 9.

[3] A series of writings by Dutch jurists gave form to the fusion of Roman law with Dutch-Germanic custom. Famous as the architect of international and maritime law, the Dutch jurist from Delft, Hugo de Groot, or Grotius, made the first and most influential summation of Roman-Dutch law: *Inleiding tot de Hollandsche Rechtgeleertheyd*; see: Hugo Grotius, *The Jurisprudence of Holland*, R.W. Lee ed. (Oxford 1936). Begun on 6 June 1619, the *Jurisprudence* examined 'the legal condition of persons' and property in a seventeenth century context (coincidentally, just 6 days after the Dutch Governor-General Jan P. Coen conquered Jakarta and found himself in need of a legal guide to govern). Later Dutch jurists such as Simon van Leeuwen (1664), Johannes Voet (1698, 1704), D.G. van der Kessel (1800), and Johannes van der Linden (1806) published subsequent interpretations of Roman-Dutch Law that continued to add nuance to the Dutch understanding of their civil code, a code that lasted until a French-inspired revolution brought an end to the old Republic.

[4] In 1809, the Napoleonic Code superseded Roman-Dutch law in the new Batavian Republic (as the Netherlands was known in the wake of the French Revolution) and its successor, the Kingdom of the Netherlands. A year later the Netherlands were formally annexed by France. However, the Napoleonic Code was not a clean break from the Roman-Dutch. The Napoleonic Code was itself a compromise between the Germanic law and the Roman law, both of which had obtained in France before the Code. Former Dutch colonies, most notably Sri Lanka and South Africa, still retain parts of Roman-Dutch law in their legal system.

> local ordinance, having force of law, or any well-established custom, can be found affecting it. The Roman Law as a model of wisdom and equity is, in default of such a law, accepted by us through custom in order to supply this want.

It was precisely the ability for jurists to selectively apply the desired parts of Roman-Dutch law which make it such a powerful tool. In Dutch controlled Asia, the very pliability of the Roman-Dutch law would allow it to be moulded and adapted to local needs and circumstances and the twice-hybridized colonial law – Roman law with Dutch custom and the resulting Roman-Dutch law with Asian custom – was a useful instrument for dealing with the hybridized, mestizo world of the VOC.

Local marriage

A fundamental reality of life in the Indies, a reality which was reflected in the law code, was the absence of European women there. For the Company and the colony to survive, Dutch men in Southeast Asia began taking long-term Asian wives and mistresses. From the beginning of the seventeenth century, demographic idiosyncrasies subordinated a concern with race as the Dutch developed their social and conceptual categories. Widespread interracial cohabiting forced the Dutch to adopt more fluid, non-race-based markers of difference.

Throughout the first decades of the Company's existence, the VOC, founded in 1602, seemed to be searching for both a practical and juridical solution to its demographic problem. Several early seventeenth century attempts to bring over European women failed miserably. Without the company of Dutch women, the East India Company came to realize that its initial notion of a homogenous European colony would have to be expanded and that the traditional idea of white marriage and white Christianity would have to be ignored. For the colony to work, the native companions of Company men had to be included in the equation. But the Company wanted more than just intimate partners for its men, it wanted the permanency of stable, married family units. So while the VOC came around to the idea of interracial marriage, it rallied aggressively against extra-marital relations.

Coinciding with the cessation of Dutch female immigration was the Company's first of many statements against the keeping of concubines.

Promulgated on 11 December 1620, this short edict outlawed concubinage for two interesting reasons: the first, 'the all too lamentable and familiar examples of aborting the foetus or the one concubine trying to murder the other with poison', and the second, 'as much as possible to keep God's wrath away from this republic'.[5] An edict, published eighteen months later, more fully explained this fear of 'God's wrath'. This extended set of VOC directives on concubinage, promulgated in 1622, came in large part due to the non-observance of earlier warnings (including the 1620 warning) to Company men of all ranks.

The heading of the 20 July 1622 edict against concubinage addressed both the failure of the rank and file to comply with previous edicts against the practice and the blatant indifference that Company officials showed toward the enforcement of the law. It cites the 'lack of restraint by the inhabitants or the non-pursuance [of the law] by the negligence of officers, over the course of time' as the motivating factor in the administration's decision to reissue a statement on the matter.[6] This was not only a problem that the lower rungs of the Company hierarchy became involved in; the keeping of concubines was a widespread practice from the highest administrative levels on down. Accordingly, the edict began with the caveat that concubinage would be punished 'regardless of what place or position the guilty [party] be under our jurisdiction'.[7]

Issued as a 'renovation and amplification of ordinances and edicts regarding concubinage, adultery and incest', the 1622 law was also significant as it marked the criminalization of concubinage categorically together with adultery and incest under the larger umbrella of sexual deviance. Literally described as 'mixing oneself [*zich vermengelen*] with a slave or free woman', concubinage and sex were broken down into two distinct orders – relations between those of the same faith and relations between those of different faiths.[8] So long as the infidelity was intra-faith, punishments for solicitation were mild and left to the discretion of the court: 'Attempts at concubinage, those dishonourably soliciting a woman or treating scandalously, are punished according to the situation and as the

[5] Jacobus Anne van der Chijs, *Nederlandsch-Indisch Plakaatboek 1602-1811* [Dutch East Indies Book of Edicts, 1602-1811], 17 Vols (Batavia 1888) I: 82. Subsequent quotations from the *Plakaatboeken* will hereafter be cited as *PB*.
[6] *PB*, I, 99.
[7] Ibidem.
[8] Ibidem.

judge sees fit'.[9] We might compare this to the severity of the punishment for sexual relations between Christian and non-Christian, in which 'the judge may punish, 'bodily or in property or both', the Christian man or the Christian woman who 'is lost in simple fornication or concubinage with a Moor, Pagan or other'. The non-Christian 'instigator or initiator to the transgression committed' is punished with death'.[10]

Following the statutes that delineate what constituted a sex crime and what its respective punishment should be, the 1622 code offered a lengthy proclamation about the sanctity of marriage. Filled with prophecies of doom and gloom for adulterous nations, the proclamation broke with the generally secular tone of most Company legal-discourse and lamented the 'all-destructive curse of the Lord' that hangs over the peoples who practice 'dishonest union[s], hated concubinage and God-grieving adultery'. The code described the institution of marriage as the 'only nursemaid of human happiness', and as the 'utmost and absolute necessity (…) in well-to-do republics and in all States', it was idealized by the proclamation. Marriage, not concubinage, would be the answer to Company problems.[11]

Colonial controls on marriage

By the time the Dutch had established a foothold in Asia, state control over marriage in the Netherlands and the issuing of marriage proclamations were common practice, but colonial controls on marriage differed substantially from the Roman-Dutch. The first difference was institutional. The Church retained control over marriage much longer in the colonies than in Europe. In the metropole, the Reformed Church had 'lost' to the state control over marriage since 1578, but in Dutch Asia the Reformed Church Council was responsible for registering marriage proclamations until 1632. A 1621

[9] *PB*, I: 99-100.

[10] Ibidem, 100.

[11] The heavy-handed religious admonitions behind the proclamation on marriage were used as strong-arm tactics by the VOC to encourage its men to marry their concubines, which concubines became wives who produce a loyal citizenry. An important long-term goal of the Company was to create a *burgerschap* that could be counted on in times of siege. VOC officers had witnessed firsthand the fierce resistance put up by the mestizo Portuguese-Asian populations of Ambon (1605), Macau (1622), Melaka (1641) and as the VOC laid siege. When the initial Dutch attempts at building a pure European colony were thwarted, they quickly adapted to the so-called 'Portuguese model' of easy racial mixing.

colonial law prohibited 'marriage and baptism without (…) consent and recommendation from our respective authorities of this place and that [consent and recommendation] from the servants of God's holy word, thereto authorized by the parish of the holy church of the United Netherlands and permitted by us' with a fine of 50 pieces of eight and punishment at the court's discretion.[12]

Finally in 1632, a directive to the Court of Aldermen in Batavia set up the Commissioners of Matrimonial Affairs, paralleling that institution in the Netherlands. Up until this directive, the difference in marriage between the Netherlands and Dutch Asia seemed to lie only in the sense of an institutional time-lag, but as it and subsequent edicts demonstrated, the colonial state had an additional set of concerns to deal with, namely interracial marriage of newly converted Asian women to Calvinist men. Moreover, the 1632 directive requires permission from the Governor-General for Company personnel to register a marriage proclamation and an additional 'spiritual' requirement, conspicuously absent from laws promulgated in the Netherlands. 'Blacks [*swarten*]', it read, also could not register a marriage proclamation unless they were 'furnished with an attestation, granted by the church council, to the effect that they were 'instructed substantially in the first principles of the Christian religion'.[13] Worries about the true nature of the conversion of Asian women to the Dutch Reformed faith run throughout later edicts, but a deeper concern seems to be over the conversion of Asian women to Dutch culture. Marriage proclamations became the gatekeeper, policing the 'Dutchness' of Company brides.

The nominal use of the Dutch language in Asia deeply concerned the *Hoge Regering*[14] and the ability to speak Dutch was a foremost requirement of Company brides. A 1641 edict claimed that 'the use of the Portuguese language had expanded so much in Batavia and in other Company stations that the government foresaw '[the Portuguese language] gaining the upper hand and smothering, once and for all, the language of our fatherland', and it also blamed the slaves for it.[15] One of the 'means to the advancement of the knowledge and the use of the Dutch language' was to disallow 'native

[12] *PB*, I: 89.

[13] Ibidem, 277. This seems to mirror the concern of later missionaries about the phenomenon of the so-called 'Rice Christian', that is, an Asian who converts to Christianity out of economic rather than spiritual motives.

[14] High Government, i.e., Governor-General and the Council of the Indies.

[15] *PB*, I: 459.

women, 'who do not moderately speak and understand our Dutch language' to marry Dutch men.[16] The Commissioners for Matrimonial Affairs were to act as a sort of language board giving out certificates of language competency for marriages and other purposes. Their language monitoring function was repeated in the 1642 Statutes of Batavia: 'For sound reasons, the aforementioned commissioners are henceforth expressly forbidden to register a marriage proclamation of a Netherlander with any native woman unless she can moderately understand and speak the Dutch language'.[17]

But in order to gain economic advantage, trading-states (European and Asian alike) were willing to overlook differences of race, religion, and culture that would eventually become so insurmountable in later centuries. The wives of Company employees were the immediate beneficiaries of the colonial marriage law. Once married, Company wives gained full European status, access to special VOC courts and the same relatively progressive legal, especially inheritance, rights as Dutch women.

High European mortality impacted more than the dead and dying and forced the Company to consider the fate of the fatherless left behind. And again, the Roman-Dutch law proved very useful in a colonial setting. According to Dutch jurists, all minors must have a guardian. If a minor's parents were alive, the minor was under the guardianship of the parent. If, however, a minor's parents were deceased, the minor became a ward of the state. The state then either carried out the wishes of the parents regarding guardianship as stated in their will or, in the absence of such a testamentary provision, appointed a guardian. Statutes excluded some individuals from becoming guardians: women (excepting the ward's mother or grandmother), soldiers, and people who themselves had guardians. In the event that a suitable guardian (usually a family member) could not be found, the orphan (*wees*) became a permanent ward of the state. At the orphanage (*weeshuis*), the *weesmeester* as the representative of the state became the orphan's legal guardian until the *weeskind* came of age. Directed to act in the interest of the minor, the guardian was to care for whatever estate the orphan may have

[16] Other 'means to the advancement of the knowledge and the use of the Dutch language' were: (1) to reward slaves with the privilege of wearing hats only 'if they moderately understand and speak' the Dutch language, of which they must be able to show written verification, given by the Commissioners for Matrimonial Affairs. Otherwise their hat or cap will be confiscated and themselves be 'whipped soundly'; (2) to 'grant no letters of freedom [*vrij-brieven*]' to male or female slaves with Christian masters unless the slaves 'had 'papers' [showing that they] could moderately speak the Dutch language.'; *PB*, I: 460.
[17] *PB*, I: 542.

received, represent the minor in court, teach the *weeskind* a trade, and see to the general well-being of the orphan. Connected to the institution of the orphanhood was the *weeskamer,* or Orphan Chamber, that functioned like the modern probate court. The *weeskamer* saw that a proper inventory was taken of the deceased's estate, made rulings on wills or intestate successions, and handled the devolution of the property in question. Especially in cities with large populations of *weeskinderen*, such as Amsterdam, the *weeskamer* became a powerful financial institution.

In the statutory sense, there was no discernable difference between the Netherlands and its colonies regarding orphans or the orphanage. That was only in the statutory sense. In practice, the high mortality of European men made orphanhood a larger issue in the Indies. The primary concern was capital flight. If a VOC employee died with no wife and no heirs other than an illegitimate orphan child, family back in the Netherlands might claim his Asian holdings and insist upon their repatriation. A statement in the 1642 Statutes of Batavia instructing the *weesmeester* points to this problem, 'Daily in these lands many people die who leave behind no kin or heirs who should receive their property, and that said property usually would be squandered and come to nothing'.[18] The Company was interested in creating a viable citizenry in Asia, and remittances and asset liquidation in the Indies worked against this end. This made the case for marriage all the more important. By recognizing mixed marriages and granting Asian women Dutch legal status, the VOC was better able to ensure that the personal wealth accumulated in Batavia would stay in Batavia.

Property and the Economics of Marriage

In the case of the Indies, the Roman-Dutch law fitted seamlessly with the significant role that Asian women would play in the commercial realm. Both in Roman-Dutch and colonial statues, edicts on marriage, legitimacy and the welfare of children demonstrated how tightly woven social concerns were with economic considerations. This was particularly conspicuous in the case of property and marriage. Under Roman-Dutch law in the Netherlands, at the contraction of a marriage, the estates of husband and wife were brought together and held in common. This 'community of goods' included both assets and liabilities. During the marriage, debts and earnings applied to this

[18] *PB*, I: 513.

common purse, and husband and wife shared equally in it if the marriage ended. Though the couple held marriage property in common, without her husband's consent a married woman 'may not', wrote Grotius, 'alienate or encumber her husband's property or her own; may not contract debts to bind herself or her husband'.[19] The wife was able to buy food and household goods without her husband's consent, and with his additional blessing she could act as his full-fledged business agent.

Noting again the differences between the modern and pre-modern economies, Grotius explained how this early modern business-woman came into existence. According to our jurist, 'in times of old' a woman was allowed to indebt her husband up to four pennies on household goods but the husband was liable for no more. 'But later, the commerce and wealth of the country being greatly increased, the principle was extended so that today a married woman engaged in public commerce or trade may contract in all matters relating thereto and consequently may bind herself and her husband and alienate and encumber her stock'.[20] In this way, women whose husbands publicly declared them as their business agents *could* 'alienate or encumber her husband's property or her own'.[21] This practice bears a striking resemblance to the Southeast Asian pattern of temporary marriage in which a monsoon-riding merchant empowered a local woman to run his business while he was away.

In pursuit of the bottom line, the Company chose for interracial marriage and opted for the Portuguese-like model of easy racial mixing and integration. Given the constraints of distance and disease, the VOC had very few choices. At times, though not without frequent exception, early modern Dutch Asia looked very much like the place the post-WW II Netherlands *imagined* itself to be: a cosmopolitan island of racially-tolerant prosperity.[22] These sentiments were contingent upon deeper material realities, and with the later nineteenth century containment of malaria, the advent of the steam ship and the opening of the Suez Canal, that terrain shifted and so did colonial affect. But until then, the demographic baseline

[19] Grotius, *Inleiding tot de Hollandsche Rechtgeleertheyd* ('sGraven-Haghe, 1631), 2nd ed. I.V.23.
[20] Ibidem.
[21] Ibidem.
[22] Of course, this was proven a fiction in the Netherlands when, in the last quarter of the twentieth century, successive generations of Turks and Moroccans refused to return to their *land van herkomst* or assimilate as Europeans. 'Tolerance' was only a convenient civic religion when the virtual state of apartheid existed between Dutch and non-Dutch in Netherlandic cities.

and the nature of the early modern commercial enterprise would conspire to promote a legal system that was not race-based and that supported the VOC system.

Pragmatism and racial blindness – Dual courts in Dutch Asia

Driven by competition and enabled by pragmatism, under VOC law there were two kinds of people: those inside the Company and those outside the Company. Individuals employed by the VOC were given special treatment, including their own judicial system. For VOC personnel and their families and slaves, the Company established a separate court system, the *Raad van Justitie* (Council of Justice) with the *Advocaat-Fiskaal* (Advocate-Fiscal) acting as chief prosecutor. This court served as a *forum privilegiatum* for the Company-class and was chaired by a member of the *Raad van Indië* (Council of the Indies) and staffed, in theory, by ranking Company men with legal training. As for the *burgerbevolking* (civilian population), European or Asian, their cases were heard together in the *Schepenbank* (Court of Aldermen). Though still under the Governor-General, this court was staffed by important Chinese and European civilians who were not necessarily legal professionals. The staff served double duty by running the local police force.[23] Of utmost importance, the Council of Justice was much better equipped than the Court of Aldermen to try complicated questions of inheritance and complex civil and criminal proceedings.

Although important, the non-Company populations, whether native, foreign Oriental or European, were not given access to the Company courts. In many cases this put Asians, especially Asian women married to Company men, ahead of non-Company Europeans. The separation of the population into VOC and non-VOC was the most fundamental and important legal distinction in the early modern Dutch colonies. Dutch decision-makers exercised steely pragmatism in the architecture of their legal system and its legitimacy was grounded in deeper structural truths, regardless of the juridical rhetoric.

The English played an unwitting role in the creation of a legal system that privileged Company employees over non-Company employees. Their

[23] The Chinese Alderman was called upon when a case involved a Chinese. It is unknown why, but Chinese served as Aldermen in the eighteenth century, perhaps the VOC-sanctioned massacre of Batavian Chinese in 1741 was the watershed.

ships plied Asian waters by the end of the sixteenth century and they emerged as fierce rivals to the Dutch. In Europe, the English fought four wars with the Dutch over commerce during the seventeenth and eighteenth centuries. Batavia's founder and the most influential man in the seventeenth century VOC, Jan Pietersz. Coen, called the English 'arrogant competitors' and only reluctantly allowed them a trade office in Batavia. But Coen denied them extraterritoriality and demanded that the English be subject to Dutch law. Shortly thereafter, an incident helped persuade Coen to set VOC personnel apart from non-VOC as a way of targeting English competitors. Members of the English trade office had taken it upon themselves to arrest a Chinese man and take him inside their lodge. Once inside, the Chinese man injured an English bottler and the VOC decided to intervene. No authority was above that of the Governor-General, said Coen and he seized the opportunity by arresting the Englishman and then proceeded to give him a lashing.

'To prevent other such instances', the High Government appointed Jan Steyns van Antwerpen as bailiff (*baljuw*) on 29 March 1620.[24] The appointment of a bailiff or city prosecutor in Batavia was one of the first sovereign acts performed on Batavian soil and the duties and instructions assigned to the Bailiff further demonstrate the Dutch desire for this official to act as a check on English power. In addition to the protection of Dutch conquests and trade, the Bailiff was charged with 'building a good city' and 'maintaining the sovereignty of the land against the penetration of the English'.[25] Months after the incident with the Chinese man and the English bottler, the Court of Aldermen was established to pursue the legal process against non-VOC residents of Batavia, and by 1625 there were two autonomous city prosecutors, the Advocate-Fiscal and the Bailiff, each running his own police force and presenting cases to the respective Company and municipal courts.[26] VOC officials were willing to do whatever it took to squeeze the English out of the market, and a dual court system insured that Englishmen would receive no special treatment from under colonial law.

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[24] J. la Bree, *De rechterlijke organisatie en rechtsbedeling te Batavia in de XVII^e eeuw* (Rotterdam 1951) 85.

[25] *PB* I:85; Besch. III, 806.

[26] Later another prosecutor with the title 'drossart der Bataviasche Ommelanden' (Prosecutor of Batavia's Environs) was added to pursue non-Company crimes committed outside the walls of the city.

Company versus Non-Company

In a strange way, the Company's concern with the bottom-line forced their legal structure to be less preoccupied with matters of race. Rather than legal privilege being tied to race, the primary distinction with regard to the administration of justice was Company employment. Legal scholar J. la Bree does not find the colonial regime dividing up its subjects along colour lines; the law separates Company personnel, their wives and slaves on the one hand, and 'European colonists, free indigenous, foreign Orientals, and slaves' on the other. VOC wives are accorded the status of their husbands and even the slaves of Company personnel also appear before the Council of Justice, while European and Asian free burghers, even though hired out by the Company, did not appear before the VOC court, the Council of Justice, but instead before the municipal Court of Aldermen. La Bree sees the Company/non-Company dichotomy as the closest the law came to codifying the population. 'This distinction into groups', notes La Bree, 'is the primary guide for arriving at an approximate [legal] definition'.[27]

Again pragmatism is at work. The tenets of the tangible ordered early Dutch Asia and race theory could only reign in social practice late in the 1800s, when it was wedded to capitalism. Like so many Europeans travelling to Asia, the mental baggage that may or may not have accompanied them seems also to have perished en route. This is not to say that Dutch Asia was a place that knew no prejudice; on the contrary, early modern Dutch Asia was rampant with collusion, discrimination, and intolerance. Batavia still had its bigotries, only they tended to be expressed in terms of status rather than race

On one side of this legal divide, the *Schepenbank* or Court of Aldermen, if not the 'privileged forum' that was the Council of Justice, was a fascinating institution within the VOC-institution. The *Schepenbank* originated in the Netherlands. In the early modern Dutch Republic, cities formed the source of power and authority. Though part of a province in a Republic, municipalities essentially administered themselves. Medieval drainage-boards appeared as the first governing bodies in the Low Countries and evolved as a practical necessity to keep the region from being constantly inundated with water. Increasing mercantile prosperity and

[27] La Bree, *De rechterlijke organisatie*, 75.

urbanization[28] throughout the late medieval and early modern period produced equally pragmatic civic institutions as merchant elites came to dominate society. In most cities, prominent plutocrats were chosen to form a Court of Aldermen. For example, an early modern observer described Leiden as having been ruled by the Aldermen and under the Count of Holland 'since antiquity'.[29]

The Company brought this Dutch legal institution, the *Schepenbank*, to the Indies to provide justice for the non-VOC community. Generally, the Court of Aldermen consisted of a mix of nine of the 'most skilled officers of the fort in the service of the VOC', 'the most distinguished, capable and honest of the leading burgers of this city', and 'one of the most distinguished of the [Chinese] nation'.[30] The High Colonial Government appointed Aldermen for one-year terms that could be renewed indefinitely. For their services, the colonial government gave the Aldermen fixed salaries, a take of the fines levied, a special seat in church services and an exemption from sumptuary laws forbidding the wearing of excessive gold and silver jewellery. Though they supervised various duties of civic administration including overseeing estate sales, censuses, and weights and measures, their primary task involved sitting in judgment of cases brought before them by the city prosecutor.

Batavia's founders recognized the need for and implemented separate Company and municipal court systems. The Indies government armed the Bailiff, working under the municipal courts, with his own police force that he paid and outfitted from the fines he collected. In a 1622 colonial statute we read that the Bailiff was given command over 'four strapping Germans and four black officers' who were referred to as *kaffirs*.[31] The *kaffirs* came allegedly from East Africa and wore red. Later eighteenth century court proceedings still referred to the policemen as *kaffirs* but they were likely of

[28] Urbanization in the Republic was at 40%, by far the highest in Europe, and 60% in Holland. It was fuelled by the agricultural downturn in arable farming and a shift to livestock, creating an elastic supply of labour. See: Jan de Vries and Ad van der Woude, *The first modern economy. Success, failure, and perseverance of the Dutch economy, 1500-1815* (New York 1997) chapters 6, 9 and 13.

[29] J. J. Orlers, *Beschrijvinge der Stadt Leyden* (Leiden 1641) 619. Cited in the Woordenboek der Nederlansche Taal.

[30] Jan Pietersz. Coen, *Bescheiden omtrent zijn bedrijf in Indie*, H.T. Colenbrander ed., 4 vols. (Den Haag 1919-1922) III:751, 980.

[31] *PB* I:92. For an example of this in action, see the case of Samuel Brandt [chapter 4] who allegedly kidnapped and kept the *slavin* Christina van Ambon. It was the gumshoe bailiff and his persistent *kaffirs* who tracked down Brandt and 'liberated' Christina back to slavery.

Madurese origin. With his *kaffirs*, the Bailiff remained in close communication with the neighborhood leaders (*wijkmeesteren*) and with the heads of the various ethnic communities (*hoofden*) inside and outside the city. In the city proper, the Bailiff and *kaffirs* could make the necessary arrests and conduct a criminal investigation when a crime was committed. But, as we shall see, private individuals conducted their own investigations and delivered crucial evidence and suspects to the Schepenbank. However collected, after the Bailiff gathered evidence and statements, he then presented the case to the Court of Aldermen.

Of utmost importance, the *Raad van Justitie* (Council of Justice) or *Justitie* was much better equipped than the Court of Aldermen to try complicated questions of inheritance and complex civil and criminal proceedings. Though still under the Governor-General, this court was staffed by important Chinese and European civilians who were not necessarily legal professionals. The staff served double duty by running the local police force.[32] Early instructions to the *Justitie* required it be staffed with trained jurists.[33] Many in the *Schepenbank* received their training on the ground in Batavia. Compared to the relatively small percentage of Batavia's population who fell under the jurisdiction of the *Justitie*, the masses inside and outside Batavia were subject to an overworked Schepenbank. It did function, but the *Schepenbank* remained, in many ways, a court inferior to the *Justitie*.

Extractions from criminal proceedings in the *Schepenbank* give a sense of how the court functioned. Investigations lacked checks and balances and the *Schepenbank*'s pre-trial criminal process could be arbitrary and personality driven. One day in 1793 a Chinese woman named Nioknio discovered an intruder in her home. The intruder, a man named Madie,[34] was attempting

[32] In the seventeenth century, a Chinese Alderman was called upon when a case involved a Chinese. Chinese did not serve as Aldermen in the eighteenth century.

[33] La Bree, *De rechterlijke organisatie*, 56.

[34] Madie's life in Batavia had not been easy but had been steadily improving until his act of theft. From his name we assume he was from Mangarai on the island of Flores. In his examination, Madie said that he arrived in Batavia two years previous on a Bugis prau and since had lived with a slave named Omar and worked as a coolie, then lived with a Portuguese named Queenis and worked as a servant boy, and finally had lived for the last six months with a woman named Magantie whom Madie said had taken him in as her own son and for whom he sold fish daily at the market [Examinatie van Madie vrij Mangarees voor Den Heer Landdrost Steven Poelman R: O:, 14 Mar 1793, fo. 385-387, Nationaal Archief, Den Haag, toegangsnummer 1.04.18.03, inventarisnummer 11981]. On 15 Apr 1793 Madie was sentenced to be put in chains and to labour in the *ambachts quartier* for 5 years.

to steal the candelabra that Nioknio kept on an offering table in her entryway. With the candelabra bundled in his sarong, Madie fled to the river, depositing his contraband there. Nioknio and her husband, Lim Joepet, called for the bailiff and along with a *kaffir* they apprehended Madie and retrieved the candelabra. Several days later the *landdrost*/bailiff, Steven Poelman, ordered all involved to appear before the *Schepenbank* as he prosecuted the case against Madie. So it often occurred that the bailiff conducted the criminal investigation, acted as law enforcement, and prosecuted the case before the *Schepenbank*.

As Batavia began expanding, the Bailiff was unable to cover the expanses outside the city walls and so another prosecutor was appointed, known as a *Landdrost*, to be responsible for Batavia's environs. The *Landdrost* (a.k.a. *Drossaard* or *Drost*) was essentially a second Bailiff and his title came from the officer who oversaw justice in the Dutch countryside with the assistance of Asian notables. For example, one night near Bandung a fight broke out over who would get to dance with the performing *ronggeng* girls, and a Javanese stableman named Soeta stabbed his fellow stableman, Landjiep, dead with a *kris* (Malay dagger). Soeta was apprehended and brought before the regional headman, the Tommongong Angadiridja of Bandung, who promptly turned him over to the *Landdrost*. Court records show a Javanese letter from Tommongong Angadiridja stating that 'Soeta van Tjikow has confessed to me that he had gone amok at the *ronggeng* and killed another man'.[35] Thus, especially in areas outside Batavia's city walls the *Schepenbank* employed a network of Asian community leaders to help with its administration of justice, though these environs were under direct municipal control.

Trial and the Criminal Process

The criminal trial itself was governed by its own set of rules and procedures. When a crime had been committed and a suspect apprehended, the bailiff would prepare an indictment [*versoek*] against the accused and present it to

[35] My translation is from the contemporary Dutch translation in the records, Originele brief van den Tommongong Angadiridja van Bandong aan den heer Willem Vincent Helvicius van Riemsdijk, opperkoopman en gecommitteerden tot en over de zaaken van den Inlander. Aangebracht den 8 April 1778. Nationaal Archief, Den Haag, toegangsnummer 1.04.18.03, inventarisnummer 11966.

the *Schepenbank*, often the next day. The indictment briefly stated the crime charged and sought the Court's permission to conduct the necessary depositions [*declaratoiren*] and interrogations. Usually within a week of the indictment, witnesses and defendants were brought in to testify before the bailiff, several members of the *Schepenbank,* and clerks/translators. If the defendant confessed, the interrogation was called as such [*confessie*] and the Court proceeded to sentencing. In the case of a denial, the court had other means at its disposal.

A confession was important to the *Schepenbank*. According to Roman Dutch law, in the absence of a confession, non-circumstantial evidence and multiple eye-witnesses (normally 3) were required to sentence someone to death. Civil proceedings required only single eye-witness accounts and circumstantial evidence. The criminal code was more demanding. The aforementioned Soeta did not initially confess to the murder and Tommongong Angadiridja's testimony notwithstanding, the prosecutor sought and received permission to conduct a 'sharp examination' to extract the confession [*eijsch ad torturam*] necessary to put him to death.[36]

Another method for the *Schepenbank* to get information and verify testimony was the *recolement*. This entailed the process of reading previous statements of defendants and witnesses back to them and asking them to attest to their truthfulness and if necessary amend their contents. Normally seven days after the initial statement, the individual would be brought back to court for the *recolement* which often, but not always, amounted to a routine affirmation of the initial statement. The *recolement* was also a chance for the individual to sign his or her name (or leave a mark) and to take (or in the case of slaves, to not take) a ritual oath according to one's cultural and/or religious conventions.

A Chinese pig butcher Lim Kinko, swore an oath 'in the Chinese fashion'[37] that he returned home one evening from the market and found his *slavin*/concubine/wife Balij van Bali and his concubine/wife Nio Kinnio on the floor in a pool of blood after trading hatchet blows in a bout of

[36] Soeta confessed and was executed. We know he was hanged thanks to a tiny drawing of a gallows next to his case. Eisch ad torturam door Trevijn contra Soeta, Javaan, 's heeren gevangen en aangeklaegde over manslag', 11 May 1778. Nationaal Archief, Den Haag, toegangsnummer 1.04.18.03, inventarisnummer 11966. See also frontispiece.

[37] Regarding what the 'the Chinese fashion' of oath taking might be, this rare document describes the custom as cutting the head off of a *stoen*.

jealousy.[38] At the same trial two neighbour women (presumably *peranakan*), named Imnio and Si Balij reported hearing Lim's 'Chinese wife' Nio Kinnio call for help; Imnio and Si Balij both swore an oath 'according to the Mohammedan custom' by 'the laying of the first two fingers of the right hand on al-Koran'.

Anyone could testify before the Aldermen but special provisions were made in the case of slaves and others, including the elderly.[39] Slaves delivered testimony just like any other witness or defendant and signed their names (or left a mark) at the *recolement* but swore no oath. This practice was repeated throughout the criminal proceedings and definitive proof that slaves swore no legal oath is found in the case of the 'enterprising' runaway *slavin* Sitie van Makasar. In one *declaratoir*, six people gave essentially the same statement (Mochamat Tsikini, a Moor; Pier Mochaman, also a Moor; Bappa Salee, a *peranakan* Chinese; Oeij Loanko, Chinese man; Na Kienseeng, Chinese woman; and Jamia, a *slavin*) and all but the *slavin*, Jamia, took an oath.[40] However, aside from this procedural difference, slave testimony seems to have been given the same weight as evidence at trial.

On occasion, an individual decided to change or amend his or her statement. Then, the *recolement* became anything but a reiteration as changes in testimony ran the gamut from subtle nuancing to dramatic reversal. On

[38] When Nio's father died, she didn't have the means to bury him. The Chinese Lim Kienko was coincidentally in the house of mourning and out of charity and commiseration offered to loan Nio the money to have him buried and Nio promised to pay him back. Lim repeatedly demanded to be paid back but since Nio didn't have the money she offered to go live with him. Lim agreed. He had a *slavin* named Balij van Balij with whom he had two children. In the beginning and for awhile Nio and Balij got along, but jealously mounted and daily quarrels and fights broke out which eventually grew more violent. According to Nio, four days after the Chinese New Year while they were busy making preparations for a coming offering, Balij chased her children outside the house and locked the door from the inside and took out the key. Balij came directly to the back furiously gripping a hatchet she had retrieved from under the hearth of the cookshed and delivered Nio four serious wounds. Nio said she went out of her mind with confusion and consternation, wanting to defend herself, threw a knife at the *slavin* injuring her in the crown of the head and lightly injuring the brain. Before she died, Balij said that Nio struck first.

[39] Batavia's famed insalubrity did not prevent some women from living well past the normal life expectancy in Dutch Asia; octogenarians were not uncommon and some even managed to approach the century mark. Nyai Saima was a 'free, non-Christian' 80-year-old Bimanese woman living just outside Batavia's Utrecht gate in an area called Godong Panjang. In general, court officials, to their credit, seemed more concerned with assessing the reliability of a witness regardless of age rather than automatically disqualifying a witness because of age, which was often an approximation anyway.

[40] Two took 'an Islamic oath' and three took 'a Chinese oath'.

17 Dec 1790 when a Chinese woman, Lim Siongnio, saw that her husband's chances for an acquittal in his nutmeg smuggling case were dwindling and that the prosecution had requested permission to use torture during his interrogation, she decided to alter her statement.[41] Previously, she swore that her husband, Njio Tiongko, had told her that an unnamed Chinese man had accidentally left a bag of nutmeg at their house while Njio was busy weighing cloves. Njio opened it, saw that it was nutmeg and ran after the Chinese to give it back to him when he ran into some officials who confiscated the nutmeg. A week later at her *recolement*, Lim was telling a slightly different story. She had been mistaken, she said. Her husband had not told her about the abandoned nutmeg, but she herself had witnessed the unnamed Chinese leave it behind.[42]

One of the most fascinating and dramatic conventions of *Schepenbank* information-gathering was known as the 'Points of Confrontation'. In instances where many versions and reversions of events muddied the legal waters, the court sat the conflicting witnesses down together and had them square off in a contest for the truth. The 'Points of Confrontation' could become particularly heated (and informative) when the legal inquiry turned into a 'he-said/she-said' between estranged lovers. Lewat van Timor was in an intimate relationship with Pama van Bugis, much to the dismay of Pama's mother, Indock van Bugis. All were slaves of the Chinese Gouw Koko and when Koko refused to get involved in the affairs of Indock's daughter, Indock became more confrontational toward Lewat until one morning the mother was found wrapped tightly in a mat, face down in a mud pool on a Chinese plantation, her throat slit. Lewat went missing and four months later he was picked up in Banten and brought to face not only the Aldermen but also other witnesses with whom Lewat's testimony conflicted. When asked if the couple had Indock's blessing, Lewat answered an emphatic 'Yes!' but Pama said 'No', adding that Lewat fought daily with her mother. According to Lewat, Pama had begged him to spirit her away from Koko but Pama shot back with the reply, 'That is not true. That night he asked me to get him out'. Four Balinese fellow-*slavinnen*, one Balinese slave, and Master Koko all took turns with Pama, facing Lewat and refuting his story. In his case and in others, the intensity of the confrontation often

[41] In a prosecutorial memo a request was made for *gijzeling* by the examination

[42] Declaratoir van de Chineese vrouw Lim Siongnio, D [pgs 197-200]. Nationaal Archief, Den Haag, toegangsnummer 1.04.18.03, inventarisnummer 11976.

delivered the Aldermen results and, as in the case of Lewat and the others, the coveted confession.
The *Schepenbank* enforced the separation of the population into VOC and non-VOC. This divide was the most fundamental and important legal distinction in the early modern Dutch colonies and was done away with in the nineteenth century when demographic and economic conditions changed. Dutch decision-makers exercised steely pragmatism in the architecture of their legal system and its legitimacy was grounded in deeper structural truths. Demographic, economic, and political-economic factors shaped the decision to promulgate a universal law code.

Conclusion

The practical considerations of needing marriage partners for Company men and wanting an exclusive and exclusionary court system for the families of those partnerships governed VOC law and practice. Indeed, pragmatism in the pursuit of profits was at the heart of VOC activity. The results were sometimes shocking and brutal, but the lust for lucre also led the VOC down, what were by contemporary standards, some surprisingly enlightened and progressive avenues.[43] Unlike the British who were incessantly preoccupied with racial purity and cultural contamination in their colonies, throughout the seventeenth, eighteenth, and most of the nineteenth centuries, the Dutch cohabited and intermarried with the Asian community simply because racial mixing was more practical and realistic given the virtual absence of European women making the early modern voyage to Asia. And so, greed was tempered by a desire for sustained growth, and it led the VOC into unique and seemingly contradictory situations, for sometimes tolerance paid, sometimes it did not.

When tolerance paid, the VOC practiced it and when it did not its prejudice was extreme. If marrying a local woman was what was required to create a network within a local economy, there were no misgivings about mixed marriages, but if exterminating the urban Chinese (as happened in 1741 in Batavia) was necessary to preserve Company hegemony, then ethnic cleansing was deemed necessary. If treaties could monopolize the delivery

[43] Today the same phenomenon can be seen in modern nation-states which have discovered that it is much more profitable to enrich a wider swath of their citizenry and tax their earnings than it is to completely monopolize wealth.

of trade goods, then friendly alliances would be made with sultanates and princedoms, but if an island refused to cooperate, it might be razed and its inhabitants slaughtered (as happened on Banda in 1641).[44]

Pragmatism is the most important explanatory key to VOC colonial behaviour. With a fiscal compass as its primary navigational tool, the world's first joint-stock company made decisions, including legal decisions, calculated to enhance its profitability. Instead of privileging fellow-Europeans, the Dutch instead choose to promote their own native companions to European status and to relegate non-VOC Europeans to the legal margins: progressive racial policy or shrewd business practice or both? Recently, I was struck by a news report about how Royal Dutch Shell is trying to position itself as the industry leader in green energy: heightened environmental conscience, shrewd business practice or both? *Plus ça change*.

[44] This severe fiscal-practicality carried over into nineteenth-century colonial administration – well past the Company's demise – when slavery was abolished, less because it was morally wrong and more because it was costlier than coolie labor and the Cultivation System.