Courting conflict : managing Dutch East and West India Company disputes in the Dutch Republic

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3. Legal strategies, illegal trade

Conflicts over extradition and the proceeds of illegal private trade

The VOC and the WIC defined legality and illegality in trade based on their charters and the regulations which they issued in the Republic and overseas. What constituted illegality was constantly redefined, as, in the case of the VOC, company policy changed, and for the WIC, as the company reacted to internal and external attacks on its monopolies. Both companies allowed private trade but constrained the extent to which their employees could trade for their own accounts by goods, quantities, or routes. Thus, there was a distinction between illegal private trade and permitted private trade. Overstepping the bounds of permitted private trade could lead to criminal proceedings in company courts. This was, after all, a breach of the terms of engagement between employer – being the VOC and the WIC – and employee; it was a breach of the companies' monopolies. Why, then, did private trade related cases enter the courts in the Republic?

The cases which are examined in this chapter reveal the routes into the High Court that cases followed. How the cases came up from lower courts to the High Court will be traced through the sentences. What is clear from the court records is that the cases which were heard in the High Court were not the criminal proceedings by which the accused was pronounced innocent or guilty of illegal private trade. Rather, they were civil proceedings which were offshoots of the criminal cases. Three of the cases which are examined in this chapter ware about the payment of wages, insurance claims, and disputed inheritance respectively but all stemmed from the issue of illegal private trade conducted in the charter areas of the VOC and the WIC.

More than just the progression of civil disputes in the legal arena, the cases show that the courts and the VOC contested jurisdiction and competences of legal institutions. A pattern emerges from the VOC cases: company servants who had been accused of illegal private trade or corruption in Asia fled the jurisdiction of Batavia; their arrival in the Dutch Republic sparked conflicts over jurisdiction and competence of the courts in Holland. The VOC's legal strategy in these cases was to fight for extradition of the accused to Batavia. This, I argue, reveals the company's desire to manage conflict in-house, that is, in its own courts. The WIC did not pursue the same strategy. This was the consequence of the WIC's different legal framework in its charter area and WIC courts' relationship with the legal system in the Republic (Introduction and Chapter 1).

In addition to the matters of jurisdiction and competence which the cases highlight, this chapter will make specific contributions to scholarship on illegal private trade, corruption and smuggling. Firstly, the cases analysed here deepen understanding of the mechanisms of illegal private trade. In a recent special issue on smuggling, the editors, Karwan Fatah-Black and Matthias van Rossum, called for more research on the case-study level to bring these mechanisms to light.[1] Not only do the cases under examination here

[1] Fatah-Black and Rossum, "De Nederlandse smokkelhandel," 9.

reinforce the importance of complicity and collaboration, including inter-imperial connections, but they also show that those relationships broke down and betrayal could lead to prosecution.

Secondly, the court cases bear out Fatah-Black and van Rossum's point that merchants were not the only ones involved in illegal private trade: skippers, crews and officials played important roles too. Furthermore, those involved were company employees and non-employees, subjects of the States General and foreigners.[2] Strikingly, their involvement in illegal private trade did not preclude their use of financial instruments nor their use of the courts to defend their interests.

Finally, how do the illegal private trade related cases in the High Court reshape conceptions of the VOC and the WIC monopolies? One of the most obvious ways that individuals and their networks – company employees and non-employees, Dutchmen and foreigners – breached the monopolies of the companies was by conducting illegal private trade. That illegality was widespread in both companies is well-known. But not all private trade was illegal. Both the VOC and the WIC allowed private trade in certain goods, or limited quantities. Distinguishing permitted from illegal private trade is not always easy, because of the various areas in which illegality could occur, and the proliferation of regulations both in the Republic and overseas regarding trading on one's own account.

For decades, illegal private trade has been conceived as one of the contributors to both companies' collapse in the late eighteenth-century. From this point of view, neither company was able to stamp out the scourge of illegal private trade which company servants conducted at the expense of their employers, the VOC and the WIC.[3] Recently, scholars have nuanced the view of private trade, particularly in so far as the VOC opened its monopolies to its servants.[4] In line with this development, the first section of this chapter deals with the definition of private trade, smuggling and corruption and the regulations according to which the companies determined the limits of permitted private trade.

The court cases which are analysed in this chapter all stemmed from illegal private trade undertaken in the charter areas of the VOC and WIC. Sections two and three focus on cases involving the VOC. Section two delves into two illegal private trade cases in which the company servants involved used the same mechanism of smuggling, namely transhipping. The details of what they smuggled, and how, come to light in the cases which recount their illegal activities. Yet the off-shoot civil cases were very different: the case between Willem Toledo and the VOC revolved around whether or not Toledo should be

[2] Ibid., 7, 16.

[3] On the reasons for VOC decline, including illegal private trade see Els M. Jacobs, *Merchant in Asia: The trade of the Dutch East India Company during the eighteenth century* (Leiden: CNWS Publications, 2006), 6-9. Nierstrasz, *In the Shadow of the Company*, 73-78. On smugglers against the WIC see Heijer, *De geschiedenis van de WIC*, 136. Enthoven, "An assessment of Dutch Transatlantic commerce, 1585-1817."

[4] VOC: Nierstrasz, *In the Shadow of the Company*. Nierstrasz, *Rivalry for Trade*. WIC: Antunes, Post, and Salvado, "Het omzeilen van monopoliehandel." VOC, EIC and other companies: Maxine Berg et al., "Private trade and monopoly structures: The East India Companies and the commodity trade to Europe in the eighteenth century," in *Chartering Capitalism: Organizing markets, states and publics*, ed. Emily Erikson (Bingley: Emerald, 2015).

extradited to Batavia; the case which Jan Schull brought against the VOC was a claim for his wages to be paid. The case against Toledo in particular highlights the VOC's legal strategy by which the company tried to reinforce the jurisdiction of their court in Batavia. The case against Toledo was certainly not the only example of this approach to cases in the Republic – section three takes up the issue of jurisdictional disputes in the Republic which arose from cases related to illegal private trade and more broadly, to corruption.

In section four the focus shifts to the WIC and in particular to illegal private trade conducted on the West Coast of Africa. As mentioned, because of the different legal structures, WIC illegal private trade cases did not lead to the same contests over jurisdiction and competence in the courts in the Republic as VOC cases did. What the WIC cases bring to the fore are the mechanisms of smuggling, highlighting the centrality of cross-imperial cooperation. These findings are in line with the strong research current in Atlantic history which emphasises the connected nature of Atlantic activities behind the façade of 'national' empires.[5]

Taken together, the VOC and WIC cases confirm what historians have long known: that illegal private trade was ubiquitous in the charter areas of the VOC and the WIC. But more than that, the cases showcase mechanisms of smuggling – the networks that individuals used, the means by which they took on board or unloaded their illicit cargo, and what kinds of illicit cargo they transported. The importance of cooperation – and inter-imperial cooperation in particular – comes to the fore. The cases reveal differences in scale in illegal private trade between the Indian and Atlantic Oceans with the equipping of ships for smuggling in the Atlantic being a particularly WIC problem. On the other hand, the jurisdictional disputes in the Republic caused by private trade related cases were a specifically VOC issue. That extradition cases like those discussed in the following sections were specific to the VOC can be explained by the VOC's legal structure, set out in Figure 2 (Chapter 1).

Private trade in the Indian and Atlantic Oceans

Earlier I made the point that research on the VOC and the WIC has been quite separate, until recently. When it comes to scholarship on illegal trade activities in the charter areas, this divide is reinforced by the terms used: the two bodies of scholarship to some extent speak different languages. The terms private trade, corruption and smuggling are used by scholars, but how do these concepts relate to each other? The difference in language use in the scholarship on illegality in the Dutch empire obfuscates the similarities in mechanisms and strategies used by those involved in illegal activity. Conceptual clarity, and unity in language use will facilitate comparative research and empire-wide studies.

In the Indian Ocean context, illegality is conceived in the terms private trade and corruption, with private trade treated as corruption by many historians in light of the VOC

[5] Oostindie and Roitman, *Dutch Atlantic Connections*; Richard Drayton, "Masked Condominia: Pan-European collaboration in the History of Imperialism, c. 1500 to the present" (paper presented at the Transitions to Modernity Colloquium, Yale University, 24 September 2012).

attempts to enforce its monopolies.[6] Private trade here should be understood as trading for an account other than the companies. This is particularly clear in the terms used for illegal private trade, which were not only *verboden handel*, but also *particuliere handel.* The latter emphasises exactly the point that it was for an individual's account.[7] However, private trade was not all illegal, and thus a further distinction is paramount: permitted private trade and illegal private trade must be distinguished. The limits of legality in trade were defined by the VOC charters, *artikelbrieven*, instructions for fleets and company administrators, and local ordinances (*plakkaten*). Conceptually, illegal private trade and corruption overlap, but are not synonymous. Corruption among VOC employees – one of the causes of the company's decline, according to historians – encompassed activities including but not limited to illegal private trade. Femme Gaastra highlights the distinction between behaviours that would be considered corrupt today, but were perquisites of high-ranking positions in the seventeenth century. He notes that even when those differences are stripped away, there was embezzlement and fraud that contemporaries found unacceptable.[8]

The term which dominates scholarship on illegality in Atlantic trade is smuggling. In the WIC literature, excellent research has illuminated the scope of Zeeland smuggling as well as the role of the WIC in breaching the regulations of other empires.[9] Karwan Fatah-Black and Matthias van Rossum define smuggling as evading taxes, levies and limitations relating to the movement of goods.[10] Based on this definition, illegal private trade and smuggling are synonymous.

The legality of trade was defined by the VOC and the WIC on the basis of the charters granted them and the regulations which they issued both in the Republic and within their charter areas. But the companies were not the only ones defining legality and illegality: in the context of multiple empires involved in trade in the Indian and Atlantic Ocean, illegality was defined from multiple viewpoints. What was considered illegal within one imperial regulatory framework was permitted within another. This is particularly relevant in assessing the legality of activities undertaken by foreigners. VOC and WIC restrictions on trade applied to employees and non-employees, and subjects of the States General and foreigners at various points in time. This followed from the different types of monopolies which the companies held – 'national' monopolies which excluded all subjects of the States General, contrasted with 'universal' monopolies, generally those won by

[6] Berg et al., "Private trade and monopoly structures," 131-132.
[7] The court records of the case involving Jan Schull, discussed later in this chapter, include these two terms, used interchangeably. See NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *840* (1748), Geextendeerde sententie, scans 180, 182, 190, ff. 180r, 182r, 190r.
[8] Femme S. Gaastra, *Bewind en beleid bij de VOC, 1672-1702* (Zutphen: Walburg Pers, 1989), 90. Byapti Sur is currently conducting doctoral research on corruption amongst VOC servants in India. She argues that allegations of corruption were a political tool in disputes between different factions of company administrators overseas and in the Republic. https://www.universiteitleiden.nl/en/staffmembers/byapti-sur#tab-1 (accessed 2017-11-18).
[9] For instance: Paesie, "Lorrendrayen op Afrika." Klooster, "Inter-imperial smuggling in the Americas, 1600-1800."
[10] Fatah-Black and Rossum, "De Nederlandse smokkelhandel," 5.

conquest and based not on provisions from the States General but on treaties with foreign sovereigns, by which the companies prohibited all non-company trade.[11]

Within the regulatory frameworks of the VOC and the WIC, the distinction between permitted private trade and illegal private trade was crucial. Both companies allowed their servants to conduct private trade, which took a number of forms. Following the long-held maritime custom of *voering*, the Dutch East India Company permitted the men employed on company ships to take one or more chests (*scheepskisten*) with them on the Cape route.[12] The parameters of size, number and contents were set by the company in the *artikelbrief* under which company ships set sail. Initially, the allowances for permitted trade varied from chamber to chamber but, when the first general *artikelbrief* was issued in 1634, the rules were standardized. Private trade allowances were based on the shipboard hierarchy and applied across chambers.[13] This is seen clearly in the regulations for 1717-1743 which stipulated that a commander could take three chests and one sailor's chest on board for his own account; captains and merchants could take two of each; sailors, soldiers and carpenters could take only one chest; the cook and others of similarly low standing could take none. Different ranks could take drink chests (*kelders*) with them, and a specified number of pots.[14] The goods with which mariners chose to fill their chests could be sold for profit, bartered or exchanged, and given as gifts to cement contacts.

The regulations on the return journey were different because of the company's awareness of the temptation which faced its employees – bringing Asian goods back to the Republic for personal profit. Seamen were allowed to bring goods back to the Republic up to the value of three months' wages, thus following the pattern of differences according to rank. However, only certain goods were permitted. During the 1690s the company directors in the Republic, the Gentlemen Seventeen, decided that goods which brought in little profit for the VOC – including at that point tea and porcelain – could be brought back by seamen in any quantity but they had to pay the company freight charges. In 1750 the

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[11] Chris Nierstrasz introduced the idea of plural monopolies, distinguishing between three which the VOC held. These were the 'Dutch'monopoly, covering all Europe-Asia trade; the intra-Asian trade monopoly; and monopolies taken by conquest and agreed by foreign sovereigns. The first two were granted to the VOC by the States General, and Nierstrasz refers to them as 'national' monopolies. The third was global in scope and reliant on the VOC's capacity to enforce its will on competitors not limited to inhabitants of the Dutch Republic and people under the jurisdiction of the VOC. Nierstrasz, *In the Shadow of the Company*, 73-75. The concept has not been applied to the WIC explicitly but Antunes, Post and Salvado write of WIC monopolies, rather than a single monopoly. In contrast, Henk den Heijer tends to use the singular form. See Antunes, Post, and Salvado, "Het omzeilen van monopoliehandel."; Heijer, "The Dutch West India Company."

[12] Jan Lucassen, "Zeevarenden," in *Maritieme gescheidenis der Nederlanden*, ed. L. M. Akveld, S. Hart, and W. J. van Hoboken (Bussum: De Boer Maritiem, 1977), 142. Herman Ketting, *Leven, werk en rebellie aan boord van Oost-Indiëvaarders (1595-±1650)* (Amsterdam: Aksant, 2002), 55. Jan Lucassen and Matthias van Rossum, "Smokkelloon en zilverstromen: illegale export van edelmetaal via de VOC," *TSEG/Low Countries Journal of Social and Economic History* 13, no. 1 (2016): 127-128. Tijl Vanneste, "Sailing through the Strait: Seamen's professional trajectories from a segmented labour market in Holland to a fragmented Mediterranean," in *Law, Labour and Empire: Comparative perspectives on seafarers, c. 1500-1800*, ed. Maria Fusaro, et al. (Palgrave Macmillan, 2015), 135-136.

[13] Hoogenberk, *De rechtsvoorschriften*, 188. Roelof van Gelder and Lodewijk Wagenaar, *Sporen van de Compagnie: De VOC in Nederland* (Amsterdam: De Bataafsche Leeuw, 1988), 59.

[14] Berg et al., "Private trade and monopoly structures," Table A2. *Kelders* were chests into which 12 gin bottles fit.

number of permitted chests per seaman was revised and all goods were permitted, except for silk and goods which the company sold by weight, such as spices. But tea and tamarind, although sold by weight were permitted for private trade.[15] Nierstrasz has shown that the VOC's policies on private trade shifted over time as the company responded to increased competition from private traders and rival European trading companies and consequent market changes in Europe.[16]

In order to police private trade, the returning East Indiamen were inspected on their arrival in Texel before goods were unloaded from the ships. How exactly this played out was recounted in the case against Jan Schull, which features later in this chapter. The mariners' chests were unloaded from the ships, inspected, and stored in the company warehouses. Goods not considered merchandise – curiosities – could be collected by their owners; goods brought back illegally were confiscated and sold for the profit of the VOC. Unlike the English East India Company, the VOC sold off the goods brought back by its servants at its own auctions, with company goods. The proceeds of the sale, minus freight charges, were then handed over to the individual mariner-trader.[17] This protocol was intended to protect the company from being short-changed – the chests were inspected so that any non-permitted goods that were brought back to the Republic could be confiscated; and the company sold off the permitted trade goods so that seamen did not undercut the company's pricing.

While private trade was an opportunity to earn some money legally to supplement wages, it was also an opportunity for illegality which many utilised, as the cases which follow bring to light. It is in such cases that the intertwined nature of legal and illegal private trade is most obvious. According to Chris Nierstrasz, the VOC condoned some degree of illegal private trade. The company directors were not overly concerned with smuggling per se; rather, they were worried about the effects of overloading the return ships: heavy laden with company as well as private merchandise, the East Indiamen were difficult to manoeuvre in storms and attacks. [18] In this way, private trade, permitted and illegal, threatened company profits not only by increasing supply and lowering prices in the Republic, but by risking loss or capture of the entire cargo before it even reached the auctions.

Just as the legality of private trade on the Cape route changed over time, according to product and quantity, so too did private trade in intra-Asian shipping. According to the monopoly granted to the VOC by the States General, intra-Asian trade was the exclusive right of the company. The commonly-held view is that the VOC excluded its servants from this trade, in stark contrast to the English East India Company's policy on 'country trade'.[19]

[15] Gelder and Wagenaar, *Sporen van de Compagnie*, 59.
[16] Nierstrasz, *Rivalry for Trade*, 22, 76-81.
[17] Gelder and Wagenaar, *Sporen van de Compagnie*, 59. Nierstrasz, *Rivalry for Trade*, 29.
[18] Nierstrasz, *Rivalry for Trade*, 79-80.
[19] Hejeebu indicates that for decades the enduring narrative of private trade has been one of English East India Company failure to root out the problem. However, she concludes, that the EIC used private trade allowances as the carrot and being fired as the stick by which to secure the loyalty of its employees overseas. In contrast, she claims, the VOC attempted to monopolise intra-Asian trade for a long period of time, not allowing its

However, already in the 1970s, Sinnapah Arasaratnam showed that monopolising the intra-Asian trade was not an uncontested approach to company commerce in Asia. Yet conceptions of the VOC's position in and intentions for intra-Asian trade have been slow to change in the historiography.[20] Chris Nierstrasz's work is having that effect now: he has challenged the narrative of a weak company unable to eliminate illegal private trade and argues instead that the opening of the intra-Asian trade was part of considered policy changes in the company.[21]

In addition to permitted private trade, the VOC implemented recognition fees on goods sent to Europe over and above the permitted private trade of its servants. Nierstrasz's work on tea and textiles indicates recognition fees were charged by the company to both European and Asian merchants who sent such merchandise back to the Republic. The goods were then sold off at auction, greatly increasing the work of the auctioneers who claimed higher salaries as recognition trade increased (see Chapter 4). Nierstrasz claims that private trade in tea and textiles had been flourishing and the VOC implemented the recognition fee as a way to profit from private endeavours.[22] Here we see a parallel with the WIC, which also used recognition fees as a strategy to co-opt profits from private trade.

Like the VOC, the WIC was constituted by multiple monopolies. The WIC lost its grip over these monopolies, thus reshaping company activities from monopoly trade and colonisation at the outset to collector of levies and duties by the mid-eighteenth century.[23] Regulations regarding the legality and illegality of private trade were set out in the company's charters. As discussed in Chapter 2, even before the first charter was granted there were disagreements over the geographical reach and product scope of the monopoly. The first monopoly granted in 1621 gave the company a Dutch monopoly over trade in the Atlantic, covering routes and products. The only exception was salt shipping from the Caribbean which was in the hands of private traders from Hoorn and Enkhuizen for at least a year after the founding charter was issued.[24] The Dutch monopoly formed the legal basis on which the WIC could exclude all other merchants from the Republic from trade.[25] However, the company did not succeed in enforcing it. The WIC monopolies were undercut by private traders who equipped Atlantic voyages without company permission and without paying the requisite recognition fees for private trade.[26]

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servants to supplement their wages by private trading activities and thus not tapping into the synchronisations between company and private interests. Hejeebu, "Contract enforcement."

[20] Arasaratnam, "Monopoly and Free Trade." A recent contribution on differing visions of empire is Weststeijn, "The VOC as Company-State."

[21] Nierstrasz, *In the Shadow of the Company*, 3, 79-87.

[22] Nierstrasz, *Rivalry for Trade*, 28.

[23] For a concise overview of the history of the first and second WIC and the opening of the company's monopolies, see Heijer, "The Dutch West India Company," 77-112. Gert Oostindie and Jessica Roitman make the point that the WIC abandoned the idea of monopolising trade and governance early on and after giving up its monopoly on the slave trade the company's main economic activity was in fact collecting taxes. Oostindie and Roitman, "Repositioning the Dutch in the Atlantic, 1680-1800," 136.

[24] Heijer, "The Dutch West India Company," 81.

[25] The charter itself used the term inhabitants (*ingesetenen*). See Laet, *Iaerlijck Verhael*, 7.

[26] Enthoven and Postma, "Introduction," 2; Heijer, "The Dutch West India Company," 97; Wim Klooster, *Illicit Riches: Dutch trade in the Caribbean, 1648-1795* (Leiden: KITLV, 1998).

Over time, the company relinquished its monopolies over brazilwood, gold, and enslaved people and profited from private traders' activities by collecting recognition fees. Brazilwood was under company monopoly until at least 1645; from 1647 the trade was opened to private traders.[27] The gold trade was under company monopoly until the charter renewal of 1730.[28] Debate over the reduction of the company monopoly in the years leading up to the 1730 renewal will be discussed in more detail later in this chapter. The renewal of 1730 also instituted the recognition trade for the West Coast of Africa. Passports could be requested from the company chambers in the Republic, a guarantee paid upfront and then the recognition fee paid on completion of the voyage. The duration of the passport was set according to the request for a voyage to Africa and back to the Republic, or a triangular/trans-Atlantic voyage and holders were released from the payment of import and export taxes. Should the private merchants breach the terms of the trade, they were subject to a fine of *f*6000.[29] With the amendment to the charter in 1734 the monopoly of the WIC on the West Coast of Africa was essentially relinquished. Only the slave trade to the colonies in the Americas remained under the company, and that was only to last until 1739. After that point, the company kept up the forts and trading stations and acted as an intermediary in the trade in enslaved Africans.[30]

WIC ships sailed out under specific regulations and instructions set out in a general *artikelbrief*.[31] To date, no structured analysis of these legally binding documents has been done to assess the limits of permitted private trade, let alone a comparison with the details known for the VOC. It is, however, likely that sailors were permitted some space on board to carry goods for their own private trade, which would have been based on the maritime custom of *voering*, and which was allowed to VOC servants. Article Seven of the general *artikelbrief* for the WIC, dating from 1647, does not mention *voering* specifically but does prohibit company servants from carrying extra ship's chests on board without the permission of the directors. According to the regulation, extra chests would be confiscated by the company.[32] What was very clearly stated in the *artikelbrief* was that private trade by company servants was not allowed. Article 36 prohibited private trade by all company servants, of all ranks, for themselves or on behalf of other people. They risked being fired from company employ and forfeiting their wages for breaking the rules.[33]

Unlike the VOC's albeit incomplete attempts to monopolise the intra-Asian trade, the WIC did not have equivalent designs on the *kleine vaart*, the inter-Caribbean trade which included the Spanish American Mainland and later, the North American colonies

[27] Antunes, Post, and Salvado, "Het omzeilen van monopoliehandel," 44 (Table 43).
[28] Heijer, *Goud, ivoor en slaven*, 312.
[29] Paesie, "Lorrendrayen op Afrika," 80.
[30] Ibid., 84. Antunes, Post, and Salvado, "Het omzeilen van monopoliehandel," 44 (Table 43).
[31] Cau et al., *Groot Placaet-boeck*, III:1346-1354.
[32] Ibid., III:1347. Ruud Paesie has found evidence of permitted private trade – *voering* – for sailors on smuggling vessels: they were allowed to load some goods into the hold to trade in Africa. Paesie, "Lorrendrayen op Afrika," 136. He does not mention whether or not the WIC gave its employees similar allowances.
[33] Cau et al., *Groot Placaet-boeck*, III:1350.

too.[34] Recent research has shown the importance of inter-imperial trade in the Caribbean where territories belonging to different national empires were so close together and coastlines so difficult to patrol that smuggling abounded. As Wim Klooster so memorably stated, "Dutch Caribbean transit trade was largely an illicit affair. Smuggling was so important to the Dutch Antilles that it was almost their *raison d'etre*."[35] In this inter-imperial context it is important to consider legality and illegality from both parties' perspectives, an issue which reocurs in the court cases which are analysed later in this chapter. For instance, trade in enslaved people between the free Dutch port Curaçao and the Spanish Main and French colonies was legal from a Dutch point of view, but illegal from the point of view of the Spanish and French who should only have been purchasing slaves from traders within their own imperial framework.[36] St Eustatius was another such Dutch free port which thrived in inter-imperial trade.[37] But in other areas, specifically their plantation colonies, the Dutch tried to implement mercantilist policies. Gert Oostindie and Jessica Roitman make the point that this economic heterogeneity was a defining feature of the Dutch Atlantic empire: plantation colonies were governed by the principles of mercantilism, while Dutch free ports thrived on undermining the mercantilist policies of other empires. They make the point that the Dutch colonies were deeply embedded in Atlantic connections, more so because they could not rely on the company or the Republic for adequate protection or provisions.[38]

In addition to inter-imperial smuggling undermining mercantilist goals, there were two other forms of illegality in inter-Caribbean trade: tax evasion and trading with the enemy. On the first point, Cornelis Goslinga indicates that the Gentlemen 10 realised they could not control the inter-Caribbean trade – enforcing the WIC's charter-based rights was near impossible – and so "pursued a policy of connivance" by which they tolerated the trade provided the required fees were paid to the company and the monopolies on slaves and salt were kept intact. On the second point, Goslinga claims that the *kleine vaart* expanded during the War of Spanish Succession during which time "[t]rade with the

[34] Goslinga, *The Dutch in the Caribbean and in the Guianas*, 189-230. To be specific, the Spanish were only allowed to purchase enslaved people from the agents of the *Asientistas.* The *asientos* (slave supply contracts) were often held by non-Spaniards. Even if they involved foreigners, the *asientos* were part of the Spanish regulatory framework for the colonies.

[35] Klooster, *Illicit Riches*.

[36] Wim Klooster, "Curaçao as a transit center to the Spanish Main and French West Indies," in *Dutch Atlantic Connections, 1680-1800: Linking empires, bridging borders*, ed. Gert Oostindie and Jessica Vance Roitman (Leiden and Boston: Brill, 2014).

[37] In particular, slave trade via this island to the surrounding French and English islands thrived in the 1720s. Heijer, *De geschiedenis van de WIC*, 150, 157, 160, 181.

[38] Gert Oostindie and Jessica Vance Roitman, "Introduction," in *Dutch Atlantic Connections, 1600-1800: Linking empires, bridging borders*, ed. Gert Oostindie and Jessica Vance Roitman (Leiden and Boston: Brill, 2014), 71. This idea is most coherently expressed by Richard Drayton who argues that 'national' facades masked imperial interdependence. Drayton, "Masked Condominia: Pan-European collaboration in the History of Imperialism, c. 1500 to the present." On how inter-imperial, regional and Atlantic connections were crucial to the provisioning of colonies, and characterised the networks of individuals active in the colonies, see Hoonhout, "The West Indian Web."

enemy continued as if nothing had happened."[39] Goslinga sums up the effect of illegality in the inter-Caribbean trade thus:

> Monopolies, charters, navigation laws and other regulations tried in vain to eliminate [the *kleine vaart*], or at least keep it within the frame and dimensions of the Mercantilist System. In spite of all measures to counteract it, there is every evidence that the kleine vaart was a main cause of the decline and fall of monopolistic institutions and of the futility of protective restrictions.[40]

Unable to control the private trade in the Caribbean, and in some cases unwilling to because of the lack of provisions supplied to colonies by the WIC, the company directors and officials tried to co-opt some of the gains by imposing taxes and fees but still maintained their position of "connivance and duplicity".[41]

The VOC and WIC charters, *artikelbrieven* and special instructions defined and redefined legality in terms of quantity, product, area, route, and/or persons involved. These regulations applied to all company servants: seafarers, military personnel, administrators and officials. But employees in different 'branches' of the companies had different opportunities to exploit on the spectrum of illegality from petty to excessive. These opportunities were based on their locations, contacts, available credit, and entrepreneurial ingenuity. The possibilities ranged from small-scale smuggling of coins or sugar by sailors, to elite networks of officials involved in, for instance, illegal diamond trade, and the equipping of ships for illegal trading voyages.[42] Those who sailed from the Republic to Asia and across the Atlantic had opportunities to exploit which differed from the possibilities open to administrators and trade officials who lived in company ports and towns (semi-) permanently.

At the one end of the spectrum, illegal private trade was intertwined with legal trade. That is, illegal private trade was dependent on company infrastructure. This is what Karwan Fatah-Black and Matthias van Rossum have called endemic smuggling, which they define as parasitic on legal trade.[43] The epitome of this sort of illegality was taking extra chests on board a company ship, such as Jan Schull did, which case is discussed in greater detail later in this chapter. The concomitant permitted private trade was the *voering* allowance and the VOC recognition trade, both of which forms of trade were dependent on VOC infrastructure. At the opposite end of the spectrum of illegality was illegal private

[39] Goslinga, *The Dutch in the Caribbean and in the Guianas*, 190.
[40] Ibid., 189.
[41] Ibid., 197.
[42] For example, VOC sailors transported coins in their pockets: Lucassen and Rossum, "Smokkelloon en zilverstromen." WIC sailors carried Brazilian sugar in their shirts to sell in the Republic: Klooster, "De bootsgezellen van Brazilië," 49. Governor-General Maetsuycker's wife was involved in illegal diamond trade in India: Gaastra, *Bewind en beleid*, 120. On Zeeland smugglers see Paesie, "Lorrendrayen op Afrika." Heijer, *Goud, ivoor en slaven*, esp. Ch 8.
[43] Fatah-Black and Rossum, "De Nederlandse smokkelhandel," 17-18. They distinguish endemic smuggling from eruptive smuggling. Eruptive smuggling was the consequence of changing patterns of production, consumption, political power, or war.

trade conducted by merchants independent of company shipping. One example is the infamous *lorrendraaiers* (smugglers) who flouted the WIC monopoly and equipped ships for Atlantic trade, in particular in the trade in enslaved Africans. They are discussed later in this chapter too. That trade was not dependent on WIC shipping. The concomitant legal side of this was WIC recognition trade, which, in contrast to the VOC, gave merchants permission to send out their own ships to trade in the charter area against payment of a fee.[44] The striking difference that is revealed in the court cases which follow, is that illegal private trade in Asia was intertwined with legal private trade and company trade – relying on the VOC infrastructure of ships, shipping routes and access to markets – while illegal private trade in the Atlantic was constituted by equivalent illegal activity as well as the equipping of ships for voyages independent and in breach of the WIC monopolies.

In spite of the difficulties which the VOC and WIC faced in policing the ever-shifting boundaries between legal and illegal trade, the companies prosecuted employees, rivals and foreigners for breaking the rules of permitted private trade. The regulations set out the punishments for transgressors: the VOC punished illegal private trade conducted by its servants with confiscation of goods, forfeiture of wages, and demotion.[45] But in the context of multitudes of participants, trade routes, and regulations, which courts had jurisdiction over such issues? In the following sections, detailed accounts of illegal private trade and who conducted it come to light in the High Court archive, bringing to the fore the mechanisms of smuggling, the problems of jurisdiction in prosecuting the crimes and related civil cases, and revealing significant differences between how the VOC's and the WIC's monopolies were breached by illegality.

Transhipping on the Europe-Asia route

The following cases bring to light a specific mechanism of illegal private trade, namely transhipping. This involved a rendezvous at sea during which goods were loaded onto or unloaded from a vessel by another ship which came alongside it. For Dutch East and West India Company employees, transhipping allowed men to conduct their business beyond the watchful eye of company inspectors. However, there were always accomplices and witnesses whose silence was crucial to success. The two cases which follow bring to light the way that company employees went about conducting illegal private trade alongside the company's trade, making use of the existing infrastructure – ships, routes – to profit themselves. These cases are examples of what Fatah-Black and van Rossum call endemic smuggling. The men involved in transhipping were found out and prosecuted for illegal private trade, one in Batavia and one in the Republic. But they both ended up facing civil legal proceedings in the High Court in the Republic. Each case is discussed in detail here,

[44] It was of course dependent to some extent on WIC infrastructure in that, when conducted legally, ships should have called at WIC-controlled ports. See Chapter 2 for disputes over WIC recognition trade.
[45] Article 65 of 1643 *Artikelbrief* published in J. A. van der Chijs, ed. *Nederlandsch-Indisch Plakkaatboek, 1602-1811*, 17 vols. (Batavia and The Hague: Landsdrukkerij and Martinus Nijhoff, 1885), I: 330. See also Hoogenberk, *De rechtsvoorschriften*, 207-208.

including the mechanisms of smuggling as well as the nature of the case heard in the High Court.

Spiriting goods to Batavia: Willem Toledo vs. VOC chamber Amsterdam

Willem Toledo was a man who had made his way up the ranks of shipboard personnel during his years in VOC employ. From the time he was eight years old, so he claimed, he had taken up different functions in the company, reaching the position of skipper (*schipper*) in 1674.[46] It was in November of that year that he sailed out of Texel on board the large ship *Sumatra*, of which he, as skipper, was the highest official.[47] On arrival in Batavia the following year, Toledo was given orders to board a different ship, presumably meaning he worked in the intra-Asian trade for a few years. He claimed that he served the company well at all times and did not speak ill of it.[48] In 1677, while Toledo was still in Asia, the *Advocaat Fiscaal* laid a criminal charge against him before the Council of Justice in Batavia – the allegation was illegal private trade on the journey to Asia.[49] Over the following decades Toledo and the VOC were engaged in legal proceedings that spanned the Indian Ocean. From the point of view of individual agency, the case brings to the fore the mechanisms of Toledo's illegal activity and the importance of collaboration in his trade and escape to the Republic. The same matter continued in the judicial institutions in Holland during which time the political bodies – the States of Holland and the States General – weighed in. The High Court's jurisdiction and competence were challenged by the VOC which claimed repeatedly that Toledo should be sent to Batavia to face the sentence passed by the company's court. In this way, the VOC fought to keep the case in-house. The implication of this was that the company was trying to uphold and reinforce the jurisdiction of its own court, the Council of Justice in Batavia.

Toledo was accused of collaborating with English ships to load alcohol onto the *Sumatra*. He transported the drinks to Batavia, where he sold them and pocketed the profit. The *Sumatra* sailed out of Texel with an unnamed English ship. While both were out in the Channel, brandy, French wine and high-quality beer called *Mom* were

[46] Strangely, Willem Toledo cannot be traced in the database of company employees – VOC opvarenden. The first voyage by a ship named *Sumatra* of which personnel are recorded in the database is from 1680.

[47] This comes to light in the court proceedings between Toledo and the VOC in the High Court. Nationaal Archief, Den Haag, Hoge Raad van Holland en Zeeland, nummer toegang 3.03.02, inventarisnummer *785* (1693), Geextendeerde sententie, ff. 113r-v, scan 114-5. According to the database of VOC ships this was in fact the first voyage that the ship made to Batavia. It was in use by the company until it was sold in Batavia in 1691. The vessel would have carried 225-70 persons on board. http://www.vocsite.nl/schepen/detail.html?id=11010 (accessed 2016-02-03).

[48] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *785* (1693) Geextendeerde Sententie ff. 113v, scan 115.

[49] Heer Pauw was Advocate Fiscaal until August, when Mr Gualter Zeeman was appointed to the position. Francois Valentijn, *Oud en Nieuw Oost-Indiën, vervattende een naauwkeurige en uitvoerige verhandelinge van Nederlands mogentheyd in de gewesten...* 8 vols. (Dordrecht and Amsterdam: Johannes van Braam and Gerard Onder de Linden, 1724-6), III: 306, 385. The High Court records are not explicit about it, but it seems that there were a number of other officials accused at the same time. These were men on board the *Sumatra* and *'t Wapen van Alkmaar.* NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *785* (1693), Geextendeerde sententie, scan 115 f. 114r.

transferred aboard the *Sumatra.* While no quantities were specified, the court records stated at various points that the amounts were considerable. According to the VOC, Toledo was not satisfied to do this only once but executed a number of such transhipments while in the Channel.[50]

The case against Toledo highlighted not only the how and what of Toledo's illegal trade, but the VOC revealed how the directors came to know of Toledo's misdeeds and their response. While Toledo stayed in Asia, the *Sumatra* returned to the Republic, arriving in Texel on 16 July 1676.[51] One of the men on board must have then denounced Toledo to the company directors.[52] That a fellow seafarer would know about Toledo's activities on the voyage to Batavia is hardly surprising; transhipping goods in the Channel could not possibly have been done without at least the notice – if not physical assistance – of officers and crew. Perhaps Toledo, as skipper, could buy their silence in return for a small share of the profit? Whatever ensured the secrecy of others was not sufficient to keep the informant quiet. Perhaps the reward offered for such denunciations, specified in the *artikelbrief*, convinced the anonymous seafarer to turn in Toledo.[53] The directors then collected evidence and sent instructions to the authorities in Batavia to begin criminal proceedings against Toledo, which instructions were received and carried out in 1677, some three years after the transhipping in the Channel.[54]

It is quite possible that the vessel which carried the evidence against Toledo was the same one that carried Volckert van Goens to Batavia. Like Toledo, he too was accused of loading beer and wine onto the company ship in the Channel and selling it off in Batavia.[55] An indication that transhipping goods in the Channel was a concern to the VOC was the States of Holland Resolution (1680) which mentioned the risks it posed to company ships. The resolution gave the example of a ship which was seized by the 'Turks' and forced to go to Algiers. It was vulnerable to capture, according to the company, because of the rendezvous with other ships in the Channel.[56] Transhipping as a tactic for smuggling was also used beyond the Channel: according to Piet Emmer, the Dutch

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[50] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *785* (1693) Geextendeerde Sententie, f. 113v, scan 115; ff. 119r-v, scan 120-1. The records include the interesting detail that the brandy was contained in *flessenkelders* – porcelain bottles in a wooden box.

[51] VOCsite http://www.vocsite.nl/schepen/detail.html?id=11010 *Sumatra* (accessed 2017-11-18).

[52] The company indicates that the directors came to know about Toledo's transhipping only when the Sumatra returned to the Republic. NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *785* (1693), Geextendeerde Sententie, f. 120r, scan 121.

[53] *Artikelbrief van de geoctroyeerde Nederlandsche Oost-Indische Compagnie* dated 3 September 1672 published in Chijs, *Nederlandsch-Indisch Plakkaatboek*, III: 560-561.

[54] Cau et al., *Groot Placaet-boeck*, VII:961. Resolutie, Staten van Holland. NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *785* (1693), Geextendeerde Sententie, f. 114r, scan 115; f. 120r, scan 121.

[55] Nationaal Archief, Den Haag, Familie Archief van Goens, toegang nummer 1.10.32, Inventaris nummer *31*. Extract en resolutie in de zaak van V. v. Goens enz. 7 Feb 1681. Thanks to Erik Odegard for bringing this to my attention and generously sharing his transcription of the original. I have found five ships in the vocopvarenden database which arrived in Batavia in 1677. One of them is *'t Wapen van Alkmaar*, and another is the *Sumatra* on her second voyage. So while it is possible, it is at most a 1 in 5 chance. The database may not be complete.

[56] Cau et al., *Groot Placaet-boeck*, VII:962. Resolutie, Staten van Holland. The ships are not named in the resolution. In 1730 there were two ships, *Purmerlust* and *ter Horst,* which were seized and taken to Algiers. The court case which arose regarding the wages of the crew is discussed in Chapter 4.

transhipped Brazilian goods in the South Atlantic in order to evade Spanish and Portuguese monopolies.[57]

In addition to collaborating with the English in the Channel to tranship the drinks, Toledo was reliant on the English for assistance in returning to the Republic. At some point during the legal proceedings in Batavia Toledo fled to Bantam where he boarded an English ship and sailed to England. In theory no line of appeal existed from the court in Batavia to the courts in the Republic, thus flight was the only option to avoid punishment. To prevent this, the directors had instructed the officials in Batavia to imprison Toledo because the company was convinced that should Toledo make his way back to Europe, he would have no difficulty in finding employment in other nations' companies and thus end up serving the VOC's rivals in Asia.[58] However, from England Toledo returned to the Republic.[59]

Despite Toledo's escape, the *Fiscaal* in Batavia continued the case: Toledo was sentenced *in absentia* on 27 May 1678. He was dismissed from his position (*gedeporteert van ampt*) and declared useless to the company; his wages were forfeited; he was banished to the island Rosengein (Banda Islands) for a period of 20 years; and he had to pay a fine (*amende*) of the significant sum of 1000 *Rijksdaalders*.[60] These punishments were in line with the general *artikelbrief,* from 1672, which prohibited transhipping in the Channel.[61]

The general *artikelbrieven* under which VOC ships sailed had always prohibited company vessels from allowing ships to come alongside them and detailed the punishments for those who disobeyed. Article 24 of the first general *artikelbrief* (1634) specified that no-one was permitted to allow English and French vessels to come alongside company ships; or to have people from those countries on board with the exception of sailors; nor to show any of the return cargo to such people before the directors had come on board and made sure that everything was in good order. The penalty for flouting the regulation was seizure of half the wages owed to the man in question.[62] The article was reworded slightly in the 1658 version – the notable change was that England and France were omitted in favour of a more general prohibition.[63] The

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[57] Piet C. Emmer, *De Nederlandse slavenhandel, 1500-1850* (Amsterdam: De Arbeiderspers, 2003), 39.

[58] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *785* (1693) Geextendeerde Sententie, ff. 114r scan 115. It was stated in the plural, indicating that Toledo was one of a number of officials who had been accused and who should have been imprisoned to prevent their flight to Europe. As discussed in Chapter 1, charter Article 35 allowed high-ranking officials to seek redress in the Republic.

[59] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *785* (1693), Geextendeerde sententie, scans 122-3, ff. 121r-v. Cau et al., *Groot Placaet-boeck*, VII:961. Resolutie, Staten van Holland.

[60] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *785* (1693), f. 113v, scan 115. It is later specified that the island is Rosengein, known today as Pulau Rozengain. See also ibid. Resolutie, Staten van Holland. 1000 *Rijskdaalders* = *f*2400 in Asia based on the conversion of 1 *Rijksdaalder* =48 *stuivers.*

[61] Chijs, *Nederlandsch-Indisch Plakkaatboek*, II: 560-561. 3 September 1672 'Artikel-brief van de geoctroyeerde Nederlandsche Oost-Indische Compagnie'.

[62] Ibid., I:315-316. 2 Maart 1634 'Artikel-brief voor de Oost-Indische Compagnie'.

[63] *Historiesch verhaal, van het begin, den voortgang, en den tegenwoordigen staat des koophandels, van de Generaale Nederlandsche Geoctroyeerde Oost-Indische Compagnie*, (Arnhem: Wouter Troost, 1772), II:435. 'Articulen en ordonnatien…' (1658) Article XXIV.

general *artikelbrief* issued in 1672 included an amendment to Article 24 by which the prohibitions encompassed the outward journey. The 1672 amendment stated:

> And also no-one on the outward journey... wherever [the ship] may be... would be allowed to let any ships, boats or people come aboard, even less to take onboard any persons, letters or goods in vats, packets, money box, chest or whatsoever it may be in, under any appearance, cover or pretext, overtly or covertly, in any manner, not only on the pain of being made redundant, but moreover payment of a fine of 1000 Carolus guilders.[64]

It is worth noting that in trying to combat the problem of transhipping, half of the fine was offered to the person who denounced the illegal activity.[65] A reward of *f*500 Carolus would have been a significant sum for an ordinary sailor (*matroos*), amounting to almost four times his yearly salary.[66]

While the *artikelbrief* was the grounds for bringing charges against Toledo and finding him guilty in Batavia, the matter that arose in the courts in the Republic was extradition. Toledo, who had escaped before he was sentenced in Batavia, was arrested when he returned to Amsterdam, based on the directors' knowledge that he had deserted.[67] The Gentlemen Seventeen then sought permission from the Amsterdam Aldermen (*Schepenen*) to send Toledo back to Batavia on the very next ship so that the sentence passed by the Council of Justice there could be executed. The *Schepenen* granted permission to transport him. Toledo disputed the ruling in the Court of Holland which concluded that it was not competent (*bevoegd*) to make a decision in the case. Toledo later appealed to the High Court where the parties debated the issue of transportation. The VOC claimed that the case belonged under the authority of the Provincial States of Holland which had dealt with a similar case against Johannes Middag in December 1673.[68]

Johannes Middag stood at the centre of an extradition dispute in the Republic. The VOC accused Middag of traitorous activities, in particular, having collaborated with none other than former VOC Director-General in Batavia, alleged illegal private trader, and then French East India Company director, François Caron. The VOC alleged that Middag had left his post in Asia without company permission and had made his way back to the Republic where he was preparing to enter the French Company's service. The VOC

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[64] Original: *"Ende en sal oock niemandt in het uytzeylen ofte oock buyten de uytterste ton of anders buyten gaets of elders in zee, waer het oock soude mogen wesen, buyten ordre of consent van de Bewinthebberen, vermogen eenige schepen, schuyten of volck aen boordt te laten komen, veel min over te nemen eenige persoonen, brieven of goederen in vaten, packen, kassen, kisten of waer in het oock soude mogen wesen, oock onder wat schyn, decksel of praetext het soude mogen geschieden, opentlyck noch bedecktelyck in eenigerhande manieren, niet alleen op peene van ghedeporteert te worden van syne bedieninge, ende daer en boven verbeuren een amende van duysent Caroli gulden."*Chijs, *Nederlandsch-Indisch Plakkaatboek*, II: 560-561. 3 September 1672 'Artikel-brief van de geoctroyeerde Nederlandsche Oost-Indische Compagnie'.

[65] Ibid., II:560-561. 3 September 1672 'Artikel-brief van de geoctroyeerde Nederlandsche Oost-Indische Compagnie'.

[66] According to Lucassen, a VOC sailor (*matroos*) would have earned *f*7-11 per month in the seventeenth century. Lucassen, "Zeevarenden," 141.

[67] Cau et al., *Groot Placaet-boeck*, VII:961-962. Resolutie, Staten van Holland .

[68] Original: *"behoorde te worden gebracht in de schoot van Haar Edele Groot Mog*[*ende*]" ibid., VII: 962. Resolutie, Staten van Holland. 11 May 1680.

directors had sought and gained permission from the court in Amsterdam to arrest Middag, and send him to Batavia on the next ship in order that he stand trial there. Middag disputed that he had done anything warranting civil let alone criminal proceedings against him in Asia. He claimed that he was a citizen (*burger*) of The Hague and he was a subject only of the jurisdiction of the Aldermen in that city. The dispute was recounted in a resolution of the States of Holland which confirmed the court's decision to allow the VOC to extradite Middag to Batavia.[69]

Considering the States of Holland's support for the VOC's argument for extradition, it is not surprising that in the later Toledo case, the VOC argued that the States of Holland should make the decision. In the States, the company believed it had an ally in upholding the company's court structure – that is, by extraditing accused company servants, the jurisdiction of Batavia was reinforced, disputes were kept in-house and the insulated nature of the VOC legal system as discussed in Chapter 1, was respected. However, the decisions made in the Middag and Toledo cases did not prevent the issue of extradition from arising in the following years. Jurisdictional disputes arose in the eighteenth-century, not least of all the high-profile case involving Frans Canter, former VOC *resident* in Bassoura.[70] The jurisdictional disputes between the Court of Holland and the High Court which were central to the Canter case will be discussed in greater detail later in this chapter.

The pattern that emerges from the cases is the VOC's insistence on sending its servants back to Asia to face justice in the company's courts. In the case against Toledo, the VOC was adamant that Toledo should be sent to Batavia to serve out his sentence for illegal private trade. It is understandable that the company wanted to keep issues within the jurisdiction of their own court. In this, the company sided with the Amsterdam court and its verdict which was in line with company wishes. What the company sought to do was to maintain the separation between the company court's and the legal arena in the Republic, which were in theory separate. Unsurprisingly, Toledo did not wish to return to Batavia to face his sentence of banishment. The case dragged on to the point of irrelevance: when the High Court finally passed a sentence, in 1693, Toledo was deceased. As a result, the judges commented that the question of transportation was no longer significant.[71] The problem of whether or not to extradite VOC servants to stand trial in Batavia remained unresolved.

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[69] Ibid., VII: 956. Resolutie, Staten van Holland. 22 December 1673. The resolution indicates that the States of Holland and the court had been in contact via letter. It does not state which court this was exactly, but it must have been the court in Amsterdam (*Gerechte van Amsterdam*) considering the argument that Middag made regarding being a burger in The Hague. That argument would not have been relevant had a court in The Hague made the decision in favour of extradition.

[70] Gelder, "De kas van de compagnie." *Resident* was the title given to the VOC's man in charge in company outposts (*buitengewesten*), places which were considered less important in the network of VOC ports and towns. For organisation and hierarchy of VOC personnel: https://www.vocsite.nl/geschiedenis/orgschema.html (accessed 2017-11-18).

[71] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *785* (1693), f. 127r, scan 128.

Jan Schull vs. VOC Chamber Amsterdam

From the route between the Republic and Batavia, we now turn to shipping between Canton and the Republic. In the late 1720s trade between the Republic and China was undergoing changes. While previously, trade with Canton was conducted via Batavia, a direct trade was established in 1729.[72] By the time Jan Schull was appointed skipper (*schipper*) of the first direct voyage to Canton, he already had decades of experience sailing to Batavia and Ceylon for the Amsterdam chamber of the VOC.[73] Likely a trusted employee by that time, he was entrusted with the command of the *Coxhorn* which sailed to Canton, spent five months there and then returned to the Republic, arriving in July 1730.[74] In January 1732 Schull was once again on the VOC Chamber Amsterdam's books: he was recorded as the supercargo on board the newly built *Knappenhoff* which was sailing to Canton under the command of skipper Pieter Verley.[75] Schull earned a handsome salary of *f*150 per month in this position.[76] This voyage was to be his last. On arrival in the Republic Schull was accused and found guilty of committing illegal private trade on the return journey.

The case between Schull and the VOC reveals mechanisms of smuggling goods from overseas into Amsterdam and how Schull went about evading the company's smuggling-prevention techniques for the return fleets. But the case in the High Court was not a criminal case against Schull for private trade – he claimed his wages from the chamber, and the return of chests which he brought back as his private trade allowance, that is, legal private trade. It is clear that having been convicted of illegality did not preclude Schull from using the courts to make his audacious claim against the VOC.

According to the company, Jan Schull grossly contravened the limits of permitted private trade on the voyage from China to the Republic. In this way, he caused great damage to the company. Schull allegedly transported three kinds of goods from Asia on board the *Knappenhoff* and disposed of them in two ways. The goods mentioned were silk, porcelain and tea. The quantity of tea was not given, but Schull allegedly transported 25 chests packed with silks and three chests containing over 2000 pieces of porcelain. It is clear from the sentence that this did not comprise Schull's entire quantity of merchandise

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[72] Els M. Jacobs, *In Pursuit of Pepper and Tea: The story of the Dutch East India Company* (Zutphen: Walberg Pers, 1991), 85; Nierstrasz, *Rivalry for Trade*, 60.

[73] Jan Schull's first voyage was in 1710, at which point he must have been a teenager. http://www.gahetna.nl/collectie/index/nt00444/d9eb4d82-c864-11e6-9d8b-00505693001d/view/NT00444_OPVARENDEN/sort_column/prs_voornamen/sort_type/asc/q/zoekterm/jan%20schul/q/periode_van/1709/q/periode_tot/1760/q/comments/1 (accessed 2017-11-18).

[74] http://www.vocsite.nl/schepen/detail.html?id=10227 (accessed 2015-10-19). The *Buren* which had been delayed at Texel due to frost was supposed to accompany the *Coxhorn* to China. However, the ship sank in a storm at Noorderhaaks, just off Texel. Of the crew, 43 were saved. The cargo of specie (*muntgeld*) was lost. http://www.vocsite.nl/schepen/detail.html?id=10188 (accessed 2015-11-08). The record of Schull's position on the *Coxhorn*: http://www.gahetna.nl/collectie/index/nt00444/caad6972-c864-11e6-9d8b-00505693001d/view/NT00444_OPVARENDEN/sort_column/prs_voornamen/sort_type/asc/q/zoekterm/schull/q/periode_van/1709/q/periode_tot/1760/q/comments/1 (accessed 2017-11-18).

[75] http://www.vocsite.nl/schepen/detail.html?id=10552 (accessed 2015-10-19). For Pieter Verley/Verleij's details see http://www.gahetna.nl/collectie/index/nt00444/ca8862bc-c864-11e6-9d8b-00505693001d/view/NT00444_OPVARENDEN/q/zoekterm/verleij/q/comments/1 (accessed 2017-12-01).

[76] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *675,* unpaginated, scan 88.

transported on his own account, indicating that he had had more than 28 chests loaded onto the *Knappenhoff* in Canton.[77] Surely this is not something that he could have done alone, and not without the notice of other officers on board, which raises the issue of who was complicit. He must also have had assistance when the *Knappenhoff* stopped at the Cape of Good Hope on the return journey. At the Cape, Schull allegedly had "a large quantity of goods and merchandise" unloaded from the ship and then, presumably, sold in the city.[78] It is quite possible that selling off goods at the Cape was a common strategy. It is tempting to consider whether or not Schull had cultivated contacts at the Cape on his previous visits to whom he could supply the illicit Asian merchandise. The sentence was not concerned with the mechanisms of the trade at the Cape, but that it took place.

Schull's second opportunity to unload merchandise came when the *Knappenhoff* was just off the island of Texel. Schull had used various devious means, so the company said, to plan a meeting between the *Knappenhoff* and small lighters onto which goods could be unloaded. The lighters would then transport the goods before they could be inspected by the Amsterdam directors. The sentence states:

> By requests, promises, gifts, threats and violence, and as such in all sorts of improper ways he had planned that two vessels or lighters would come aboard the Knappenhoff at ungodly hours out of which [the lighters] would be fully loaded, in such a strictly forbidden and improper way he [Schull] had all the aforementioned important goods and merchandise transported ... and with the help and assistance of other miscreant persons and accomplices had robbed the company.[79]

In this way Schull managed to avoid the usual protocol followed by the directors who would come on board to inspect all the goods, have the chests unloaded and transported to the warehouse, and then allow the owners to collect their personal belongings. As mentioned, Asian commodities such as tea and porcelain would be sold by the company but for the profit of the company employee who had brought them back.[80]

Private trade of this nature contravened the company regulations in a number of ways – the merchandise, the quantity, and unloading goods before reaching the destination. To make their arguments, the company measured Schull's behaviour against the legally binding contracts made between the chamber and its employee. The *artikelbrief* under which he sailed to China was referred to at length, with various articles cited on the limits and consequences of private trade. In addition to the *artikelbrief*,

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[77] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *840*, Geextendeerde sententie, f. 182r, 185v.
[78] Original: "*een grooten menigte van goederen en Coopmanschappen*". NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *840*, Geextendeerde sententie, f. 182r.
[79] Original: *"door versoeken, beloften, giften, dreijgementen en gewelt, en sulx op allerlij ondeugende manieren soo wel hadde uijtgewerkt, dat twee vaartuijgen off ligters des nagts ende bij ontijen aen boort van 't voors. schip Knappenhoff, waaren gekomen, en met goederen daer uijt volladen van daer gevaaren waren, sulx hij op die soo scherp verbooden en ondeugdende wijse alle de gem. importante goederen en coopmanschappen in der imptn. voors. schip meede gebragt, met hulp en assistentie van andere ondeugende persoonen en meede complicen de Compe. ontvoert hadde gehadt, of laten ontvoeren."* NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *840*, Geextendeerde sententie, f. 182v.
[80] Gelder and Wagenaar, *Sporen van de Compagnie*, 59.

regulations passed by the Gentlemen Seventeen were mentioned regarding private trade.[81]

Despite the fact that Jan Schull had signed the *artikelbrief* himself and made an oath to adhere to it – and even been entrusted with the task of making sure that others on board the *Knappenhoff* followed its articles – he had severely damaged the company's interest by indulging himself in illegal private trade. According to the VOC's view recorded in the sentence, Schull had disregarded "all honour, loyalty, duty and his oath" while in China, where he committed "very grave crimes, such as cheating, lies, corruption, threats, violence and other heinous practices" which greatly damaged the company. He was accused of only pursuing his own "interest and advantage through excessive forbidden trade."[82] How the VOC found out about Schull's actions remains a mystery. As in the case against Toledo discussed above, it may have been one of the crew members who witnessed or heard about the illegal activity who gave Schull up. Schull's actions did reach the ears of the VOC directors in Amsterdam and proof found its way into the hands of the legal authorities in Amsterdam. The *hoofdofficier* of Amsterdam charged Jan Schull in a criminal case in 1733.[83] But Schull did not appear for his court date nor subsequent hearings; on his return from China Schull had fled and was thus a fugitive. He was sentenced *in absentia* on 1 June 1734. His sentence was forfeiture of his substantial wages and banishment, with the proviso that if he breached the terms of his banishment he would be punished severely.[84] Toledo's sentence passed in Batavia was similar, despite the fact that banishment was not specified in the *artikelbrief* as the punishment for illegal private trade. The Amsterdam sentence against Schull established his guilt in committing illegal private trade. The guilty verdict did not deter Schull from beginning legal proceedings against the VOC in the subsequent years, in which suit he claimed payment of his wages and return of his three chests from permitted private trade.

At the time of this case Schull was residing in Utrecht. Having been banished from Holland, Schull could not appear in the courts in Holland himself, thus the case he brought against the chamber Amsterdam was conducted by Gerrit van de Graas, to whom Schull had given power of attorney. He claimed three closed chests (*gesloten kisten*) and ships bedding (*een kooij*) as well as the goods packed inside them.[85] The surprise here is that van de Graas did not oppose the court's judgment of Schull's guilt – rather, out of the apparently vast array of illegal actions, van de Graas persisted that three of the chests were legal, constituting permitted private trade by the supercargo. These chests had been branded with the mark J. S. and nailed shut. According to the sentence, they contained

[81] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *675*, Resolutie, scan 88; NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *840*, Geextendeerde sententie, f. 185v.

[82] Original: "*alle eer, trouw, pligt, en gedaane eed veragtende en met de voet schoppende*", "*op seer ondeugende en strafwaardige wijse en manieren schuldig hadde gemaakt, aen verscheijde seer groove misdaden, als aan bedriegerijen, falsiteijten, corruptien, bedreiginge, gewelt en andere snoode practicque*", "*sijn eijgen ongeoorlooft intrest en voordeel door een excessive verboden handel alleen behartigt*". NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *840*, Geextendeerde sententie, f. 182r.

[83] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *840*, Geextendeerde sententie, ff. 178r-v.

[84] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *840*, Geextendeerde sententie, f. 178v.

[85] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *840*, Geextendeerde sententie, f. 178v.

pieces of porcelain – over 2000 pieces – as well as tea.[86] Both of these commodities were allowed to be traded privately by company employees but of course, there were limitations on the amounts. Jan Schull was only allowed to bring three chests back to the Republic and the goods within valued at up to three month's wages, in his case *f*450. In addition to claiming the chest and *kooijgoed*, Schull's representative disputed the forfeiture of his wages. The VOC opposed these claims.

The case progressed from the Amsterdam court to the Provincial Court and finally to the High Court. From the High Court's summary sentence it seems that the Amsterdam court sentence, dated 1737, declared Schull's wages forfeited but awarded him his three chests and bedding. The chamber must then have appealed the sentence in so far as it pertained to the chests and *kooij* in the Court of Holland. In 1744 the VOC received a favourable verdict: the Court of Holland overturned the Amsterdam sentence and denied Schull the goods. On appeal in the High Court the judges overturned the provincial court's sentence in so far as it had overturned the Amsterdam sentence – that is, Schull's claim to the chests and *kooij* was awarded, but the High Court confirmed the Amsterdam court's decision that Schull's wages be forfeited. The High Court judges who passed the 1748 sentence – Mollerus, Keetlaar, Pauw, van Nispen, van Santheuvel, Dierkens, van Ruster, Alewijn and the president, van Hees – discussed whether to follow the letter or principle of the law. On the one side, it was argued that the regulations regarding goods that could be transported by company employees were only specified for the journey to China, and not on the return. In opposition to this, it was argued that the regulations were intended to control private trade and thus had to be considered equally valid for the return journey. The judges were not unanimous in their interpretation of the articles regarding private trade. According to van Nispen, there was no article which allowed the company to seize permitted private trade goods in the case of unpermitted goods being unloaded from the ship without permission. In the end, the president concluded that Schull's wages had been rightfully withheld by the VOC; that the reason for the regulation regarding private trade was the prevention of fraud and thus to preserve that intention, the regulation was valid for both the outward and return journey. The judges' musings in the resolution to the sentence highlight the importance of interpreting the law, and establishing an understanding of the law at a time when direct trade with China was a novelty.[87]

Unlike in the case against Toledo, the Amsterdam Chamber did not dispute the competence of the court to deal with the case nor seek permission from the court to transport Schull to Batavia to face legal proceedings there. Batavia as the company rendezvous in the Indian Ocean no longer played a role in the trade with China of which Jan Schull was a first participant. Schull's career in the Amsterdam chamber spanned decades and while we may suspect his illegal private trading did too, it was the quantities of tea, silk and porcelain that he brought back from Canton that ended his career. As in the previous case against Toledo, legal and illegal trade were intertwined: both men made use of company infrastructure, and the opportunities of company employ to conduct trade for

[86] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *840*, Geextendeerde sententie, f. 185v.
[87] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *919,* Register der dictums...geresolveerd, scans 116-7; inv. nr. *675,* Resoluties, scans 88-9.

their own profit beyond what was permitted. And in both cases, the *artikelbrief* played a central role in the courts.

Contesting competence: The VOC's strategy

By virtue of its charter, regulations and *artikelbrieven*, the Dutch East India Company prosecuted its servants for corruption, including illegal private trade, in company courts. In Chapter 1 I argued that the VOC's legal system was insulated by virtue of the fact that cases could be appealed from company courts to the Council of Justice in Batavia, but there was no line of appeal to courts in the Republic (Figure 2). In practice, off shoots of corruption and illegal private trade cases were heard in the courts in the Republic. This has already been seen in the Toledo and Middag disputes, discussed earlier in this chapter. The resolutions made by the States of Holland and the rulings by the courts in The Hague in those disputes did not put an end to jurisdictional contestations. VOC servants continued to escape the jurisdiction of the company's own legal system and arrive in the Republic, where the VOC insisted that they be extradited. Which institution had the competence to rule on extradition was contested between the courts. A reocurring strategy used by the VOC in such cases was submission of an exception (*exceptie*) of incompetence and request that a case or litigants be transferred to a different court (*renvoij*), specifically to the Council of Justice in Batavia. In such episodes, the company's desire to keep matters in-house comes to the fore. But more than just wanting to deal with the illegal actions of its servants internally, the legal strategy of *exceptie* and *renvoij* reveals the VOC's attempts to delineate the jurisdiction of the court in Batavia, and seal off the company's legal arena from the courts in the Republic.

During the 1720s the High Court in The Hague deliberated on a case in which the VOC employed the strategy of *exceptie* and *renvoij*. The case before the High Court was between Ida Hochepied, widow of Wouter Valkenier, and the 'Directors of the General East India Company', and revolved around the company's refusal to pay out an enormous inheritance of approximately *f*100,000 claimed by Hochepied.[88] In this case, and in others, the VOC attempted to have legal proceedings and litigants sent to Batavia to be heard in the Council of Justice there, stating of Hochepied's case "that it all belongs to the [administration of] justice in Batavia."[89] The case between Hochepied and the company brought civil matters of credit and debt, criminal charges of illegal private trade, and contested competence and jurisdiction of the High Court into the same frame.

Ida Hochepied was married to Adriaan Verdonk, VOC director in Persia, and after his death, to Wouter Valkenier, Councillor of the Indies.[90] Verdonk and Valkenier were

[88] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *667* (1721), Resoluties, scan 125.

[89] Original: "*dat die alles behoort tot de justitie op Batavia*." NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *665* (1713), Resoluties, scan 137.

[90] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *665* (1713), Resoluties, scan 137. See also https://www.vocsite.nl/geschiedenis/handelsposten/perzie.html (accessed 2017-06-14).

both men of considerable means.[91] According to the case records, Verdonk claimed that Jacob Hoogcamer, Director in Persia from 1698-1701, owed him Rds37828, approximately *f*94,570.[92] After Verdonk's death, Hochepied and the heirs gave power of attorney to N. Castelijn and N. van der Hoff, to claim the sum from Hoogcamer in Asia, presumably Batavia. The parties were engaged in a civil suit over the size of the debt. However, the fiscal there began criminal proceedings against Hoogcamer and van der Hoff, claiming that the contested sum should in fact be confiscated because it was the proceeds of 'forbidden trade', that is illegal private trade. Following the criminal case in 1706, the sum was confiscated and sequestered in the company's treasury in 1709.

In the Republic, Hochepied asked the Gentlemen Seventeen to have the funds remitted to the Amsterdam chamber and distributed in the Republic. Instead, the company directors ordered the Council of the Indies to divide up the money according to the Council of Justice's sentence, without specifying what that entailed. Dissatisfied, Ida Hochepied brought the matter to court in 1710 and received permission from the Court of Holland to sue the VOC in first instance. She concluded that the VOC should be condemned to pay her the sum which had been withheld from her for no reason; rebutting Hochepied's claim, the company said that they did not owe her the money, all they had done was order a sentence passed in Batavia be executed. Based on the company's belief that the matter belonged in the judicature of Batavia, they submitted *exceptie van incompetensie en renvoij* as well as *litispendentie*, that is, they proposed that the court was not competent to adjudicate the case, that it should be sent back to Batavia, all the more because there was an ongoing case there over the same issue. In November 1711 the Court of Holland ruled in favour of the VOC: the exception of incompetence was accepted, and the court concluded that the case – Hochepied's claims – should be heard in Batavia. The High Court revisited the Court of Holland's decision (*reformatie*) and wrote up a resolution for the sentence in 1713. The Resolution summarizes Hochepied's reasoning: her legal action was based in the same location from which the company's instructions emanated. In Hochepied's view, the fact that the company ordered that the sum confiscated be divided up and handed out, which order was given by the Gentlemen Seventeen in the Republic, meant that the matter belonged in the courts in the Republic, which were after all, the only courts where litigation against the Gentlemen Seventeen could be pursued. In 1713, the High Court's commissioners, Simon Admiraal and Reinier Schaep, recommended that the Court of Holland's sentence be overturned and the exception submitted by the VOC rejected, that is, the case would not be sent back to Batavia. However, the matter was not concluded: the case reappears in the High Court records in 1714, and again in 1721.[93] No final judgment was pronounced by the High Court: Reporter Simon Admiraal recommended that the court could not pronounce a definitive sentence, rather the matter had to be shelved until the civil case in Batavia over

[91] According to Gaastra, Wouter Valkenier remitted the princely sum of *f*243,000 to the Netherlands when he departed Batavia in 1699. Gaastra, *Bewind en beleid*, 328 n. 383.
[92] https://www.vocsite.nl/geschiedenis/handelsposten/perzie.html (accessed 2017-06-14).
[93] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *665* (1713), Resoluties, scan 137; inv. nr. *667* (1721), Resoluties, scan 125.

the value of the debt had been determined; otherwise, the court would have to deny Hochepied's claim.[94] There is no further trace of the dispute in the High Court records.

The VOC used the same legal strategy in the high-profile case against former *resident* of Bassoura (Basrah, Iraq) Frans Canter. He was not accused of illegal private trade, but of corruption – theft from the company's treasury, and desertion. In April 1752 the Amsterdam *schout* arrested Canter on the order of the directors of the Amsterdam chamber of the VOC. Over the following years, the dispute played out in the juridical and political institutions of the Republic as the family Canter and the VOC Chamber Amsterdam went head to head. The matter at the centre of the case, as Roelof van Gelder points out, was the competence of the courts in the Republic to adjudicate the case. More specifically, the juridical and political institutions – at city, provincial and supra-provincial levels – grappled with the question of whether an Amsterdam burger could be tried by courts in the Republic for alleged crimes committed in the VOC's jurisdiction, and which of the institutions could decide which court was competent.[95]

The VOC attempted to have Canter extradited to Batavia. The Amsterdam Alderman agreed to the request, but the family contested the decision in the Court of Holland, however, to no avail. The family then appealed to the High Court to have Canter released. Despite dividing the bench, the court pronounced that Canter could not be extradited to Batavia before the High Court had drawn up a definitive sentence. Moreover, the family addressed Anna van Hanover, widow of the deceased stadholder William IV, with the same request that Frans Canter be released. Based on the opinions she solicited from the Court of Holland and the *hoofdofficier* of Amsterdam, she denied the family's request. In December 1752, the High Court pronounced a verdict in the case – in contrast to the court's earlier decision, the court removed the obstacles to extraditing Canter to Batavia. Canter, who was still in custody at this stage, tried to escape but failed. His family continued their attempts to secure his freedom – they sought revision of the High Court's decision – *mandament van revisie* – and it was granted them by the court. The legal minds employed by both sides each produced a printed *Deductie* in which arguments were put forward regarding Canter's status as burger in Amsterdam, or not and how that affected which court was competent to decide the matter of transportation. On 2 October 1753 the bench of the High Court, augmented with judges from the Court of Holland, declared their previous judgment erroneous. The court prohibited the VOC to send Canter to Batavia, and gave the company six weeks to pursue the case before the competent court in the Republic. Neither side was satisfied to leave the dispute at that point – the Canter family tried to have Frans released from custody; the VOC tried to enlist the support of the States General, and, relinquishing their other allegations, tried to have his *f*7000 wage credit confiscated by the Amsterdam court. In January 1754, nearly two years after his arrest, Frans Canter was released on bail.[96] Van Gelder concludes that the VOC was the loser in

[94] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *667* (1721), Resoluties, scan 125.
[95] Gelder, "De kas van de compagnie."
[96] Ibid., 34-42.

the case; the Amsterdam Aldermen were the winners: "[a]gainst the will of the Court of Holland and against the wishes of the VOC they managed to maintain their rights."[97]

A third case in which the VOC employed the same strategy against a company servant serves to reinforce the enduring nature of the pattern. During the late 1770s, the High Court heard an appeal case from the VOC against former undermerchant, secretary of policy and treasurer of Negapatnam (Nagapattinam, Tamil Nadu, India), Johannes Hazelkamp. The dispute between the company and their former employee had its origins in the 1760s, when it came to light that there was a significant shortfall in the company's funds under his control. Criminal proceedings were instituted against Hazelkamp in Negapatnam but he appealed them successfully in Batavia and was reinstated. In 1768 Hazelkamp returned to the Republic where he claimed a sum of money owed him by the VOC, likely wages accruing in the chamber which had employed him. The case between Hazelkamp and the VOC progressed from the Provincial Court to the High Court, which overturned the 1777 sentence and decided that the company's 'exception of incompetence' would in fact be accepted. This sentence was passed in June 1778.[98]

The three cases presented here indicate that the VOC used a legal strategy of *exceptie* and *renvoij* to try to keep legal disputes in-house, that is, to try to bar cases based on issues which had arisen in Asia from entering the legal arena in the Republic. The link to private trade was clear in the first case, between the VOC and Ida Hochepied: criminal proceedings against high-ranking personnel in Asia or their representatives were mentioned in the case in the High Court because of the bearing that such proceedings had on whether or not the Court of Holland or the High Court could adjudicate a related dispute. The cases against Canter and Hazelkamp indicate that matters of jurisdiction and competence of the courts in the Republic continued to be contested in the eighteenth century. The VOC was by no means assured of the High Court's support in these challenges – while the VOC tried to use the High Court to seal off the escape route from Batavia's jurisdiction and thus the company's legal system, the three court cases taken together show that the company's strategy was not entirely successful. Furthermore, the cases highlight the different types of illegality, in illegal private trade and the broader category of what the VOC considered corruption.

Cooperation in illicit Atlantic affairs

In contrast to the VOC's insulated legal system, the WIC's system of courts overseas linked up with the courts in the Republic. As Chapter 1 showed, the States General was the linkage. Thus, it is not surprising that the records of the High Court in The Hague include

[97] Original: "*Tegen de wil van het Hof van Holland en tegen de wensen van de VOC in hebben ze hun rechten weten te handhaven.*" Ibid., 44.

[98] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *958* (1778), Register der dictums... gepronuncieerd, scan 5; inv. nr. *923* (1778), Register der dictums... geresolveerd, scan 77; inv. nr. *680* (1778), Resoluties, scans 96-8. Opstall, M. E., van and R de Vries, "1.10.59 Inventaris van het archief van S.C. Nederburgh [levensjaren 1762-1811], 1606-1809 en van de familie Nederburgh, 1458-1965" (Den Haag, 1987), 85.

court cases which began in the WIC's courts and were delegated to that bench by the States General. One such case originated in the court in Elmina, on the West Coast of Africa. This section focusses specifically on that region, and the illegal private trade conducted there – in enslaved Africans and gold – by non-company men, and company men alike. The Elmina case as well as other cases relating to illegal private trade on the West Coast of Africa will be used to make three points: firstly, regarding the mechanisms of smuggling, the cases highlight the importance of cooperation between individuals of different 'national' empires; secondly, they bring into sharp relief the changing regulations on legality in trade; and finally, they reinforce the point that being guilty of illegal private trade did not preclude the use of the courts.

The infamous *lorrendraaiers*

Studies by Henk den Heijer and Ruud Paesie, among others, have made it clear that the WIC faced competition in trade from illegal voyages to the West Coast of Africa, particularly from Zeeland. The scale of illegal activity is striking: according to Paesie, there were 800 vessels equipped for illegal Atlantic trade in the period 1674-1730, around 80 per cent of which were based in Zeeland ports; during that same time frame the WIC sent out 660 ships, some of which were actually captured smuggling vessels.[99] These private voyages breached the WIC's monopoly as well as those of other empires. Specifically, the terms which the Spanish and the Republic agreed to at the Peace of Munster (1648) outlawed trade between the Republic and Spain's colonies and concomitantly between Spain and the Republic's colonies. However, trade was conducted via Curaçao and after 1670, a direct trade was established with the Spanish colonies, conducted principally from Zeeland.[100] Paesie states:

> As soon as peace was agreed [at Munster, 1648] the same shipowners switched over to illegal trade with the Spanish colonies or they evaded the WIC charter and equipped ships for the illegal goods- and slave trade to West Africa. The original Zeeland position for maintenance of the WIC charter was thereby drastically altered.[101]

For a period, the illegal trade flourished, and during wartime, privateering made many men wealthy. But the WIC took measures against the illegal activity, namely capturing smuggling vessels and confiscating the ships and cargo; and bringing Zeeland smugglers into company employ. In the wake of these successful measures, in 1720 wealthy Zeeland merchants put together plans to rejuvenate trade through cooperation, in the form of a company. They sought approval from the city authorities which was granted them in July

[99] Ruud Paesie, *Geschiedenis van de MCC. Opkomst, bloei en ondergang.* (Zutphen: Walburg Pers, 2014), 22.
[100] Ibid.
[101] Original: "*Zodra de vrede gesloten was schakelden dezelfde reders over op de verboden handel op de Spaanse koloniën of ontdoken zij het octrooi van de WIC en reedden zij schepen uit voor de illegale goederen- en slavenhandel op West-Afrika. Het oorspronkelijke Zeeuwse standpunt tot behoud van het WIC-octrooi was daarmee drastisch gewijzigd*." Ibid., 20.

1720, and thus the *Commercie Compagnie van Middelburg* (MCC) came into being. The directors were Middelburg burgomaster (*burgemeester*) Willem van Citters, merchants Hermanus van der Putte, Pieter de la Rue, Hermanus Christiaensen, Jacobus Sluijters, Casparus Ribaut, Cornelius Speldernieuw, and Joost van Huijen, and former VOC skipper Jan Ackerman.[102] When it was established in 1720, the goods- and slave trade conducted by the MCC was illegal as it breached the monopoly which the WIC still held, albeit tenuously, over trade on the West Coast of Africa and the slave trade. However, that was to change as the WIC's monopolies were finally given up in the 1739 charter renewal.

Pieter de la Rue had a long career as a smuggler before his involvement in establishing the MCC. During the War of Spanish Succession, he was involved in 15 privateering voyages, some of which included smuggling. After the war, his illegal trade continued, while simultaneously he was chairman of the principal investors (*hoofdparticipanten*) of the WIC and was also a director of the Levant Trade. Significantly for his Atlantic trade activities, he was involved in the manufacture of gunpowder, an essential item for trade on the West Coast of Africa.[103] High Court records show that de la Rue was involved in illegal trade even earlier than the War of Spanish Succession: during the 1690s he was a litigant in an insurance dispute which revealed his involvement in breaking the monopoly of the WIC. While the WIC was not a party to the case, the company's monopolies were under discussion amongst the judges. The case between de la Rue and Hendrik Dusseldorp makes clear that illegality did not preclude the use of financial instruments nor contesting their terms in court.

In 1698 or 1699, *De Pieter* set sail from Middelburg to the West Coast of Africa. That the voyage was illegal was clear in the insurance contract drawn up in August 1698: *De Pieter* set out "from Middelburg to the coasts of Africa and America, without permission from the West India Company, to all known and unknown, permitted and unpermitted coasts, there to trade etc and then return to Middelburg."[104] The court records recount that, despite the explicitly illegal nature of the voyage, the participants registered the insurance contract with a notary. The use of public institutions to register illegal trade is not unique to this case: research on the brazilwood trade has shown that participants used notaries to register their illegal trade agreements and contracts.[105] What the case of *De Pieter* adds to this, is the fact that the participants could use the legal system to resolve the commercial conflicts which arose out of their illegal private trade.

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[102] Ibid., 27-28.

[103] Ibid., 22.

[104] Original: "*van Middelburgh op de custen van Africa en America, sonder permissie van Westind[isch]e comp[agni]e op alle bekende en onbekende, gepermitteerde en ongepermitteerde custen, en daer negotieren etc ende dan weder keeren tot Middelburg*." NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *666* (1715), Resoluties, scan 63. It is possible that this is the same ship mentioned in Paesie's database although a number of details do not match up. While the dates are correct, and the skipper's name is most likely correct, Paesie's description notes they stole slaves and goods from the French whereas the High Court records indicate that the ship was taken by the French after the Atlantic crossing and was brought to St. Malo. http://www.paesie.nl/pdf/Overzicht_van_getraceerde_smokkelschepen_met_aanvullingen_nov_2014.pdf (accessed 2016-03-01).

[105] Antunes, Post, and Salvado, "Het omzeilen van monopoliehandel," esp. 31, 34.

According to the court records, *De Pieter* was a slave ship, which had loaded slaves in Bijagos (islands off the coast of Guinea-Bissau) and sailed across to the French colonies 'in America'. This contravened the WIC's monopoly which at this stage still covered the slave trade from the West Coast of Africa. *De Pieter*'s voyage simultaneously contravened French regulations. As Silvia Marzagalli writes, what came to be known as the 'exclusive system', implemented by Colbert in the 1670s, was aimed at excluding foreigners, and in particular the Dutch, from French colonial trade. Under this system, French colonies were supposed to be supplied only by the French but their provisions, including labour, were not sufficient and so an "intensive illegal trade went on with Curaçao and whoever else in the Caribbean who was able to sell slaves to French colonists."[106] The French seized the slave ship *De Pieter* on its return to the Republic and took the vessel to St. Malo, where legal proceedings might have ensued over the legitimacy of the prize. In the Republic, a dispute arose between Pieter de la Rue, who had taken out insurance on *De Pieter* and Hendrik Dusseldorp, the accountant (*boekhouder*) for the expedition, who had been tasked with reclaiming the ship in St. Malo. The case between the two men was first heard by the Commissioners for Insurance (*commissarissen van Assurantie*) in Middelburg, whose verdict was confirmed by the Middelburg Aldermen (*burgemeesters en schepenen*) the following year, 1707. While the other insurers had already made their payments, de la Rue refused to, claiming that *De Pieter* should not have sailed to the French colonies and that in so doing, had increased the risk of the voyage. In the High Court, the judges discussed the terms of the insurance policy, concluding that they were very general, and considered the implications of sailing to the French colonies as opposed to the "coasts of the West India Company like ordinary smugglers."[107] De la Rue may well have taken the implication that he was extraordinary as a compliment.

The WIC was not a party in the dispute but the company's charter was considered by some of the judges. Judge Reinier Schaep noted that there was no greater risk sailing to the French colonies than to other coasts in America seeing as all those places were illegal. Judge Pompejus de Roovere took the matter a step further by considering the implications of the illegality of the voyage for pronouncing a ruling: he raised the issue whether or not the court could rule on the insurance claim seeing as the policy contravened the WIC's charter.[108] In spite of this reservation, in 1715 the High Court upheld the verdict of the two lower courts, declaring de la Rue not aggrieved by the sentences.[109]

This case is a clear example of how illegal activity did not preclude the use of financial instruments and judicial institutions in the Republic. In spite of the illegal nature of the voyage, Pieter de la Rue and Hendrik Dusseldorp drew up an insurance contract for

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[106] Silvia Marzagalli, "The French Atlantic," *Itinerario* 23, no. 2 (1999): 77. Silvia Marzagalli, "The French Atlantic and the Dutch, late seventeenth-late eighteenth century," in *Dutch Atlantic Connections, 1680-1800: Linking empires, bridging borders*, ed. Gert Oostindie and Jessica V. Roitman (Leiden and Boston: Brill, 2014), 103-108.
[107] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *666* (1715), Resoluties, scan 63.
[108] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *666* (1715), Resoluties, scan 63. Original: De Roovere: "*Bedenken te hebben, of wij op sulke policen, strijdende tegen t octroij vande compe, wel regt connen doen*."
[109] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *666* (1715), Resoluties, scan 63.

their voyage. And on the basis of that contract the two men engaged in litigation in Middelburg and on appeal in the High Court. Furthermore, the case highlights the inter-imperial character of illegal slave trade, in this case Dutch illegal trade to the French colonies. This point is picked up in the case of *The Happy Return*, a collaboration between Dutch- and Englishmen in the trade on the West Coast of Africa.

The Happy Return did not live up to its name. The ship sailed from Rotterdam to the West Coast of Africa where it was seized by the Dutch West India Company in 1730.[110] From a Dutch point of view, that year marked many changes on the ground and in the regulations of the trade in West Africa. In March 1730, the Director General of Elmina, Robbert Norré, was succeeded by Jan Pranger.[111] Despite personal involvement in smuggling, Norré had taken a hard line against former WIC employees who became smugglers and reappeared on the coast.[112] 1730 was also the year in which the WIC charter was renewed. From 1674 – when the second WIC was brought to life out of the bankruptcy of the first – the company held monopoly rights over trade on the West Coast of Africa and the slave trade to the Americas. However, after heated debate between Amsterdam and Zeeland, the 1730 charter limited the company's monopoly to a stretch of the Gold Coast and the slave trade to the Guyanas (Suriname, Essequibo and Demerara, and Berbice). Trade on other sections of the West Coast of Africa was opened to private traders against payment of recognition fees to the WIC.[113] It was in this context of the redefinition of legality that *The Happy Return* was seized.

The court records give no indication of what was on board the ship but do identify the freighter and supercargo and thus lay bare the inter-imperial character of smuggling. Isaac Minet, the freighter, was named as one of the litigants in the High Court records.[114] Minet (1660?- 1745) was from a family of French Huguenots who had left Calais in the 1680s and settled in Dover, England. There the family established a successful shipping firm. They profited from the Letters of Marque which became available when England joined the War of Austrian Succession (in 1744) and at about the same time they expanded their business to banking services. Isaac Minet was joined in the business by one of his sons, William (?-1767), as well as by his nephew Peter Fector (1723-1814) who was from Rotterdam.[115] Fector was not the only Rotterdam connection: Jacob de Vries,

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[110] Paesie, "Lorrendrayen op Afrika," 286. See also Paesie, 'Overzicht van getraceerde lorrendraaiers.'

[111] *Naamboekje van de wel ed. heeren der Hoge Indiasche Regeringe gequalificeerde persoonen, enz. op Batavia; mitsgaders respective gouverneurs, directeurs, commandeurs en opperhoofden op de buiten comptoiren van Nederl. India, zoo als dezelve ultimo April 1762. in wezen zyn bevonden. Als mede alle gouverneurs generaal zedert het jaar 1610. Nevens de hooge en mindere collegien en bedienden op de buyten comptoiren van Nederlands India*, (Amsterdam: Cornelis Wilt, 1763), 104.

[112] Paesie, "Lorrendrayen op Afrika," 286.

[113] Antunes, Post, and Salvado, "Het omzeilen van monopoliehandel," 44 (Table 43); Heijer, *Goud, ivoor en slaven*, Ch 9.

[114] NL-HaNA, Hoge Raad van Holland en Zeeland, 3.03.02, inv. nr. *968*, Sententiën of dictums in gedelegeerde zaken en revisiën, unpaginated.

[115] http://doverhistorian.com/2013/12/24/dynasty-of-dover-part-iv-minet-fector/; http://heritagearchives.rbs.com/companies/list/fector-and-co.html; http://archives.ucl.ac.uk/DServe/dserve.exe?dsqIni=Dserve.ini&dsqApp=Archive&dsqDb=Catalog&dsqCmd=show.tcl&dsqSearch=(RefNo==%22HUGUENOT%20LIBRARY/F/MT%22) (accessed 2016-02-05).

the supercargo on board, originated from Rotterdam. He was also a former WIC employee. During the 1720s he had been employed by the company as a skipper (*schipper*) in which capacity he had made a number of voyages. Then he became a smuggler.[116]

It is likely that despite its English flag, *The Happy Return* was considered a *lorrendraaier* by the WIC because for all intents and purposes it appeared to be Dutch: the voyage started in Rotterdam, and the supercargo originated from the same place, and was himself a former WIC servant. It is possible that the majority of the crew was also Dutch, seeing as the ship was probably equipped in Rotterdam too. From the High Court records it is clear that after the ship was seized it was taken to Elmina where the Director General, Jan Pranger, and his council passed a sentence on 24 July 1730.[117] While the High Court records do not state what the sentence was, or who the party was, it was surely a condemnation of the ship and cargo, declaring it to be good prize. According to WIC appraisal lists (*taxatielijsten*), *The Happy Return* was carrying textiles, firearms and gunpowder, iron, alcohol, beads and cowries valued at *f*10.918.[118]

From the point of view of the English, however, *The Happy Return* and Minet's involvement in trade on the West Coast of Africa was perfectly permissible – since the Royal African Company had officially lost its monopoly in 1698, the trade was open to private traders, against payment of a levy.[119] Isaac Minet, the freighter, felt aggrieved by the sentence passed by Pranger and Council and must have petitioned the States General with his grievances.[120] The States General delegated the writing of a sentence to the High Court in 1732. On 28 September 1734 the High Court sent the States General an interim decision (*interlocutoire sententie*) which was passed by resolution in the States General's meeting the following day. It required more proof from Minet which he provided in 1736. The High Court then moved to drawing up the final verdict: the 1730 sentence which was under revision was judged to be fair towards Minet and he was therefore required to pay the cost of the revision. This sentence was not passed by the High Court but sent back to the States General in fulfilment of their request.[121] The case thus reveals how, in the writing and sending of letters between the two institutions, the States General used the

[116] Paesie, "Lorrendrayen op Afrika," 286. And Paesie, 'Overzicht van getraceerde lorrendraaiers.' Paesie gives a number of examples of men who had served the WIC and then left company employ to make a profit in privateering expeditions, including Arie van der Parre who was a WIC skipper turned smuggler and was supercargo aboard a ship that was off the coast of West Africa at the same time as *The Happy Return.*

[117] NL-HaNA, Hoge Raad van Holland en Zeeland, 3.03.02, inv. nr. *968*, Sententiën, unpaginated. *Naamboekje*, 104. According to den Heijer, the Director General and councillors did not necessarily have any legal training, but did have access to some legal texts on the coast. He states that "[i]f the legal sources available were inconclusive, decisions were made based on experience" which was usually sufficient in minor cases. But den Heijer implies that they could be out of their depth in more complex cases. In such circumstances, "defendants had the right to submit their case to the directors *in patria*, especially when they had a higher rank." Heijer, "Institutional interaction on the Gold Coast," 214.

[118] Paesie, "Lorrendrayen op Afrika," 391.

[119] Kenneth Gordon Davies, *The Royal African Company* (London: Longmans, Green and Co, 1957), esp. 122-135.

[120] There is no record of Minet's case in the Court of Appeals archive. In fact, none of the cases in that archive originated from the court in Elmina. This may be an indication of the court's limited jurisdiction, or the result of what has been preserved and lost.

[121] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *968*, Sententiën, unpaginated.

mechanism of delegation to connect WIC Atlantic jurisdictions with the High Court in The Hague. Even though no mention was made of the Court of Appeal, the Minet revision case follows the pattern set out in Figure 2 (Chapter 2).

Both cases of smuggling on the West Coast of Africa bring to the fore the kind of opposition that the Dutch West India Company faced. Equipping voyages for private trade from the Republic contravened the WIC monopoly, which was also under threat from the Zeeland Chamber which advocated doing away with the monopoly and instead allowing private trade against payment of recognition fees. The VOC did not face an equivalent type of opposition – ships were not equipped in the Republic for trade voyages in contravention of the VOC monopoly, other than in the early years of the seventeenth century, addressed in Chapter 2.

The voyage of *De Pieter* contravened the WIC's monopoly and flouted French regulations regarding delivery of slaves to its colonies in the Americas. The illegality of the voyage did not prevent the men involved from insuring the voyage but more than that, it did not preclude contesting the terms of the policy in the High Court. However, Judge de Roovere in particular revealed his concern over whether or not the court could adjudicate the case seeing as the voyage contravened the WIC charter. Similarly, *The Happy Return* was considered to be a monopoly breaker by the WIC and was seized off the West Coast of Africa, and sentenced in Elmina. But the English freighter, Isaac Minet, contested the decision, most likely by addressing his protest to the States General. The States General then delegated the case to the High Court and passed the High Court's sentence in its own meeting. Despite the English freighter, and sailing under an English flag, *The Happy Return* began its voyage in Rotterdam, and likely had numerous Dutchmen amongst the crew. The supercargo himself not only originated from Rotterdam but also was a former WIC skipper. Looking at this case from the point of view of mechanisms of smuggling, we cannot avoid the collaborative character of the voyage. It was neither English, nor Dutch, but inter-imperial in nature.

Smuggling gold

In the same year that Minet's *Happy Return* was taken, Robbert Norré vacated the position of Director General on the coast. He had taken up the post on 11 March 1727 as successor to Pieter Valkenier under whose directorship he served as principal factor (*oppercomies*), and held the post until 5 March 1730. In February of that year, with concerns over his health, Norré had requested that he be relieved of his position, which he received, and Jan Pranger then replaced him.[122] Norré began his journey back to the Republic in 1730 on board the ship *Delft*. Having survived the conditions on the coast for at least two years – conditions which brought premature death for thousands of Europeans – Norré

[122] Incidentally, his predecessor, Valkenier, had also claimed to have concerns about his health in his request to be repatriated. This was perhaps a good argument to make, the coast being infamous for its high mortality but we can suspect that these men, having enriched themselves on the coast, were ready to return to the Republic to enjoy the proceeds of their trade. Henk den Heijer, ed. *Naar de koning van Dahomey. Het journaal van de gezantschapsreis van Jacobus Elet naar het West-Afrikaanse koninkrijk Dahomey in 1733* (Zutphen: Walburg Pers, 2000), 29-30. See also *Naamboekje*, 104.

succumbed on his way to the Republic. What was discovered at his death – that he had sent and was himself carrying gold back to the Republic – became part of a legal battle between his heirs and the Dutch West India Company which was only brought to a close in 1751.[123] The case reveals mechanisms of the illegal gold trade, and in particular identifies the men involved and their roles in the illicit activity.

Robbert Norré's heirs in the Republic disputed his estate. This brought them into conflict with the WIC which unfolded in the years immediately following Norré's death. The heirs appeared before commissioners of the company, asking for the Gentlemen Ten's grace, and that the company would hand over all the goods that had belonged to Norré. Having considered the family's need, the company handed over various goods of some value, including a chest of Norré's papers. Inside the chest the family found the agreement which had been made between a WIC skipper named Hoogdorp and the deceased Norré regarding 16 mark gold dust which he, Hoogdorp, would transport to the Republic. As a result of this find, and not having received the gold from Hoogdorp themselves, the family began legal proceedings against him. The WIC intervened on behalf of Hoogdorp, their employee, and took over the case for him. Thus, the heirs were the claimants, Hoogdorp the original defendant and the WIC the intervenors in the case over the disputed estate.

The case between the heirs and Hoogdorp was sentenced in the Provincial Court on 10 July 1750, a full two decades after Norré's death. The court's verdict favoured the heirs: Hoogdorp and the WIC had to pay the heirs the proceeds from the sale of the gold or what was purchased or invested with the proceeds as well as interest of 4 per cent per annum.[124] This verdict was reached by the Gentlemen Johan de Mauregnault, president; Adriaan van der Mieden; Carel Vitriarius; Johan Diederik van Slingeland; Wigbold Slicher; Jacob Arent van Wassenaar, Heere van Haseswoude; and Samuel Gilles all of whom were councillors in the Court of Holland (Provincial Court).

The WIC felt itself greatly aggrieved by the sentence and so proceeded to the next instance, requesting and receiving leave to appeal the verdict of the Court of Holland in the High Court. Their claim was to overturn or correct the sentence passed by the Court of Holland, which the High Court did by a sentence dated 3 April 1751. The High Court judges who were involved in pronouncing the final verdict were the Gentlemen Ruster, Mollerus, Pauw, van Nispen, van Santheuvel, Dierkens, Alewijn, Mauregnault, and the president at the time, Hendrik van Hees.[125]

The decision taken by the court was by no means simple, and neither were the judges in full agreement on the reasoning behind the verdict. The technical point of intervention – replacing a litigant as opposed to joining one party and becoming a co-litigant – was discussed at length. The doctrine of *Ex turpi causa non oritur actio* was also

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[123] NL-HaNA, Hoge Raad van Holland en Zeeland, 3.03.02, inv. nr. *843* (1751), Geextendeerde Sententie, scans 33-39.

[124] NL-HaNA, Hoge Raad van Holland en Zeeland, 3.03.02, inv. nr. *843* (1751), Geextendeerde Sententie, scan 38.

[125] NL-HaNA, Hoge Raad van Holland en Zeeland, 3.03.02 inv. nr. *676* (1751), Resolutie, scans 22-24; inv. nr. *843,* Geextendeerde Sententie, scan 39.
http://resources.huygens.knaw.nl/repertoriumambtsdragersambtenaren1428-1861/app/personen/4836 (accessed 2016-01-28).

discussed. According to this legal principle, a litigant cannot pursue a legal remedy to a situation which has its origin in his own illegal act.[126] These legal conundrums arose out of the actions undertaken by Norré and his fellow smugglers at Elmina which were in flagrant disregard of the company's regulations and constituted a breach of its monopoly on the gold trade.

Dutch involvement in gold trade on the West Coast of Africa predated the creation of the WIC. After that company was established, gold was the main reason for the company to be active on the coast.[127] Between 1623-36 the company exported 40.500 Mark of gold (9.185,4kg) valued at *f*12 million while during the following four decades, the total export reached 57.532 Mark (13.048,26 kg).[128] As the seventeenth century progressed, and the Ashanti empire expanded, gold trade declined and there was a shift away from gold towards trade in enslaved people. Around 1700, the declining gold export from the coast stabilised at a lower level than in the early years of the company's trade.[129] When the WIC charter was renewed in 1730, a sixty mile zone on the coast at Elmina remained under company monopoly, but the rest of the coast was open to private traders. Within the exclusive zone, trade in goods and enslaved people could only be conducted in the name of the WIC. When the charter was amended in 1734, even that exclusive zone was given up.[130] Thus, during Norré's tenure, the gold trade was one branch of trade over which the WIC still held a monopoly.

The company on the coast was beset with problems, not least the corruption of its servants operating there. Of course, company employees going to the West Coast of Africa had to swear loyalty to the company, promising to follow the company's regulations, which included provisions against illegal private trade.[131] Regarding gold specifically, the directors of the WIC required that all gold sent back to the Republic from the coast should be addressed to them. The resolutions and orders which were sent to the coast expressly forbid anyone from sending gold to the Republic which was not addressed to the company on pain of confiscation of the gold in addition to forfeiture of wages and emoluments still owing to the employee according to the company's books. The intimation was that none of the company employees could possibly pretend ignorance of these regulations seeing as they were sent to the coast from time to time and were put up there in public.[132] Promised loyalty was no guarantee of obedience. Henk den Heijer claims that the corruption of officials on the coast contributed to the "disappointing" and "lacklustre" results of the company's trade there. He states that "[t]hroughout the area governed by the WIC, including the Gold Coast, staff members attempted to enrich themselves by

[126] NL-HaNA, Hoge Raad van Holland en Zeeland, 3.03.02, inv. nr. *676* (1751), Resolutie, scan 23.
[127] Heijer, *Goud, ivoor en slaven*, 128.
[128] Heijer, "The Dutch West India Company," 90.
[129] Heijer, *De geschiedenis van de WIC*, 134-135.
[130] Heijer, *Goud, ivoor en slaven*, 312; Antunes, Post, and Salvado, "Het omzeilen van monopoliehandel," 44 (Table 43).
[131] Heijer, "Institutional interaction on the Gold Coast," 207.
[132] Original: "*verbiedende eenig goud buiten addres aan de compe. meede te geeven, op poene van confiscatie van t selve en van alle te goed sijnde gage en emolumenten*." NL-HaNA, Hoge Raad van Holland en Zeeland, 3.03.02, inv. nr. *676,*Resolutie, scan 22.

stealing company goods and organizing private trading."[133] Director General Robbert Norré's dealings on the coast underline this conclusion and shed light on the form that private trading could take.

The mechanisms of illegal private trade in gold which are revealed in the case point to the importance of cooperation between individuals who operated within different imperial legal frameworks but whose trade networks intersected. According to the company,

> notwithstanding the aforementioned precise, emphatic and serious resolutions and orders, the mentioned Norré dared to contravene them [by] directly engaging with various private English ships, to remit hundreds of ounces of gold from time to time not addressed to the intervenors [that is the company].[134]

The company believed that Norré cooperated with English private traders to smuggle gold on board English vessels. How frequently he made use of this smuggling route and when it was first operational is impossible to discern from the court records but clearly the company believed that it happened a number of times. It is highly likely that it was during his time as principal factor on the coast that Norré built up his connections and started to exploit the opportunities for personal enrichment. We cannot be sure of this but taking into account the fact that Norré was director for only three years, and the assertion by the company that it happened "from time to time" (as problematic as that assertion is knowing they were trying to build their case), and that three separate episodes of illegal transport of gold come to light in the case, it is plausible, if not highly likely that Norré had been involved in illegal private trade for some time.[135]

The company's evidence of English-Dutch cooperation in circumventing the WIC monopoly on gold was bills of lading (*cognoscementen*) of 162 Mark of gold (1296 ounces; 36,74kg) which Norré had addressed to a man named Humphry Morice.[136] It is quite possible that this is the same Humphry Morice who was Governor of the Bank of England from 1727, a Minister of Parliament and merchant. In the 1720s Morice was known as one of the experts on trade on the West Coast of Africa, along with his friend and business associate Richard Harris. Morice and Harris equipped ships together which plied the West Coast of Africa, the trade at that point being open to private traders from the point of view

[133] Heijer, "Institutional interaction on the Gold Coast," 207.

[134] Original: "*dat niet teegenstaande voors: precise nadrukkelijke en ernstige resolutien en ordres gemelte Norre zig hadde verstout daar teegen directelyk aan te gaan en buijten adres aan de intervenienten met verscheijde particuliere engelsche scheepen van tijd tot tijd honderde oncen goud te remitteeren."* NL-HaNA, Hoge Raad van Holland en Zeeland, 3.03.02, inv. nr. *843,* Geextendeerde Sententie, scan 35.

[135] Norré was principal factor during the Directorship of Valkenier. Heijer, *Naar de koning van Dahomey*, 30. His career before that is unknown.

[136] 1296 ounces of gold dust = 162 mark ≈ 40kg in troys weight. No estimate of the value was given in the legal records. NL-HaNA, Hoge Raad van Holland en Zeeland, 3.03.02, inv. nr. *843,* Geextendeerde sententie, scan 35.

of English legal pronouncements.[137] It is possible that Norré sent gold to Morice on board the ships which Morice and Harris sent to the coast.

In addition to the English connection, Norré used WIC connections to send gold to the Republic. He cooperated with fellow WIC servants who carried gold to the Republic on company ships. Amongst Norré's papers, evidence was found that he had made an agreement with the skipper Jan Lambregstsen Hoogdorp of the ship *Steenhuijsen* that the skipper would carry 16 Mark (3.63kg) of Portuguese gold dust from the West Coast of Africa back to the Republic where he would then sell it for the highest profit and buy 'Hollandsche Obligatien' to that value. As per the agreement, when Norré reached the Republic he would then claim the value of the gold and the interest earned on it from Hoogdorp.[138] It is this specific purse of gold and the value of it once sold that was under discussion in the case between Norré's heirs and the skipper Hoogdorp and the WIC in Hoogdorp's place.

The court records indicate that Norré made use of a third means of carrying gold to the Republic, which was to do it himself when he repatriated. The court documents state that when Norré set sail for the Republic on the *Delft*, he was carrying gold with him, which was discovered after his death. No indication of the amount or value was noted.[139]

From the court records then three different means of illegally sending gold from the West Coast of Africa come to the fore, all utilised by one man during his time in company employ on the coast. English connections played a very important role for Norré in the means of smuggling gold from the coast and England was an important destination. Norré attempted to smuggle gold to the Republic via the employees and ships of the West India Company too. It is likely that these three separate instances of illegal private trade in gold which come to the fore in this one case are the proverbial tip of the iceberg. Norré was not the only director to enrich himself in these ways during the period in which the WIC monopolised trade on the West Coast of Africa. Others include Willem de la Palma who had amassed a fortune of *f*75.000 after being Director General for three and a half years, and Norré's successor Jan Pranger returned to Amsterdam in 1736 as a very wealthy man; neither got his money through the *f*300 salary and emoluments of their position alone. Corruption among company men of middle and senior rank on the coast was, according to den Heijer, a damaging and enduring problem.[140] Like many who preceded him, as well as those who came after, Robbert Norré entertained hopes of personal wealth at the company's expense. As the WIC claimed, Norré's dealings with the English, with Hoogdorp and the gold he carried himself "made clear that the

[137] William A. Pettigrew, "Free to Enslave: Politics and the Escalation of Britain's Transatlantic Slave Trade, 1688-1714," *The William and Mary Quarterly* 64, no. 1 (2007): 18-19.
[138] NL-HaNA, Hoge Raad van Holland en Zeeland, 3.03.02, inv. nr. *843,* Geextendeerde Sententie, scan 34. 16 mark gold is approximately 4 kgs. Hoogdorp was involved in the slave trade as captain of the *Steenhuijsen* between 1726 and 1731, comprising three voyages. http://www.slavevoyages.org/voyages/ViuLF6j5 (accessed 2017-11-18).
[139] NL-HaNA, Hoge Raad van Holland en Zeeland, 3.03.02, inv. nr. *843,* Geextendeerde Sententie, scan 35.
[140] Heijer, "Institutional interaction on the Gold Coast," 208-209.

aforementioned Robbert Norré had no other intention than to defraud the company and to hide everything from it."[141]

Conclusion

Cases related to private trade arose in the High Court of Holland, Zeeland and West-Friesland. The first of the three contributions that this chapter makes, is to provide part of the answer to the main research question of this thesis, namely, what types of disputes involving the VOC and the WIC arose in the High Court in The Hague? Both the VOC and the WIC were party to litigation in that court which related to the private trade conducted by its servants, such as Toledo and Jan Schull, or by private merchants, such as the Englishman Isaac Minet.

Considering that each company had created a legal system in its own charter area that could deal with private trade court cases, why were there cases related to this issue in the High Court in The Hague? In order to answer this question, we have to go back to the relationship between the courts overseas and the courts in the Republic, set out in Chapter 1, and depicted in Figure 2. The VOC's highest court, the Council of Justice in Batavia, ruled in final instance in the company's legal system. Company servants who deserted and escaped the jurisdiction of Batavia caused the leakage of disputes into the legal system in Holland. When these men arrived in the Republic, and were arrested there, disputes arose over whether or not they should be extradited to Batavia, and over which court in Holland was in fact competent to rule on extradition. The VOC pursued the strategy of *exceptie* and *renvoij* in order to try to keep disputes in-house, and in so doing the company tried to reinforce the jurisdiction of the Batavia court. The extradition cases involving Toledo, Middag and Canter, were not about corruption including private trade per se, but were disputes over jurisdiction which were sparked by company employees' misdeeds.

The case between the VOC and Jan Schull was also an offshoot of an illegal private trade case. This case is quite different in that Jan Schull sued the company for payment of his wages and return of the permitted chests which he brought back to the Republic. The High Court records of his suit against the VOC make no mention of the company trying to have him extradited to Batavia; he was found guilty of illegal private trade by the court in Amsterdam, it seems. His case against the company made its way through the courts according to the progression from city, to provincial court and then to the High Court, as depicted in Figure 1 (Introduction).

In contrast to the VOC extradition cases, private trade in the WIC charter area did not spark disputes in the Republic over jurisdiction. This can be explained by the fact that the WIC legal system was not set up as being insulated from the courts in the Republic – the States General's Court of Appeal was the link between the company courts and the

[141] Original: "d*ewelke in alle zijne omstandigheeen klaar hadden doen zien dat de voors: Robbert Norre niet anders daar mede voor hadde gehad als de compagnie daar in te frauderen en voor deselve alles te verduyste."* NL-HaNA, Hoge Raad van Holland en Zeeland, 3.03.02, inv. nr. *843* scan 35.

High Court. The way in which delegation worked was clear in the Isaac Minet case which the States General delegated to the High Court for revision in the 1730s.

Taken together, these private trade related cases bring to the fore important elements of illegality in the Indian and Atlantic Oceans. The second contribution that this chapter makes then, is to bring to the fore mechanisms of illegal private trade. The VOC cases highlighted the way in which transhipping was used to evade the watchful eye of inspectors. Toledo had goods loaded onto the VOC ship on the outward voyage, meeting English ships in the Channel, while Jan Schull had goods from Asia transhipped into lighters before the vessel was inspected on its return to the Republic. The WIC cases reinforce the role of the English, showing that illegality on the West Coast of Africa involved cooperation between rival empires. The inheritance dispute which arose in the courts in the Republic between deceased Governor Robbert Norré's family and the WIC skipper with whom he conducted illegal trade, brought to light that he had in fact been conducting illegal trade in three different ways – carrying gold to the Republic himself, sending it with WIC skippers, and collaborating with English private traders to send gold to a contact in England.

Finally, the cases show that illegal activity did not preclude the use of financial and legal institutions in the management of conflicts which arose from the illegal activities. This was evident in the notarised insurance contract for illegal Atlantic trade which Pieter de la Rue and Hendrik Dusseldorp disputed in the High Court. The inheritance dispute in which the WIC intervened was also a matter which arose out of illegality, as the judges noted in the case. But that did not stop Norré's family from suing the captain for the gold, or its value, which he transported. Furthermore, that Jan Schull sued the VOC to claim his wages and chests even after he had been found guilty of illegal private trade and banished, while audacious, further reinforces that illegality did not preclude the use of the Republic's institutions. Indeed, Jan Schull was one of many litigants who claimed wages from the companies. These cases are the focus of the following chapter.