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

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Conclusion

The Dutch East and West India Companies courted conflict in the Dutch Republic. Overseas expansion, as it was undertaken by the two companies, led to conflicts which were managed in the political and legal institutions in the Republic. As legal disputes unfolded, both companies summoned parties and were themselves summoned to the High Court in The Hague. The conflicts that were heard in that court related to all aspects of the companies' business: suits over entrance into their charter areas, matters relating to private trade, wage claims, ownership of shares, and property rights related to colonial imports. These issues were pursued by a wide range of litigants: individual and corporate, 'local' and foreign, men and women. Some of these disputes arose out of events and activities in the Republic; others were rooted in the companies' charter areas.

Explaining why cases were heard in the High Court requires a wide view of the institutional landscape, *in patria* and in the charter areas. Such a view encompasses dispute management which, at least initially, did not involve litigation. This broad approach is shaped by recent work in the field of legal history. Scholars have introduced the importance of taking a wider view of how commercial conflicts were handled rather than looking only at the resolution of disputes. Alain Wijffels, Justyna Wubs-Mrozewicz and Louis Sicking have urged fellow researchers to take on the idea of conflict management. Conflict resolution through formal judicial procedures including litigation is one element, they contend, of a wider spectrum of choices and opportunities in the process of managing a dispute, that is setting the terms on which business can continue. The conflict management approach takes cognisance of the fact that the cause of the conflict – the underlying conflict of interest – is not necessarily resolved, even via conflict resolution mechanisms which ostensibly end disputes. Conflict management encompasses formal and informal mechanisms of dealing with disputes which were used in various fora. In the preceding chapters, this concept was fruitfully applied to understanding how litigants and the Dutch companies managed disputes in the early modern period. Some cases showed that the dispute between parties was long-running, and had been managed by political bodies, notably the States General, before the matter was heard in the courts, and in some conflicts afterwards too.

There was a multiplicity of routes into the High Court in The Hague. In the legal framework of Holland and Zeeland, cases could begin in and progress from city courts, to the Court of Holland and then to the High Court, as set out in Figure 2. High Court sentences were final, but could undergo revision by a bench constituted by the Sates of Holland. In addition, the High Court sentences revealed that sentences passed by the Insolvency Chambers of Amsterdam and Middelburg were appealed first in the city courts, and then in a higher court. On the basis of practice then, we can see the use of the specialised courts and their subsidiary place in the hierarchy of courts. Moreover, the legal principle of *omisso medio* was not followed strictly. *Omisso medio* should have meant that cases which began in city courts were appealed in the Court of Holland. Yet, there was

a surprising number of cases in which one of the parties appealed a sentence of a city court directly in the High Court, that is, bypassing the Court of Holland entirely. Both the VOC and WIC Chamber directors appealed city court sentences in the High Court. While we might be inclined to think that bypassing the Court of Holland was a privilege granted to the companies, this was not the case. It was not only the companies who bypassed the Court of Holland when appealing cases in the High Court; opposing parties did it too. Within the exhaustive list of VOC and WIC High Court cases, there is no discernible pattern regarding when *omisso medio* was waived.

Explaining why certain cases were heard in the High Court required looking beyond the Republic's shores to the legal systems established by the companies. This research has illuminated the relationship between the courts in the Republic and the VOC and WIC courts which those companies established in their charter areas. The States General played a crucial role in that relationship. This was in part due to the fact that it was the States General that delegated sovereignty to the two companies which granted them the authority to set up legal systems in their charter areas. This included establishing courts, appointing legal personnel, and writing law.

The legal systems that were established in the Indian and Atlantic Oceans differed considerably in the shape that they took, and in their relationship with courts in the Dutch Republic. Soon after the VOC established Batavia as the headquarters of the company in Asia, the company set up the Council of Justice there which emerged not only as the highest court in Batavia, but as the appellate court in the VOC's legal system. The company was strongly centralised in Asia, focussing on Batavia as the administrative and legal centre. In theory, cases sentenced by Councils of Justice elsewhere in the company's network of towns could be appealed in the Council of Justice in Batavia. Batavia was the top point of the VOC's trans-oceanic legal hierarchy which was insulated from the legal system in the Republic. From the company's court in Batavia, cases could not be appealed in the Republic. In at least parts of its charter area then, the VOC was ruler and final judge. High Court records show that cases were not appealed directly in the Republic but there were certainly cases heard in the High Court which had their roots in Asia. Both cases which were sparked by events in Asia as well as cases which in fact were related to ongoing or completed legal proceedings in Batavia were heard in the High Court. I argued in Chapter 1 that the States General was crucial in connecting jurisdictions which were otherwise separate. Before the creation of the court in Batavia it is not surprising that cases related to events in Asia were heard in the Republic. This was a period in which the centralisation of the company around Batavia, including the centralisation of the legal system was in progress. But more than that, I argued in Chapter 1 that it was the charter itself that left open a route for high-ranking personnel to air their grievances with the States General. In the case of Goodschalk, the States General then directed the case to the High Court in The Hague. Crucially, this charter provision created a hole through which company disputes leaked into the legal system in the Republic.

Disputes entered the Dutch courts when litigants like Goodschalk and others escaped the jurisdiction of company courts and reappeared in the Republic. In such cases, the VOC argued for extradition. Permission to extradite these men to Batavia, where the

company could judge them, sparked conflicts over jurisdiction and competence in the courts in the Republic. Extradition cases are evidence of the VOC trying to keep disputes in-house, that is, the VOC was trying to assert its 'stateness' in the Republic by claiming jurisdiction over company employees. The courts in the Republic did not necessarily agree on whether or not the VOC should be allowed to extradite company men, leave alone which court was competent to make that decision. The extradition cases are a window into the clash of the two sides of the VOC's corporate identity: while it was ruler and judge in its charter area, in *patria* it was a subject. This duality caused conflicts in the Republic, which took the form of extradition cases, a uniquely VOC problem.

The WIC legal system in the Atlantic did not have the same centralised character as the VOC. This resulted in a different relationship between the company courts among themselves as well as between those courts and the courts in the Republic. By virtue of the delegated sovereignty in the charter, the WIC established courts across the Atlantic. While there were efforts by some governors and company directors to establish localised hierarchies, there was no company headquarters in the Atlantic and no appellate court for all WIC courts. The WIC legal system thus took a different shape from the VOC legal system. The WIC legal system was also different in the way that it intersected with the legal system in the Republic. Cases from the Atlantic courts were appealed in the Republic, in the Court of Appeal for West Indian cases. This court was a function of the States General which played a formal role in sentencing cases. The political body's role was twofold. The States General adjudicated cases in which a company court did not know how to sentence the case; and sentences passed by the company courts could be appealed in the Court of Appeal. The latter cases were then delegated to the High Court. Using the mechanism of delegation, the States General connected the company jurisdictions and the High Court in The Hague.

In addition to connecting jurisdictions via delegation, the States General played an important role in managing company disputes outside of the court system. Petitioning the States General and submitting to its decisions was certainly distinct from formal judicial proceedings but was itself a formal mechanism of dispute management. The decision made by that body did not necessarily resolve the conflict but did implement terms by which interaction – business – could continue. Management of disputes in this way was most clearly seen in the conflicts between the VOC and van Noort, the VOC and Isaac Le Maire, and the VOC and the WIC (Chapter 2). The first two disputes were played out in the political and legal institutions in Holland. The States General managed the conflict between the VOC and van Noort for a number of years, setting the terms of engagement between the companies, but later gave its permission to transfer the dispute to the High Court. Negotiation and mediation via petitioning the States General was part of early modern strategies of company conflict management, which involved simultaneous or subsequent legal proceedings.

Unsurprisingly, the States General concerned itself with diplomatic disputes as well. In practice, this took the form of dealing with disputants who petitioned the political body, and the sovereigns who did so on their behalf. Thus it was the States General that dealt with the letters from James VI of Scotland when Carmichael, who claimed Scottish

subjecthood, tried to claim restitution of goods seized by the VOC in Ambon (Chapter 1). Following the written exchanges, the States General allowed the dispute to be heard in the Court of Holland. However, it is unlikely that proceedings took place there. Later High Court records indicate that the States General delegated the case to a bench of High Court and Court of Holland judges. It was thus by decision of the States General that this dispute entered the High Court. The States General intervened to an even greater extent in one of the many disputes between the WIC and the Courland Company. After one of the Dutch Admiralties had adjudicated the WIC capture of a Courland ship as good prize, the States General overruled the decision, citing reasons of state. The States General explicitly claimed "higher authority" in the dispute (Chapter 2).

This points to an important avenue of future research: the Admiralties and their place in the legal framework of Holland and Zeeland. Admiralty lawsuits were mentioned in High Court cases but always remained somewhat in the background, giving little insight into the relationship between Admiralty jurisdictions, the High Court, and the States General. The States General interfered with Admiralty cases for reasons of state. Diplomacy was a significant issue in Admiralty cases which adjudicated legitimacy of prize, by definition an inter-state matter. As mentioned, the States General overruled the Admiralty decision on prize in a Courland-WIC dispute. In another case, the Admiralty of Amsterdam, Captain Cornelis Schrijver specifically, was involved in negotiating the release of VOC ships which had been captured by Algerian pirates (Chapter 4). Future research on the intersection of prize cases, diplomacy and political authority of the Admiralties will surely provide great insight into conflict management in the Republic and overseas.

Tracing shifts and differences in the kinds of cases that the VOC and the WIC faced in the High Court also required looking beyond the Republic to the charter areas. The companies' organisation of trade within their charter areas was not static. This was significant for conflict management because shifts in company policy affected the kinds of disputes that were heard in the High Court and go some way in explaining differences between VOC and WIC cases. Chapters 2 and 3 in particular highlighted how, over time, company policies on monopolising trade in particular goods changed. For the VOC, the growth of recognition trade in the first decades of the eighteenth century meant a lot more work for the Amsterdam auctioneers. The increased workload reignited the long-running conflict between the auctioneers and the chamber over their remuneration (Chapter 4). As is often repeated, over time the WIC monopolies were whittled away. The effect was that the WIC equipped fewer ships itself; Atlantic trade was conducted by private merchants. This is likely an important factor in explaining the difference in wage cases between the VOC and the WIC. Wage disputes were more likely to include private merchants, shipowners and captains as wage payers, than the WIC chambers.

The different patterns of trade conducted by the companies, from the Republic, is likely also a part of the explanation for why there was such a significant difference in the number of cases which the two companies faced in the High Court. There were fewer wage cases against the WIC, and private trade cases took different forms. While there were cases against employees of both companies who were accused of illegal private trade, the

equipping of vessels for illegal trade in the charter area was a problem only faced by the WIC. The high threshold of entering the Indian Ocean, including the distances and perhaps the greater ease of policing the Cape Route, meant that merchants did not equip individual vessels for illegal trade, but rather took part in companies established in Sweden, Denmark, and Ostend.

Another point of difference between the companies is in share disputes. This was a distinctly VOC problem in the High Court and accounts for some of the difference in the total number of cases against each company. The vibrancy of the secondary market for VOC shares in Amsterdam has been established in scholarship. The High Court cases shed light on share disputes with other chambers too. It is likely that the dynamism of the secondary markets for VOC shares outstripped the markets for WIC shares. Furthermore, it is likely that WIC shareholding attracted a different kind of investor – someone who was interested in Atlantic trade, rather than the VOC investors who had more interest in trading shares than in the company trade which partially underpinned their value.

The VOC and WIC court cases which were adjudicated in the High Court bring new insight into two legal issues, namely inheritance and bankruptcy. The imperial dimensions of company activity precipitated new questions relating to inheritance law. These new questions arose because the courts had to deal with cases in which a will had been drawn up overseas, the heirs were spread over different locations in Europe and in company towns and outposts, and the estate itself consisted of assets in multiple locations and jurisdictions. Inheritance cases cut across the thematic division of the chapters to encompass wage claims, ownership of shares, disputed accounts from recognition trade, and precedence in bankruptcy. A case of foreign heirs who claimed VOC wages as their inheritance reveals the strategy which the VOC developed in the first few decades of company operations. By the 1640s, the VOC had developed a common practice for dealing with foreign claimants on deceased estates. The company explicitly privileged the claims made by inhabitants of the Republic over foreign claimants. This was intended to protect subjects of the States General from the need to pursue claims in foreign courts (Chapter 4). This practice was developed in the context of numerous foreigners who were taken into company employ from the international labour market of the Dutch Republic.

The cases also bring new insight into early modern bankruptcies. While global economic crises have prompted renewed interest in the history of bankruptcy, much of how bankruptcies unfolded in the early modern period remains unclear. The cases involving the companies bring insight into how the courts in the Republic adjudicated business failure – not the bankruptcy cases themselves, but offshoots of those cases. There are three important points. Firstly, as I mentioned earlier, sentences passed by the Insolvency Chamber were appealed in the city courts and from there to the High Court. Secondly, the VOC was not a preferential claimant on insolvent estates of company employees. This was seen in the two cases of the Maertens heirs: the Insolvency Chamber ruled in favour of the heirs, relegating the claim of the VOC to be repaid the debt owed to a chamber for spices purchased. The higher courts upheld the verdict on appeal (Chapter 6). Thirdly, the VOC implemented a policy to shield itself from the costs of merchants' business failure. The VOC sold off the shares of shareholder-debtors. When merchants

who were also shareholders purchased spices and other goods from the company but could not pay, the chamber sold off their shares to partially cover their debt. In this way, the company treated shares as collateral against purchases from the chambers (Chapter 5 and 6).

What then, are the implications of High Court cases against the VOC and WIC? There are at least four areas in which this study contributes. Firstly, the most obvious implication of the existence of cases involving the companies is that the companies were active as litigants. The directors of the companies were named in court sentences, passed by various courts – subsidiary, specialised courts; city courts; the Court of Holland; and the High Court. Both companies employed legal teams to deal with court cases, likely an indication that they expected litigation. This means that in the early modern Dutch Republic, it was possible to sue an institution.

Secondly, the fact that people did sue the companies indicates that they were not considered untouchable. Litigants must have believed in the possibility of winning cases in order to pursue that route, implying that the companies were not protected from law suits, nor from losing lawsuits once they started. While in their charter areas the companies themselves were the highest authority, in the Republic the companies submitted to the workings of the legal system and the decisions of the States General. The role of the States General in conflict management and interfering in legal proceedings cautions us against concluding that the early modern Dutch judiciary was independent. The twinning of company investment and civic office, especially for the VOC, is a further warning against taking the implications too far.

The third point to consider is the implications of the companies in court for Philip Stern's company-state idea. Understanding the VOC's legal system and how the company engaged in the legal system in the Republic are crucial elements for conceiving of company sovereignty and the limits of its jurisdictional reach. The VOC's charter area was a patchwork of political configurations, covering the spectrum from tributary relationships with Asian rulers, to the VOC as sovereign overlord. In parts of the VOC's charter area the VOC was a state, exercising the delegated sovereignty enshrined in its charter. In the Republic, the VOC did not act like a state, but rather submitted itself to the working of the state's political and legal institutions. This was not always quiet acquiescence: extradition cases (Chapter 1 and 3) in particular highlight the company's attempts at asserting its 'stateness' by protecting the jurisdiction of Batavia and the company's prerogative to rule over its employees. Thus the VOC was at the same time, sovereign and judge overseas, and subject in the Republic. This duality caused tensions in the Republic over the limits of the company's reach. In the Republic, the States General kept the state-like tendencies of the company there in check.

The fourth point is on the accessibility of institutions in the early modern Republic. Analysis of the company cases has indicated that the High Court functioned as a more accessible institution than has previously been assumed. This can be concluded from the wide range of litigants who populate the cases, the low financial stakes in some of the cases, and the fact that the court did conduct pro deo cases. Scholars have generally been pessimistic about the broad-based use of legal institutions, based on the prohibitive costs.

Calculating how much legal proceedings cost could address this. In particular, the cost of proceeding in the High Court in The Hague would provide an excellent basis for future research on the accessibility of the institution. Regardless, the accessibility and wide range of litigants of the High Court supports the idea of Jan de Vries and Ad van de Woude that well-functioning institutions were a pillar of the Dutch economy.

The management of company-related conflict in the legal and political institutions of the Republic brings into sharp relief the tensions that arose in the Republic over the creation and management of an empire across the Indian and Atlantic Oceans. The conflicts involved the companies as litigants in cases against their competitors, their own employees and shareholders, and the myriad individuals whose lives were caught up in the building of a Dutch empire.