

The Historical Society of the Courts of the State of New York

A Legal History of New Netherland



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PEOPLE'S STANDARD HISTORY OF THE UNITED STATES

Illustration: The Dutch surrender New Amsterdam, Sept. 8, 1664
The People's Standard history of the United States (1895). Collection of the New York State Library

An Introduction to the Legal History of New Netherland

by Frances Murray

It is the morning of September 8, 1664 and the Dutch flag—orange, white, and blue—flies over the fort that lies within the city of New Amsterdam on the island of Manhattan. We can imagine, as historian James Grant Wilson suggests, the Dutch Director-General, Pieter Stuyvesant, furiously stamping the floor with his silver-banded wooden leg while he reads and tears to pieces the letter sent to him by Richard Nicholls, the English commander of the four frigates that control the harbor outside the fort. The letter demands that Stuyvesant surrender the Dutch colony of New Netherland—a territory that stretched from modern-day Connecticut to Delaware—to the English. We see Stuyvesant, a valiant soldier, surrounded by the clergymen and magistrates of New Amsterdam. They implore him not to go to battle because the Dutch forces are hopelessly ill-equipped and outnumbered. We observe as the citizens of New Amsterdam stop their work on the palisade defenses of City Hall to come to the fort to support their magistrates. Then, we watch as Director-General Stuyvesant, proud even in defeat, marches out of the fort through the gate that leads to Broadway. He is at the head of his soldiers, all "fully armed and equipped, the drums beating, the colors flying, and the matches lighted."¹ Dutch rule, which had lasted over fifty years, comes to an end, at least for the time being.



Stuyvesant tearing up Nicoll's letter
(New York State Library)

¹ James Grant Wilson, *Memorial History of the City of New York* 303 (1893).

Discovery

The Dutch first discovered New Netherland, part of which is now known as New York, on September 3, 1609, when the *Half Moon*, captained by Henry Hudson and sailing under the



The Half Moon

Dutch flag, anchored in New York Bay. The following day, the ship sailed up the river that became known as the Hudson. The voyage was one of many sponsored by the Dutch East India Company in its effort to find a westerly route from Europe to the spice-rich lands of the orient.



Henry Hudson

Spices from the East were very valuable in seventeenth-century Europe, and its seafaring nations—including Holland, England, Spain and Portugal—constantly warred over control of the spice routes. The Dutch, like the other European powers of the time, sought to establish colonies



Silk and Spice Routes

on other continents by right of first discovery and occupation.

This Eurocentric stance completely ignored the reality that the other continents had been occupied for hundreds of years by peoples with vibrant and sophisticated cultures of their own.

In New Netherland, these peoples included the Mohawks, the Oneidas, the Onondagas, the Cayugas, the Senecas, the Lenape, and the Manatthanes.

Settlement

Following Captain Henry Hudson's return to Holland, the Dutch government authorized expeditions to the newly-discovered lands by granting charters to groups of merchants, giving them exclusive rights of trade. The most important of these was the charter granted to the Dutch

West India Company (the Company), formed in 1619. The leading objectives of this armed, commercial monopoly were "the profit and increase of trade," and the humbling of the power of Spain and Portugal in Africa and America.² The Dutch parliament (*States General*) granted a charter to the Company on June 3, 1621, giving it almost complete administrative and judicial



The Seal of New Netherland

power in New Netherland, including the power to "appoint and remove governors, officers of justice and other public officers, for the preservation of the places, keeping good order, police and justice in like manner for the promoting of trade."³ All officers appointed were required to take an oath of allegiance to the Company and to the *States General*.

The Company began the settlement of New Netherland in 1624⁴ under the supervision of Captain Cornelis Jacobsen May, the first Director of the colony. The ship that he captained was named the *New Netherland*, and aboard it were thirty families of Dutch settlers. On arriving in New Netherland, Director May divided the settlers into several groups. Some he placed on Staten Island, others on Long Island, and yet others on the island of Manhattan. About eighteen families were settled at Fort Orange (Albany) under Adriaen Joris,



The Landing of the Dutch Settlers

² John R. Brodhead, *History of the State of New York* 137 (1853-57) .

³ Charles Z. Lincoln, *The Constitutional History of New York* 412 (1906).

⁴ Jaap Jacobs, *The Colony of New Netherland: A Dutch Settlement in Seventeenth-Century America* 30 (2009).

who "staid with them all winter," sending his ship home to Holland in charge of his son.⁵ They were soon followed by a second expedition of three ships that brought many more Dutch families to join these first settlers. The *States General* honored the event by granting a seal to New Netherland, giving it equal status with the provinces of the home country, the Dutch Republic.

Early Legal Structure

Director May's term expired in 1624 and Willem Verhulst was appointed Provisional Director of the colony in 1625. At that time, New Netherland was home to approximately two hundred people. During his one-year term of office, Verhulst chaired the Council which consisted of two Company officials and two Dutch colonists. As historian Donna Merwick noted, the Council was a continuation of fleet-of-ships convention where, in order to reach a decision at sea, Verlhurst would have raised a white flag to assemble the captains of all the ships in the fleet.⁶ In the later months of Verhulst's rule, the number of Councilmen was increased to nine. Occasionally, the Council was larger because captains of the Company ships also attended when in port. Verhulst was instructed to deliberate with his Councilmen on all matters of importance, indicating that the collective decisionmaking process of Holland was replicated in the new colony. Proposed laws could not be enacted unless first approved by Company officials in Amsterdam, Holland.

Jurisprudence in the colony was based on the *Provisionele Ordere* of March 1624 (a contract between the colonists and the Company outlining the respective rights and duties), on

⁵ Wilson, *supra* note 1, at 145-147.

⁶ Donna Merwick, *The Shame and the Sorrow* 40 (2006).

the Company's two sets of *Instructions* issued to Verhulst (one in January and the other in April of 1625), on the *artikelbrief* (regulations pertaining to the behavior of employees of the Company), on maritime law and the laws in force in the Dutch Republic. Article 20 of the April *Instructions* stated: "In the administration of justice, in matters concerning marriages, the settlement of estates, and contracts, the ordinances and customs of Holland and Zeeland and the common written law qualifying them shall be observed and obeyed in the first place."⁷

Women's Rights

The women in New Netherland had greater legal protection than women living in the English colonies. Women's literacy was general, and girls' education included recordkeeping and accounting.⁸ Although women were forbidden to hold public office, Roman-Dutch law and Dutch customary law permitted equal distribution of the property in an estate among sons and daughters. The women of New Netherland could choose between two forms of marriage. The first was *manus*, under which the woman's legal identity merged with her husband's. This status was similar to that of a woman married under English law (*femme couvert*) who could not hold any property (lands or goods) in her own name. Everything that she owned on the day of her marriage became her husband's property—his to use in any way he wished. The second form of marriage, *usus*, enabled a woman to retain all her legal rights and property. A premarital contract detailed her rights to operate a business, own and inherit property, and to sue in court.⁹

⁷Jaap Jacobs, *New Netherland: A Dutch Colony in Seventeenth Century America* 102-103 (2005).

⁸ Jean Zimmerman, *The Women of the House* 76 (2007).

⁹ Dorothy A. Mays, *Women in Early America* 121 (2004); Jean Zimmerman, *supra* note 8, at 81-83.

The great Dutch jurist, Hugo Grotius, in his book entitled *Jurisprudence of Holland* (1631), described the Dutch law of marital community property as follows: if either spouse died intestate, the surviving spouse inherited half of the property and the other half went to the children. Alternatively, couples could chose to execute a notarized mutual will providing for the distribution of property in the event of the death of either. When one or both parents died leaving minor children, Dutch law provided for the appointment of guardians by a magistrate to protect the financial interests of the orphaned children.¹⁰ Although Long Island was part of New Netherland, Dutch law did not apply in the English towns that had been set up there. In those jurisdictions, married women could not hold property and had virtually no rights of inheritance—the husband could make a will without his wife’s consent, and mothers could be excluded completely from the guardianship of their children.¹¹



Hugo Grotius
(Stedelijk Museum het
Prinsenhof, Delft)

Criminal Jurisdiction

The Director and Council, acting together, had jurisdiction over criminal matters, although they were not empowered to impose capital or corporal punishment. The *Instructions* required that "all adulterers and adulteresses, thieves, false witnesses and useless persons among the Christians, likewise all lazy persons who draw pay from the company be returned to the homeland in order that they may be punished here according to their deserts."¹²

¹⁰ Oliver A. Rink, "Before the English," in Milton M. Klein (ed.), *The Empire State: A History of New York* 71-72 (2006).

¹¹ *Ibid.*, at 73.

¹² Jacobs, *supra* note 7, at 103.

The Administration of Pieter Minuit

Pieter Minuit was appointed Director of New Netherland in 1626 and arrived in Manhattan on board the ship the *Sea-Mew* in May of that year. He was the first civil Director,

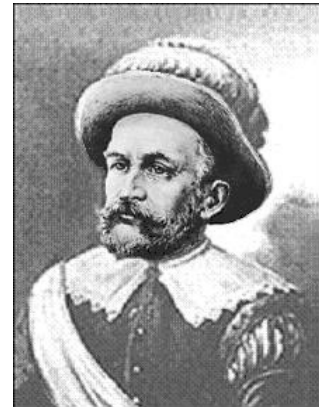


Director Pieter Minuit purchasing Manhattan

and his administration began energetically. One of Minuit's first official acts was to convene the Native American leaders of the region to negotiate the purchase of the island of Manhattan Island for the Dutch.

Reputedly, Minuit obtained title to Manhattan in exchange for Dutch goods valued at sixty guilders.

Modern scholars suggest that the Lenape, who used the island for fishing and hunting, actually granted him land use rights rather than exclusive ownership, a concept with which the Dutch would have been more conversant.¹³ In any event, the Company, having now obtained a semblance of legality for its occupation of the island, moved its New Netherlands headquarters to Manhattan¹⁴ A large stone fort, "with four angles" was staked out by the engineer, Kryn Frederycke, on the southern point of the island.



Pieter Minuit

¹³ Nevius, James. *Inside the Apple: A Streetwise History of New York City* 10 (2009).

¹⁴ Elroy McKendree Avery & William Abbatt. *A History of the United States and Its People: From Their Earliest Records* 91 (1910).

Director Minuit appointed a five-member advisory Council known as the Council of Five. Together, the Director and the Council of Five possessed all executive, legislative and judicial powers, subject to appeal to the Company. As in the Verlhurst administration, the penalties were limited to fines and imprisonment. The Company appointed a *schout fiscal* (attorney general) to enforce the laws. He reported directly to the Company and was independent of the Director and Council. The *schout* played a very important role in the Dutch legal system. He enforced the ordinances, resolutions and military regulations of the *States General*; he supervised all prosecutions but could not arraign or arrest any person upon a criminal charge unless information had been previously received or the person was caught in the act. When taking information, he was bound to note evidence in favor of the person as well as that supporting the charge against him. In New Netherland, the *schout fiscal* also protected the rights of the Company. After trial, the *schout fiscal* ensured that the sentence pronounced by the magistrates was carried out.¹⁵ An Englishman from Canterbury, John Lamp (Jan Lampo), was the first person to hold this office. He was a splendid figure, attired in a black plumed hat and silver rapier.¹⁶ The Council members also acted as magistrates. Every Thursday, they held court sessions in a room within the fort which was located on the site of the old Custom House opposite Battery Park.

¹⁵ Charles P. Daly, *History of the Court of Common Pleas for the City and County of New York with an account of the Judicial Organization of the State and of its Tribunals*, xix (1855).

¹⁶ Russell Shorto, *The Island at the Center of the World* 62 (2004).

The Patroons

Back in the homeland, meanwhile, conflict arose over the destiny of the colony. Some saw trade as the primary objective and had little interest in establishing a permanent colony. Others favored a permanent settlement that would secure a steady supply of grain and timber for Holland and eliminate Dutch dependence on Scandinavia for these resources.¹⁷ A compromise was reached when the two factions agreed on the *Charter of Freedoms and Exemptions*. This document was intended to grant commercial liberty to the colonists and encourage land settlement under noblemen known as patroons. The charter was ratified by the *States General* on June 7, 1629.



Patroon Killiaen Van Rensselaer
(Schenectady Digital History)

Under the *Charter of Freedoms and Exemptions*, any Company member who brought or sent at least fifty settlers over fourteen years of age to the colony of New Netherland was granted an estate of sixteen miles frontage on one side of a river or bay, or eight miles on each side of a river. The charter required the patroon to buy the lands they occupied from the Native Americans and to supply a clergyman and schoolmaster for each patroonship. The patroon system was similar to the manorial system in the Dutch Republic where the patroon was bound to provide a farm and stock for each tenant. However, the tenants were actually serfs, bound in service for ten years. They were obliged to sell their produce to the patroon, to grind their corn at his mill and, after a certain time, to pay him an annual rent.¹⁸

¹⁷ Jacobs, *supra* note 7, at 113.

¹⁸ Cathy Matson, *Merchants and Empire: Trading in Colonial New York 14-15* (1998).

The patroon was authorized to set up courts of justice with unlimited civil and criminal jurisdiction, including the right to impose the death penalty, subject to an appeal to the Director and Council in New Amsterdam. The right of appeal was defeated, for all practical purposes, by the patroons' practice of requiring the tenants to agree that they would not appeal the judgments of the manorial court. Effectively, the patroon system set up a second, quasi-independent government in the colony. Historians have been very critical of the 1629 *Charter of Freedoms and Exemptions*—while it secured Native American land rights and required that schools and churches (Dutch Reform) be established, it "scattered the seeds of servitude, slavery, and aristocracy."¹⁹

The Administration of Wouter Van Twiller

By 1632, disputes had arisen between the patroons and the Company, resulting indirectly in Pieter Minuit's recall to Holland. During the next thirteen months, the colony was



Wouter Van Twiller

administered by a Provisional Director, Bastiaen Jansz Krol. In 1633, Wouter Van Twiller, a relative of patroon Kiliaen Van Rensselaer, was appointed Director. He arrived at Fort Amsterdam on the Company's ship the *Salt Mountain*, attended by 104 soldiers wearing steel corsets, leather jackets, and carrying half-pikes and wheel-lock muskets.²⁰ Van Twiller's chief objective was to maintain and extend the commercial monopoly of the Company. He had experience in trade but was ignorant of public affairs. Van Twiller's *schout fiscal* was Lubbertus Van Dinclage, a doctor of laws and a

¹⁹ Edmund Bailey O'Callaghan, *History of New Netherland*, 20 (1855).

²⁰ Edward Robb Ellis, *The Epic of New York City* 31 (2004).

man of ability. When, in 1636, Van Dinchage criticized Van Twiller's conduct of government, the Director dismissed him from office and ordered him to return to Holland. By arbitrarily removing the most learned and accomplished man in the province, Van Twiller caused his own recall.

The new Director was William Kieft, who arrived in Fort Amsterdam on March 28, 1638. He was "a commercial adventurer of ill repute," with an aggressive personality. Kieft was determined to rule with absolute authority, and during the nine years that he misgoverned the colony, he controlled the administration of justice.²¹ He reduced the Council to two members and structured the voting to give himself control. The Council sat each Thursday as a court of civil and criminal jurisdiction, and executions for homicide and mutiny were frequent.²²

By now, it was clear to the Dutch authorities that the 1629 *Charter of Privileges and Exemptions* had exacerbated the tensions in New Netherland between the Company employees and the independent traders. The patroon manors, with the exception of the Van Rensselaer patroonship near Albany, had failed. Although the Company had generous land-grant policies, it restricted the settlers and patroons from the very profitable fur trade, and it heavily taxed the export of other goods from the colony. Numerous settlers returned to Europe and some even filed suit against the Company for the hardships they had endured.²³

²¹ Wilson, *supra* note 1; James Sullivan (ed.), *History of New York State 1523-1927*, 195 (1927). (Text available on the website of The Historical Society of the Court of the State of New York).

²² Brodhead, *supra* note 2, at 279.

²³ Leslie M. Harris, *In the Shadow of Slavery* 14 (2004).

In 1638, the *States General* decided to take control of the entire province of New Netherland and extinguish the Company's rights. The Company, recognizing the value of the charter it held, refused to accede to the *States General*. An entirely new charter of "*Freedoms and Exemptions*" was drafted, approved by all parties, enacted by the *States General* on July 19, 1640, and went into effect immediately. The Company gave up its trade monopoly and removed the burdens from land ownership—the new land grants could be transferred by sale or will, subject only to an oath of allegiance. This new form of land ownership was far less restrictive than land tenure in the English colonies or the feudal-style systems in the colonies of France, Spain, and Portugal.²⁴ As a result, there was an immediate increase in the population—colonists came from Holland and English settlers, driven from the New England colony by religious persecution, became landholders who took the oaths of allegiance to the West India Company and to the *States General* of Holland. New capital was invested in the colony and agricultural capacity greatly increased.²⁵

On August 28, 1641, Kieft summoned a meeting of the heads of families in New Amsterdam, the population of which numbered around four hundred at this time. The Director intended to take severe measures to quell the Native American attacks, but was unwilling to take entire responsibility for his proposed actions. Twelve Select Men were elected as representatives of the gathering to consider matters submitted by the Director. The Select Men



Violence between the Dutch Settlers and the Native Americans

²⁴ Edward Floyd De Lancey, *Origin and History of Manors in the Province of New York and in the County of Westchester* 63 (1886).

²⁵ *Ibid.*, 54; Brodhead, *supra* note 2, at 288-289.

rejected the Director's proposals and used their elected status to seek governmental reform. In reaction, Kieft forbade further assembly until, in August 1643, he was forced to summon the people to the fort once again when the conflict with the Native Americans worsened. On September 13, 1643, the people chose a new representative body composed of eight men. The Eight Men held its first meeting on September 15th of that year and continued in existence for the following year, exercising some legislative and administrative power. The ongoing confrontations between Kieft and the Native Americans and his arbitrary actions, including the imposition of new excise taxes, led the Eight Men to send a remonstrance (protest) to the *States General* in 1644, requesting Kieft's recall. The document described the Indian massacres carried out by Kieft and petitioned for a system of government similar to that of the municipalities in Holland.²⁶

Slavery and Half-Free Status

Although the Company was involved in the slave trade²⁷, the majority of the early Dutch settlers were not slave holders. Most colonists came to New Netherland to pursue trading opportunities and intended to return to Europe within a few years. They had little need for slaves. The patroon estates set up under the 1629 charter did not give rise to a plantation system. It encouraged trade rather than agriculture and, as a result, the patroons did not require farmhands.²⁸

²⁶ Lincoln, *supra* note 3, at 414-415.

²⁷ P. C. Emmer, *The Dutch Slave Trade, 1500-1850* 18 (2006).

²⁸ Ulrich Phillips Bonnell, *American Negro Slavery* 107 (1918).

Nonetheless, some slaves in New Amsterdam were under the Company's control. In 1644, perhaps fearing that slaves would join the Native American attacks against the Dutch,



The land given to the half-slaves was outside the fortifications

Director Keift changed the state of some of the older slaves to a tribute-paying status known as "half-slavery" (sometimes also known as "half-freedom").²⁹ The half-free slaves received land so that they "could earn their livelihood by agriculture."³⁰ Their settlement was on the outskirts of the colony and acted as a buffer against the Indian attacks. The area is now known as Greenwich

Village/SoHo. Later, other slaves, either owned by the Company or by individuals, gained similar status. In return for their freedom, half-slaves were obliged to labor for the Company in time of need, and pay an annual tribute to the Company. Their children, and any children they would have in the future, were to remain in bondage. Years later, Director-General Stuyvesant stated that all the Company's slaves, except for three children, had been manumitted. It is unclear how the children had become free, but it is possible that their manumitted parents were able to purchase them from the Company.³¹ In 1663, the Company granted unconditional freedom to all persons having half-slave status.

²⁹ Phillips, *supra* note 20, at 108; Harris, *supra* note 21, at 23; Oscar Renal Williams, *African Americans and Colonial Legislation in the Middle Colonies* 17 (1998).

³⁰ Harris, *supra* note 21, at 23.

³¹ Williams, *supra* note 29, at 17.

Conversely, private ownership of slaves increased during the later years of the Dutch colony. This resulted, in part, from the 1640 *Charter of Freedoms and Exemptions* provision that the Company "shall exert itself to provide the patroons and colonists, on their order, with as many blacks as possible, without however being further or longer obligated thereto than shall be agreeable."³² Although a similar provision had existed in the 1629 charter, the restrictions on landholders under that charter, as already noted, encouraged trade rather than agriculture. The removal of these restrictions in 1640 led to greater participation in agriculture and increased the need for labor. Also, as the European population increased in the 1650s, so too did the number of privately owned slaves in the cities and towns. In 1664, when the Dutch surrendered the colony of New Netherland to the English, there were about five hundred privately-owned slaves, mostly concentrated in and around the city of New Amsterdam.

In New Netherland, a slave could bring a lawsuit, testify in court, own personal property and earn wages. The slave population had the same rights at trial as the other inhabitants. In effect, the circumstances of those held in slavery was similar to that of indentured servants and serfs. The crucial difference was that when an indenture expired, the servants and serfs gained full freedom, became citizens, and their children were not subject to automatic indenturing.³³

The Administration of Pieter Stuyvesant

The Company recalled Keift and appointed as his successor Pieter Stuyvesant, who arrived in New Amsterdam on May 27, 1647.



Pieter Stuyvesant

³² Edward Floyd De Lancey, *Origin and History of Manors* 64 (1886).

³³ Leslie M. Harris, *In the Shadow of Slavery* 14-16; 24 (2004).

Immediately upon his arrival, Director General Stuyvesant established a court of justice with Vice-Director Van Dinclage—the learned *schout* whom Director Van Twiller had dismissed—as presiding judge. The court was empowered to decide "all cases whatsoever," but Stuyvesant required that he be consulted on all "important" cases, and he reserved the right to preside in person whenever he thought fit.³⁴ In September 1647, Stuyvesant issued a proclamation to the people of the colony asking them to choose eighteen men "from among the most honorable, reasonable, honest, and respectable of the colonists." From this number the Director and Council selected nine men "as is customary in the Fatherland." Three were chosen from among the merchants, three from among the general citizens, and three from among the farmers.³⁵ The board of Nine Men had some legislative authority—it was to be consulted in matters of taxation



Adrian Van Der Donck

and had an advisory role in any civil matters. The board also functioned as a court, with three of the Nine Men, in regular rotation, forming a court of arbitration in civil cases. The court's decisions were binding upon the parties, with an appeal to the Director and Council.³⁶

Within two years, Stuyvesant was in open conflict with not only the board of Nine Men, but also with the *schout fiscal*, Van Dyck, and the Vice-Director, Van Dinclage. Adrian Van der Donck, president of the Board of Nine Men, started a journal documenting the conditions in the colony and the actions of the Director-

³⁴ Charles Patrick Daly, *Historical Sketch of the Judicial Tribunals of New York from 1623 to 1846* xxii (1855).

³⁵ Lincoln, *supra* note 3, at 417.

³⁶ Daly, *supra* note 33, at xxii.

General. Stuyvesant seized the journal and had Van der Donck jailed. On March 15, 1649, the Council, acting as a Court of Impeachment, released Van der Donck but expelled him from the board of Nine Men.

Although Stuyvesant undoubtedly knew that Van der Donck, Van Dinlage, Van Dyck and the Board of Nine Men were drafting a remonstrance (protest) critical of his rule to be submitted to the *States General*, he did not interfere further. He permitted the instrument to be signed, and allowed three of the signers to sail to Holland to deliver it to the States General.³⁷ Upon his arrival in Holland, Van der Donck appeared before the *States General* "at great length and with great effect." Stuyvesant sent Cornelis van Tienhoven, the secretary of the province, to present his side of the controversy to the Company. He took with him a large number of exculpatory documents. Under pressure from the *States General*, the Company agreed to establish "burgher government" in New Amsterdam.

With the introduction of burgher government, New Amsterdam officially became the City of New Amsterdam, and had municipal officers and a municipal court of justice. The Company order mandated that the citizens of New Amsterdam elect a *schout*, two burgomasters and five schepens. In addition to their work as legislators, these officials were to sit as a municipal Court of Justice. Stuyvesant complied with the order, but instead of allowing elections, he appointed the burgomasters and schepens and delegated the Company's New Netherland *schout* to act for the city. Historian James Sullivan noted that the burgomasters and schepens administered their judicial and civic offices honestly and justly for the common good,

³⁷ Brodhead, *supra* note 2, at 507; Shorto, *supra* note 16, at 205.

and seemed to place much importance upon their magisterial functions.³⁸ On February 10, 1653, the first regular meeting of the Municipal Court was held in the fort because the renovation of the old City Tavern as the *Stadt Huys* could not be completed in time for the first session. From February 24, the court sat fortnightly in the *Stadt Huys*, the first City Hall. The courtroom was on the southeast corner of the second story with a prison chamber in the rear.



The First City Hall (Stadt Huys)

Court Procedure

Procedure in the Municipal Court was simple and summary. The court messenger would summon the adverse party, the plaintiff would state his case, the defendant would answer, and the court could examine either party or their witnesses under oath. If the defendant failed to answer the summons (issued up to three times), the court would proceed with the case *in absentia* and render a judgment from which the defendant would have no right of appeal. The magistrates referred intricate cases to arbitrators. If the arbitration failed, the case was returned to the court for final disposition.

If the litigants preferred, a more formal procedure was possible. The plaintiff would state his case, and the defendant would require that statement be put in writing. The defendant would answer in writing, the plaintiff would reply, and the defendant rejoin. These documents would form the pleadings. A notary would then take the depositions of witnesses in written form.

³⁸ Sullivan, *supra* note 23, at 195. (text available on the website of The Historical Society of the Court of the State of New York).

When the proofs were complete, they were added to the pleadings and the whole document was called a *memorial*. Both parties had the right to read the *memorial* before it was submitted to the court, and they had the right to cross-examine witnesses or to submit testimony of additional witnesses. The length of time involved and cost of the *memorial* mode of litigation meant that few litigants resorted to it.

The civil business of the Municipal Court was extensive and included actions for debt, damages in trespass, seamen's wages, payment of rent, recovery of possession of land, and boundary determinations. The court also had jurisdiction in family matters, including breach of promise of marriage, marital separation (in which custody of the children was shared equally and the property divided, after payment of debt), and proceedings for the support of children born out of wedlock (in which the putative father was required to give security for the support of the child). The Municipal Court also had criminal, admiralty, probate, and "orphen-master" jurisdiction. State Historian James Sullivan described the judges as "stable, sensible men of affairs, generally well respected. What they lacked in legal knowledge was supposed to be supplied by the *schout*, who was the professional member of the local bench."³⁹

Religious Tolerance

Although New Netherland had a reputation for religious tolerance, it should be noted that from the very earliest days the (Calvinist) Dutch Reformed Church was the religion of the colony. The 1629 charter required the colonists to support the Dutch Reformed Church and its ministers. With the focus on commerce and economic growth, the Company did not make an issue of religion. Nonetheless, the mandate to support the Dutch Reformed Church and the

³⁹ Ibid.

official bar on public worship by all other religious denominations caused unrest in the colony that, in turn, led to a more repressive wording in the 1640 charter: "And no other religion shall be publicly admitted in New Netherland except the Reformed, as it is at present preached and practiced by public authority in the United Netherlands." Although the New Netherland authorities tolerated public religious practice by other Reformed denominations, the right of public worship was denied to all others.⁴⁰ Civil restrictions based on religion existed, and Baptists, Quakers, Jews and Catholics could not hold public office.⁴¹

In September 1654, twenty-three Jewish refugees arrived in New Netherland from Brazil, where they had joined the Dutch forces in a vain effort to repel the Portuguese invaders. Stuyvesant wanted to refused them entry, arguing that "blasphemers of the name of Christ be not allowed further to infect and trouble this new colony."⁴² The Company overrode his objections, possibly because of the large amount of Jewish capital invested in the Company, and directed that the Jewish refugees be allowed to settle and trade "provided the poor among them shall not become a burden to the [C]ompany or the community, but be supported by their own nation." The Jews could not hold public office. They could not participate in retail trade, they were restricted to private worship and their houses were to be built "close together."⁴³ Over the course

⁴⁰ 4 Catholic Historical Review 202.

⁴¹ "The Historical Magazine, and Notes and Queries Concerning the Antiquities, History, and Biography of America," published by C. Benjamin Richardson, 1869, Vol. 6, Ser. 2, 230; "Catholic World," published by Paulist Fathers, Vol. 10, Oct. 1869-Mar. 1870, 415.

⁴² Zwierlein, Frederick James. *Religion in New Netherland, 1623-1664*, 255 (1910).

⁴³ American Jewish Historical Society Executive Committee, *The Two Hundred and Fiftieth Anniversary of the Settlement of the Jews in the United States 1655-1905* (1906).

of the next three years, these restrictions were gradually removed but the Jews' request to set up a synagogue was denied.

In 1654, the Lutherans requested a minister of their own faith. Stuyvesant refused to allow that, stating that his oath to the Company and the *States General* forbade him to openly tolerate any religion other than the Dutch Reformed church. The Lutherans then appealed to the Company. In response, the Company sent a letter to Stuyvesant stating that no public religious service except that of the true Dutch Reformed Church "should be permitted in New Netherland," and directing that Stuyvesant use "all moderate exertions . . . to win Lutherans and other dissenters from their errors."⁴⁴ By ordinance of February 1, 1656, Stuyvesant restricted the religious practices of all in New Netherland who were not adherents of the Reformed religion to "the reading of God's Holy Word, family prayers and worship, each in his own house." Even more repressive were the ordinances affecting Quakers, which ordered confiscation of vessels bringing Quakers into the province and imposed a fifty pound fine to anyone giving shelter to a Quaker.⁴⁵

These ordinances met with open resistance from the people in the small New Netherland town of Vlissingen (now Flushing, Queens), who addressed a protest to Director-General Stuyvesant, now known as the Flushing Remonstrance.⁴⁶ Stuyvesant repeatedly responded with escalating harshness and cruelty until April 16, 1663, when the Company, fearing that too

⁴⁴ Edward Channing, *A History of the United States* 452 (1921).

⁴⁵ *Ibid.*, 474; John A. Doyle, *English Colonies in America: The Middle Colonies*, 44-45 (1889).

⁴⁶ The original document is in the collection of the New York State Archives.

rigorous a policy of religious repression might reduce immigration, instructed Stuyvesant to "allow every one to have his own belief as long as he behaved quietly and legally, gave no offence to his neighbors, and did not oppose the government." Some historians believe that the First Amendment to the United States Constitution and Article 1, Section 3 of the New York State Constitution may have been influenced by the precepts of the Flushing Remonstrance.



Religious Freedom in America, Flushing, NY

The English Invasion

England had long disputed the Dutch claim to New Netherland, and in the 1660s the threat of an English invasion became more serious. Stuyvesant called upon the municipal officers for advice, and they agreed that the city should enlist two hundred militiamen and one hundred and sixty regular soldiers. This was the force available to Stuyvesant when the English invaded with four frigates, ninety-two guns, four hundred and fifty soldiers and the ships' regular



New Amsterdam/New York

crews. Stuyvesant was too much of a soldier to surrender willingly without firing a shot, but he recognized that the English had superior forces and armaments. He negotiated liberal terms of surrender and the formal transfer of power was conducted with full military honors. Colonists could choose to return to Holland without hindrance. The legal rights and

obligations that existed at the time of the Dutch surrender remained binding, and local officials were continued in office.⁴⁷

As a result of the Dutch surrender, the English commander, Richard Nicholls, became Governor of New York on August 9, 1664. New Netherland was renamed New York and the City of New Amsterdam became the City of New York. Nicholls was an able administrator and won the good will of the Dutch. The Court of Burgomasters and Schepens met on the day after the capitulation, and the government of the province continued under the Dutch officials whom Nicholls had retained in office.

Ten months later, in June 1665, Nicholls implemented a new charter. It set up a government consisting of a Mayor, five Aldermen and a Sheriff, all appointed by the Governor. The new municipality followed the forms and ceremonies of municipal corporations in England. Jury trials were introduced into the colony for the first time. Five years later, the English authorities presented the New York officials with gowns to wear on state occasions, a mace to be carried by a mace-bearer at the head of their processions, and a seal for the City of New York. The administration of Colonel Nicholls ended in August 1668, and he was succeeded by Colonel Francis Lovelace.

Recapture of the Province by the Dutch

Colonel Lovelace was a man of moderation, and the colony lived in peace under his rule until July 29, 1673, when Dutch warships



New Orange

⁴⁷ David Valentine. *History of the City of New York* 160-161 (1853), digitized at <http://www.archive.org/details/historyofcityofn01vale>.

sailed into the harbor. Following negotiation, the British ceremonially surrendered the fort to the Dutch, bringing the province under Dutch rule once more.⁴⁸ Captain Anthony Colve became Governor General,⁴⁹ changed the name of the city from "New York" to "New Orange," and issued a new *Provisionale Ordere* requiring the municipal institutions to follow the Dutch practices.

Resumption of British Rule



Sir Edmond Andros

The Dutch rule was short-lived—on February 9, 1674, the Dutch and English signed a peace treaty under which the province was restored to the English. Sir Edmond Andros accepted the surrender by Governor Colve on November 10, 1674. Several months later, Andros restored the English form of government under the Mayor, Aldermen and Sheriff. Colonel Thomas Dongan succeeded Andros as Governor.⁵⁰ On April 22, 1686, he granted the Dongan Charter to New York City, which gave the freemen of each of the six wards the right to elect an alderman and assistant alderman. Together with a Mayor and Recorder appointed by the Governor, they formed the Common Council, the foundation of the present day system of government in New York City.



Governor Dongan

⁴⁸ *Ibid.*, at 170-172.

⁴⁹ Benson John Lossing, *The Empire State* 89 (1888).

⁵⁰ Wilson, *supra* note 1, at 266.

The Legacy of New Netherland

Although the legal system of twenty-first century New York has its origins in the law of England, traces of the early Dutch legal institutions still remain. New Netherland gave to American cultural and political life an enduring legacy, greatly influenced by social and political climate in the Dutch Republic in the seventeenth century, and the character of the early Dutch immigrants. Now, four hundred years later, as New Yorkers look back at the early Dutch colony, they see much that is so familiar—a beautiful and fertile land, a powerful mercantile center, and a population that is vibrant, diverse, and committed to representative government and the establishment of individual freedoms.