

The paradox of Roman-Dutch law in Holland

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1.Introduction

The birth of the Dutch republic is classified in traditional textbooks as a religious war or a war of independence¹, depending on the interpretation of the time and author.² The choice of category is also linked to the cause of the events and since the hostilities lasted eighty years it is safe to propose that various causes played a role and that different causes played the main part at different stages. This paper adheres to the theorem that the past explains the present and in consequence, the medieval background of the Netherlands will be scrutinised. The starting point will be Charlemagne since he brought the Netherlands within the German empire. The disintegration of this empire and the resulting feudalism underwent changes from the eleventh century onwards as the Crusades re-opened the Middle East and the invasions of the Normans had come to an end as they had settled in France, England and Italy. The resulting upswing in trade saw the resurgence of towns and the nascent creation of states, the return of money and the concomitant taxes.

Partly due to their geographical location, partly due to the industrious population and successful rulers the Netherlands became a densely populated, prosperous corner of Europe.³

The creation of new states from the mix and match of the feudal desmains undertaken by the Burgundians during the fourteenth century, culminated under their Hapsburg successors in the late fifteenth and sixteenth century. The introduction of new institutions aimed at unification

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¹ The term civil war might also be appropriate, although the concept of the state was still in a developmental stage.

² Cf Philip Thomas, The standpoint determines the view: Jacques Barzun's theory of aspect, in *New Frontiers. Law and Society in the Roman world*.

³ Groot Placaet Boeck (G P B), vol 1, 1 Boeck, 1 Tit, 1 Deel, *Placaet vande Staten van Hollandt 1 Corte Vertooninge van het Recht by de Ridderschap, Edelen en Steden van Hollandt en West-Vrieslandt, van allen ouden tyden inde voorsz Landen gebruyckt, tot behoudenisse vande Vryheden ende Privilegien ende loffelicke gebruycken vanden selven, den 16 October 1587*.

and centralisation of the state was executed by a new elite of university educated technocrats, schooled in Roman law.

The remarkable success of the Dutch rebellion and the astonishing rise of the republic during the seventeenth century was linked to the unique character of this confederation. The international renown of several prominent Dutch jurists has overshadowed the administrators of towns, provinces and republic as well as the work of legal practitioners dealing with local laws with the result that the jurisprudence of Holland has been largely misunderstood in international academia.

2. Medieval background of United States of the Netherlands⁴

It is impossible to describe the exact boundaries of the territories which eventually would become the United States of the Netherlands, during the late Middle Ages since the counties, duchies and bishoprics grew and diminished, amalgamated, or disappeared.⁵ However, it should suffice that during the fourteenth and fifteenth centuries the so-called Low Countries or Pays Bas coincided more or less with the modern Netherlands, Belgium and Luxembourg. If it is kept in mind that in these territories French, Frisian, Low German, Dutch and East Dutch and various derivative dialects were spoken the diversity within the region is apparent.⁶

2.1. Charlemagne; Holy Roman Empire

The reign of this historical giant will be taken as a point of departure since various important events resulted from his reign and shaped the future, the most important of which was his coronation in 800 AD by the pope in Rome, as emperor of the Holy Roman empire. This made the Low Countries part of this empire and its subsequent disintegration. After the reign of Charlemagne⁷ this disintegration started quickly as a result of the Frankish law of succession, which viewed the sovereign's power and territory as part of his estate and did not know primogeniture. In consequence, after the death of Charlemagne's son Louis the pious, the

⁴ The authorities for the information and facts provided in this chapter derive to a large extent from seminal account on this topic by Geoffrey Parker, *The Dutch revolt* as well as the most interesting and readable (albeit elderly) literature on this topic by Jan & Annie Romein, *The lage landen bij de zee Een geschiedenis van het Nederlandse volk and Erfstaters van onze beschaving Nederlandse gestalten uit zes eeuwen* and Jane de Iongh's trilogy *Regentessen der Nederlanden: De Hertogin, Margaretha van Oostenrijk, Hertogin van Savoie 1480–1530; De Koningin, Maria van Hongarije, landvoogdes der Nederlanden 1505–1558; Madama, Margaretha van Oostenrijk, Hertogin van Parma en Piacenza 1522–1586; Cf also J Ph de Monté Ver Loren, J E Spruit, Hoofdlijnen uit de ontwikkeling der rechterlijke organisatie in de noordelijke Nederlanden to de Bataafse omwenteling; E J J van der Heijden, B H D Hermesdorf, Aantekeningen bij de geschiedenis van het Oude Vaderlandse recht.*

⁵ Henri Pirenne, The formation and constitution of the Burgundian state, *American Historical Review* 1909 14 3, 477-502.

⁶ Parker, *Revolt*, 35f, 282 n 11.

⁷ Charlemagne, king of the Franks from 786-814 AD, extended the territory of his kingdom in France, Belgium, Germany and Italy. The defeat of the Lombards in 794 AD added most of Italy. The Saxon wars from 772-804 AD brought North-West Germany under his rule, while the forced handing over of the sovereignty by Tassilo, duke of Bavaria to Charlemagne in 794 AD added large part of South-East Germany. He also added parts of the South of France and in the North of Spain. A strong ruler, he introduced law and order, organised the administration, military and judiciary and promoted agriculture, commerce and learning. He was crowned as first emperor of the Holy Roman empire in 800 AD by the pope in Rome. Romein, *Lage Landen*, 58-60; Van der Heijden-Hermesdorf, 59-61; De Monté Ver Loren- Spruit, 28-62.

empire was divided between the latter's sons. The resulting civil wars and the parallel plunders and invasions by Normans diminished the power of the crown and disrupted the economy.⁸

2.2. Feudal system and the disintegration of the empire

The feudal system developed as lack of money caused a gradual transformation of a monetary economy into an economy of barter by producers.⁹ As the sovereigns lacked money to pay the military and the administration, they resorted to paying these officials up-front with grants of land and rights in exchange for their services and loyalty. Although these fiefs were in theory a tenure subject to limitations, in practice a powerful local elite of barons emerged, whose original job descriptions developed into the aristocratic titles of duke and count. The increasing independence of these positions had the result that they became hereditary. Marriage and inheritance led to accumulation of wealth¹⁰ and power which was supplemented by conquest.

Thus, the central power of the Holy Roman emperors diminished, and new mini states emerged, which struggled amongst each other for existence, hegemony or survival.¹¹ During these turbulent times the population placed themselves under the protection of the powerful landowners and the church, who both had fortified strongholds. Such protection was given in exchange for services, which also became hereditary, the so-called *corvées*, resulting in a new class, the serfs within which freed slaves and subjected peasants amassed.¹²

2.3 Towns

During the eleventh century the threat of the Normans abated and at the beginning of the twelfth century the crusades heralded a revival of commerce and industry with a concomitant revival of the monetary economy. The establishment of settlements around the emporia of merchants at harbours and rivers flourished in the Low Countries as a result of their geographical situation. Populated by merchants, artisans and workers, the development of proto industries of textiles and pottery added to the commercial activities and the new towns became important centres of wealth and taxes.¹³ The world of finance arrived with Italian banking houses in Ghent, Bruges and Antwerp and the latter became, in time, the financial centre of the world and as such financed sovereigns. The towns negotiated with the emperor, king, duke, count or bishop, and

⁸ Annual pillage and eventual destruction of Dorestad, <https://www.canonvannederland.nl/nl/utrecht/onderwijsanon/dorestad>; <https://historiek.net/dorestad/4049/>; <https://www.absolutefacts.com/nl/dorestad.htm>.

⁹ Rory Naismith, The social significance of monetization in the early middle ages, *Past & Present* 2014 223 1, 3-39.

¹⁰ Romein, *Erflaters*, 106-109 traces the family of William of Orange from around the middle of the twelfth century. Marriages with Mechtild, daughter of count Otto I of Guelders, Johanna van Polanen, death without issue of Engelbert II in 1504 made Henry III of Nassau-Breda a prominent grandee, who was amongst other functions Stadtholder of Holland and Zeeland. His marriage to Claudia de Chalons brought the principality of Orange in the possessions of the family. His son René fell in 1544 at St Dizier and his inheritance went to his cousin William of Nassau-Dillenburg. <https://www.britannica.com/biography/Adolf-German-king>;

<https://www.geni.com/people/Heinrich-de-Rijke-von-Nassau-Graaf-von-Nassau/600000002188563123>;

<https://www.geni.com/people/Engelbert-I-von-Nassau-Dillenburg/6000000006597091433>;

<https://www.geni.com/people/Heinrich-III-Graf-von-Nassau-Dillenburg/6000000011049664389>;

<https://www.britannica.com/biography/William-I-stadholder-of-United-Provinces-of-The-Netherlands>.

¹¹ Romein, *Lage Landen*, 60-66; van der Heijden-Hermesdorf, 80-137.

¹² <https://www.britannica.com/topic/serfdom>.

¹³ Romein, *Lage landen*, 116-131, 150-155; Soly, Hugo, 1549: A year of grace for emperor Charles V and his subjects in the Low Countries, in *European Festival Studies: 1450-1700, Charles V, Prince Philip, and the politics of succession*, 49f.

obtained against payment certain privileges,¹⁴ for example to build city walls, freedom of tolls and market excise, exemption from feudal *corvées* for persons and exemption from feudal incumbrances on land.¹⁵ Originally the towns were administered by the sovereign's officials, but the administration shifted to their own representatives and a major step was the acquisition of the right to their own town law.¹⁶ This included the right to legislate, to administrate and the right to judicate, from which followed the *ius de non evocando*.¹⁷ The above rights were laid down in charters, licenses and privileges and at their inauguration the sovereign swore an oath to respect these rights,¹⁸ which gave the towns a virtual autonomy, although they remained subject to their sovereign.¹⁹ After the take-over of the administration by the town representatives, a class struggle followed between the aristocracy, merchants and the artisans, the latter organised in guilds.²⁰ As a rule the municipal power ended up in the hands of rich merchants, who gradually formed a new patrician class, which came to be known as the regents.

2.4 Peasantry

The socio-economic and political developments also saw the emergence of a more assertive peasant class. Peasant revolts during the fourteenth and fifteenth centuries in Flandres, Holland, Frisia were the result of the exploitation of the farmers at the hands of the nobility and clergy who were later joined by the towns.²¹ Added to this exploitation were the continuous ravages

¹⁴ Van der Heijden-Hermesdorf, 166-169. The term privileges is used to indicate the formal promise of the sovereign to town or groups of subjects to grant them certain rights, which grant curtails his/her own powers, that is *regalia*, royal prerogatives. Sometimes labelled Charters, *Joyeuse Entrée* or Bul, the term privilege can also be used to mention the document. At the inauguration of the sovereign, the *Joyeuse Entrée*, the incoming ruler takes an oath to respect the existing privileges. See however, Philips van Leiden, *Casus* 78. 5.

¹⁵ Van der Heijden-Hermesdorf, 141-155.

¹⁶ G P B, vol 1, 1 Boeck, 1 Tit, 1 *Deel*, *Placaet vande Staten van Hollandt 1 Corte Vertooninge van het Recht by de Ridderschap, Edelen en Steden van Hollandt en West-Vrieslandt, van allen ouden tyden inde voorsz Landen gebruyckt, tot behoudenisse vande Vryheden ende Privilegien ende lofflelicke ghebruycken vanden selven, den 16 October 1587*. Romein, *Lage landen*, 121, 150; Monté Verloren-Spruit, 157-163, 165f; van der Deel, Heijden-Hermesdorf, 146-157. Dorst 1220 AD, Haarlem 1245 AD, Leiden 1266 AD, Gouda 1272 AD.

¹⁷ Van der Heijden-Hermesdorf, 156, 167. See the Golden Bull granted by emperor Charles IV in 1356 in which was among others provided that neither in civil nor in criminal cases subjects in Brabant and Limburg could be judged by any court outside these territories, which privilege was confirmed by Maximilian in 1512 and Charles V in 1530. Cf also G P B, vol 2, 5 Boeck, 1 Tit, 2 *Deel*, 4. *Privilegie van Hertoge Philips, dat niemand gevoceert mach worden, dan vande vier saecke die hier gheschreven staan, dat alle endere saacken berecht moeten worden ter Plaetsen daerse geschiet zijn. In date den 11 Junij 1452*.

¹⁸ G P B, vol 4, 1 Boeck, 1 Tit. *Algemene landt-wetten, het Landt-standt-bestier betreffende* contains documents pertaining to the acceptance of the government over Hainault, Holland and Frisia in 1358 by Albrecht, Duke of Bavaria who promised to maintain the customs and laws according to which he predecessors had ruled; The oath sworn by Maximilian, Duke of Austria in 1477 at his inauguration as Count of Holland, Zeeland and West-Frisia also contained the promise to maintain privileges; the same applies to the oath of his son Philip, Duke of Austria at his inauguration in 1494, who promised to respect all privileges granted by previous counts, but abolished privileges granted since the death of Charles the Bold, except the privileges granted to Delft, Leyden, Gouda, Amsterdam, Rotterdam and Schiedam to elect their municipal councillors; See also the *Bullae Aureae* of Charles V and Maximilian in the same title. Finally, the *Joyeuse Entrée* of Philip 2 in 1549 and his inauguration in 1555 also featured oaths promising to respect and maintain the privileges and customs, *Ibid*; Soly, 51 refers to the Duchy of Brabant were since the fourteenth century in the joyous entry the subjects reserved the right to renounce their obedience to the ruler, if he failed to fulfil his responsibilities as agreed. He mentions that Charles V had tried in vain to have this clause deleted or amended.

¹⁹ Van der Heijden-Hermesdorf, 155f.

²⁰ Romein, *Lage landen*, 173, 185.

²¹ Romein, *Lage landen*, 190f discusses the finances and how the *bede* developed from supplication to request, from request to command, ie taxation. The prosperous city of Dorst paid one ninth of the tax burden of Holland under the Burgundians and extracted two thirds of this from about forty villages.

of war of which the farmers bore the brunt. The economic growth led to an increase in population,²² which had to be fed, and landowners big and small profited, while the import and transport of grain became a flourishing enterprise.

3. Late Middle Ages and power struggles

The late Middle Ages witnessed the struggle between princes²³, nobility²⁴, towns and peasantry with each other and within themselves.²⁵ The aspiring sovereigns attempted to retain, regain and extend the military and administrative capabilities that had been lost to the nobility and towns. Thus, the emperor Frederik Barbarossa persuaded the Diet of the empire²⁶ to formulate the *iura regalia*,²⁷ in the *Constitutio de Regalibus* at the session in Roncaglia in 1158. It is noteworthy that this *constitutio* was based on an opinion of the *quattuor doctores* from Bologna.²⁸ However, his attempt to regain these rights from the Italian cities remained without success.

4. Philip van Leiden, Dutch Macchiavelli

A blueprint of the post-medieval political theory can be found in the *Tractatus de cura reipublicae et sorte principantis* of Philip van Leiden.²⁹ This author had studied in France and imbibed the new age ideas circulating at universities and courts. He criticized the *status quo* using a Reynaert allegory³⁰ and made the unequivocal statement that *regalia* are not to be alienated, as the power of the prince has been bestowed upon him in the interest of the state.³¹

²² Romein, *Lage landen*, 108, 111, 116f, 135-140.

²³ This term will be used to indicate budding sovereigns, which starts with the emperor, but included the most successful counts and dukes who had succeeded in creating new “states”. Examples of such were the counts of Holland, the bishops of Utrecht, the dukes of Gelre, the dukes of Burgundy, and the dukes of Brabant.

²⁴ All dukes, counts and other barons who had not succeeded in becoming sovereigns of a major state, but retained nevertheless varying degrees of land, wealth and power.

²⁵ For the history of the county of Holland, G P B, vol 3, 1 Boeck, 1 Tit, *Algemene Landt-Wetten*, 1-31 gives a survey of the counts of Holland and Zeeland from 1348 AD.

²⁶ The consultative/legislative body of the empire; <https://www.britannica.com/topic/Diet-German-history>.

²⁷ The royal prerogatives, the content of the sovereign’s power. H Koeppler, Frederick Barbarossa and the Schools of Bologna, *The English Historical Review*, 1939 (54 216), 577-607, <https://www.jstor.org/stable/554698>.

²⁸ Bulgarus, Martinus Gosia, Jacobus de Boragine and Hugo de Porta Ravennate. Koeppler, *The English Historical Review*, 577-588 provides a detailed and nuanced narrative.

²⁹ Born around 1330 AD from a prominent commoner family in Leiden. His father had been an alderman and several members of his family had been officials of the chancellery of Holland. He was educated for the clergy and went in 1345 AD to the University of Orléans. After his return he wrote his work, which he updated during the next twenty years. He became a member of the Council of the Count of Holland and Dean of the St Peter in Middelburg. He was appointed as ambassador to the papal court in Avignon and obtained a *doctor decretorum* degree in Paris. Van der Heijden-Hermesdorf, 137-141; Romein, *Erflaters*, 13-32.

³⁰ Van der Heijden-Hermesdorf, 138; The king is a young and naive lion, who grants the wishes of the sycophant nobility, the oxen, who appropriate so much power that even the lion’s den is under threat. The town people, the geese hide behind their walls, the calves and sheep flee in the towns and the lion has to beg his subjects for what is legally his; Romein, *Erflaters*, 26.

³¹ *Casus* 1.7. In *casus* 78.5 van Leiden provides the legal argument for this doctrine, namely the Decretal Intellecto, X 2.24.33 and VI 1.8.2. The first was originally a letter from Pope Honorius III to the Archbishop of Kalocsa in Hungary. The pope writes that he has understood that King Andras II has transferred certain parts of his patrimony to the detriment of the kingdom and his royal prestige. The pope absolved the king of his oath not to revoke these transfers on account of the higher oaths sworn at his inauguration to respect the laws of the kingdom and the prestige of the crown. R Timmer, *Profeet in eigen land: Philips van Leiden en het publiek belang*, PhDthesis UVA (2008), 102ff where the elaboration by canonists is discussed.

Thus, sovereigns cannot grant privileges to the detriment of the state and thus cannot transfer land, tolls, markets and other *regalia*.³² The aristocratic grandees should not be members of the Councils of the prince, but experts such as lawyers should fill their places. Neither should the military/nobility be involved in the civil administration nor should the municipal government be entrusted to merchants or bakers and innkeepers.³³ He proposed an overhaul of the traditional way of judication by replacing the customary judges with qualified jurists. In summary, van Leiden sketched a modern centralised state administered by educated expert civil servants.³⁴ Since he wrote his treatise well before the invention of the printing press³⁵ his work did not gain international renown, but the author clearly expressed ideas circulating during his time in certain circles in Europe.

5. Modernisation, centralisation of power, economic transformation

The new money-based economy made centralisation of state power not only possible, but also necessary. The peregrinating prince, who collected and consumed his taxes *in natura* and *in loco*, at the same time assuring the loyalty and services of his vassals, belonged to the past. The role of the nobility within the state gradually diminished as the future heralded a state managed by educated servants of the prince and enforced by a professional mercenary army.³⁶ The military role of the panzered, mounted knights and their serfs had been absorbed by the popularisation of the crossbow, longbow, pike and halberd, the availability of trained mercenaries and ultimately the introduction of firearms in Europe.³⁷

During the late Middle Ages, the Low Countries had a relatively large population,³⁸ advanced urbanisation,³⁹ with strong local institutions, traditions and local laws.⁴⁰ On the strength of their economic success these territories exemplified the transition from the static feudal medieval society into the more dynamic new age with new moneyed classes.

5.1 Burgundians

This phenomenon was exemplified by the dukes of Burgundy, who were one of the dynasties which had succeeded to enlarge their territories and, in this process, had commenced the

³² Van Leiden interprets the *regalia* rather wide and limits these not to defence, administration, law and money, but included transportation, sanitation, education etc. However, the distinction between *regalia* and feudal *corvées* was hardly clear during the Middle Ages.

³³ In *casus* 37 he opposes the guilds and their monopolies and uses the authority of the Corpus Iuris Civilis to argue that all privileges granting and confirming monopolies are null and void.

³⁴ Romein, *Erflaters*, 27.

³⁵ The first printed version of his text dates from 1516.

³⁶ Romein, *Lage landen*, mentions (without sources) that Charles the Bold introduced a permanent force, which eventually counted 18 000 men, of which half were mounted. He requested a three year tax of 120 000 “ryders” (the so-called ruitergeld) followed by a six year tax of 500 000. His third request in 1476 was refused by the States-General; See also http://myarmoury.com/feature_armies_burg.html.

³⁷ <https://www.britannica.com/topic/tactics/The-advent-of-firearms>.

³⁸ Parker, *Revolt*, 23 mentions a population of around 3 million, roughly as much as England and Wales at that time. Nineteen towns with over 10 000 inhabitants compared with four in the British isles.

³⁹ Parker, *Revolt*, 23ff refers to industrial towns (weaving) in Flanders and Holland, agriculture in Artois and Hainaut, Antwerp as a major port and commercial, financial centre and market place, Holland famous for cattle and Holland and Zeeland having 700 fishing boats and 1 400 cargo ships. Nevertheless, in times of economic downturns unemployment, poverty and famine were also rife.

⁴⁰ The early urbanisation combined with their economic strength facilitated the creation of strong local institutions, local traditions and different fiscal and legal systems. The local laws, liberties or privileges were a protection against abusive government. Parker, *Revolt*, 19-68; Romein, *De lage landen*, Hfst 5, Handel en bedrijf in de middeleeuwen, 113- 132.

transformation of the medieval governmental structures.⁴¹ In 1384 the duke of Burgundy, Philip the Bold inherited various counties in the Southern part of the Low Countries, among others the city of Antwerp. During the next century the family acquired additional territories and managed to attain freedom from both German and French dominance.⁴²

The duke was assisted by the Great Council, a body of advisers recruited from the grandees of the territories interspersed with experts, the noblesse de robe, which followed him on his travels until its permanent residence became Brussels in 1446.

In 1386 the Council of Lille was established as law court and audit-office for the Dutch territories⁴³ and in the early fifteenth century the audit-offices of Brabant and Holland were created.⁴⁴ The courts of Brabant and Holland date from 1423 and 1428 respectively, and in 1473 Charles the Bold established the Parliament of Mechlin as the supreme court of appeal for the Burgundian territories.⁴⁵

The creation of new courts and audit offices inaugurated the new age of a centralised and powerful state. These courts were manned by jurists schooled in Roman law and represented a drastic break with the traditional courts where the count only presided and the finding of the law and thus the judicial decision was left to the members of the community.⁴⁶ These new courts and their judge brought the judication process within the power of the ruler and so strengthened his rule. However, superseding the old courts and derogating the *ius de non evocendo* both contravened acquired privileges.⁴⁷ The audit offices were introduced to increase control over the income⁴⁸ and expenditure⁴⁹ of the state by officers of the ruler. They introduced control over the finances and stabilised the currency, which increased prosperity. The audit offices introduced a new administrative culture of accountability among the financial officers, since the receivers, the bailiffs, the toll collectors were required to submit their accounts to be audited.⁵⁰

However, these attempts to create a modern state fell with Charles the Bold in 1477 outside the town of Nancy as his daughter Mary was forced by the States General to grant the Great

⁴¹ Robert Stein, *Magnanimous Dukes and Rising States: the Unification of the Burgundian Netherlands, 1380-1480*, Oxford University Press, 2017.

⁴² Romein, *Lage landen*, 183ff; Van der Heijden-Hermesdorf, 169f.

⁴³ Romein, *Lage landen*, 185f.

⁴⁴ In 1406 the audit-office of Brabant and Limburg in Brussels and in 1446 the audit-office of Holland in The Hague. Van der Heijden – Hermesdorf, 172; Pirenne, *American Historical Review*, 496f.

⁴⁵ Pirenne, 499.

⁴⁶ Romein, *Lage landen*, 186.

⁴⁷ Cf Privileges granted by the Burgundians and retained in the G P B, vol 2, 5 Boeck, 1 Tit, 1 Deel, 1. *Privilegie van Hertoge Philips, behelsende dat men geen Brieven geven en sal, dragende tegen der Steden Privilegieen, Rechten ende Vryheden. De 11 Junij 1452*, 2. *Groot Privilege van Vrou Maria, de Landen van Holland en Zeelandt gegeven op den 14 Maart 1476*; 3. *Privilegie by Hertoge Maximilaen gegeven op de 26 Mey 1480*; 4. *Privilegie van Hertoge Philips 11 Junij 1452*; G P B, vol 3, 1 Boeck, 1 Tit. *Huldiging van Keyser Karel, in date den 3 Junij 1515*; Also G P B vol 4, 1 Boeck, 1 Tit for oaths at inaugurations.

⁴⁸ For the income see Romein, *Lage landen*, 189- 191 where the importance and development of so-called 'bedes' into taxes is discussed and the loans from international bankers and rich towns.

⁴⁹ Romein, *Lage landen*, 191f accentuates the military expenses.

⁵⁰ Stein, 226-254; Pirenne, *American Historical Review*, 497.

Privilege restoring all privileges abrogated by her predecessors⁵¹ and abolishing the newly created Parliament of Mechlin.⁵²

5.2 The States and the States General

During the thirteenth century the territories within the Low Countries, later called provinces, had commenced to appoint representative assemblies, the States, in which as a rule the clergy, the nobility and the towns were represented.⁵³

Flanders, Brabant, Holland and Zeeland were the most developed, and thus important, and from the fourteenth century onwards their towns had regularly obtained charters of liberties and rights from their sovereigns against payment of once-off taxes.⁵⁴ During this process the towns had become juristic entities and once they had acquired the privilege to establish their own administration, their own law, their own jurisdiction and levy and collect their own taxes they had become *de facto* autonomous.

In consequence, the States acquired in time more power⁵⁵ and after 1463 the Burgundian rulers convened meetings of all the States within their domains, the so-called States General⁵⁶, to discuss tax demands on a regular basis.⁵⁷ Originally, the *bede* was a request for money by the sovereign according to customs for certain occasions, such as weddings. From the fourteenth century onwards, the princes endeavoured to abolish these customary restrictions that limited its use. In order to do so, they needed the consent of the governed, and more particular of the towns. Thus, a request by the prince to the provincial states for one year became practice and in time the term extended and the request developed into a right. The introduction of the States General in 1463 had as aim to facilitate the introduction of taxation,⁵⁸ a direct consequence of the escalating military costs.

It is important to note that the local laws, liberties or privileges were granted in exchange for money, in fact taxation, and were of vital importance against arbitrary exercise of power by the sovereign. In consequence, at his/her inauguration the sovereign swore an oath to respect these privileges. The result was that strong local institutions had been given the occasion to develop, but also different local laws and taxes. Finally, these liberties or privileges were justly seen as protection against the rulers.

⁵¹ G P B, vol 2, 5 Boeck, 1 Tit, *Begrypende eenige generale Handvesten, Privilegien en Wetten van dese Landen, Het eerste Deel: 2. Groot Privilege van Vrou Maria, de Landen van Holland en Zeelandt gegeven op den 14 Maart 1476*; Pirenne, *American Historical Review*, 491 opined that States General substituted the power of the prince onto themselves and transformed the state into a confederation of autonomous territories.

⁵² Charles the Bold had created this institution as the appeal court for all provincial courts. Philip I restored this court in 1504.

⁵³ About 1500 only seven votes counted: one for the nobles and one each of the six great cities, Dordrecht, Leiden, Haarlem, Delft, Amsterdam, and Gouda. Tracy, James D. *Holland Under Habsburg Rule, 1506-1566: The Formation of a Body Politic*. Berkeley: University of California Press, 1990, 15, <http://ark.cdlib.org/ark:/13030/ft1779n76h/>.

⁵⁴ These privileges granted the rights of government to the cities, that is to legislate, administrate and judicate. Gerbenzon- Algra, *Voortgangh des rechtes*, 65ff.

⁵⁵ Their power to levy and collect taxes gave them control over the sovereign's power to wage war as they had to finance the raising of troops.

⁵⁶ The provincial delegations were bound by the instructions given by their States and had to refer back for consultation. Unanimity was required in the provincial delegations and all provinces had a veto right.

⁵⁷ Stein, 226-254.

⁵⁸ Romein, *Lage landen*, 190.

5.3 Habsburgs

After signing the Great Privilege in 1477 Mary of Burgundy married Maximilian of Austria, a member of another family of winners, the Hapsburgs. Originally the Counts of Hapsburg with land in Switzerland, they widely extended their territories and power until they eventually had a stronghold on the leadership of the Holy Roman Empire.⁵⁹ The Hapsburg empire building followed the traditional route of marriage, dowry and inheritance, supplemented by war. After Mary of Burgundy's demise in 1482 Maximilian entered into an armed struggle with various towns and States and after he had subdued their insurrections he acted as regent for his son Philip. He became King of the Romans in 1486 and succeeded his father Frederick III in 1508 as Emperor of the Holy Roman Empire. He married his son to the Spanish infanta Joanna and his daughter to the Spanish prince.⁶⁰ His son Philip I died young, but his grandson Charles V⁶¹ and his great-grandson Philip the second⁶² continued the extension and modernisation of their extensive possessions.

The expenses of their continuous wars against the French and Turks were financed with gold and silver from the newly discovered and conquered American territories⁶³ and loans from bankers,⁶⁴ to be paid back from taxes.⁶⁵

5.4 Reformation and inquisition during Charles V

During the later Middle Ages several church reformers had appeared, such as Jan Hus in Bohemia⁶⁶ and John Wycliffe in England⁶⁷, and this culminated in 1517 with the 95 theses of Martin Luther, his excommunication and appearance before the Diet of Worms and the Edict of Charles V declaring him an outlaw and ordering his books to be burned.⁶⁸ However, Protestantism had been born and although divided within herself, also took root in the Low Countries.⁶⁹

⁵⁹ <https://www.britannica.com/topic/House-of-Habsburg>.

⁶⁰ <https://www.britannica.com/topic/House-of-Habsburg>. <https://www.britannica.com/topic/House-of-Habsburg>.

⁶¹ Inaugurated as Duke of Burgundy in 1515, King of Spain and Austrian possessions in 1516 and elected as Emperor of the Holy Roman Empire in 1519, Charles V annexed the other provinces of the Low Countries: Frisia in 1523/4, Utrecht and Overijssel in 1528, Groningen, the Ommelanden and Drenthe in 1536 and Gelderland in 1543. In the Treaty of Venlo and the Tractaat of Venlo respectively of 7 and 12 September 1543, Gelderland received guarantees that local laws and liberties would be respected, Keverling Buisman, *Verdrag en Tractaat van Venlo, passim*; De Monté Ver Loren, Spruit, *Hoofdlijnen uit de ontwikkeling der rechterlijke organisatie in de noordelijke Nederlanden to de Bataafse omwenteling*, Deventer, Kluwer, 1982, 194 ff; van der Heijden-Hermesdorf, 171; Ruth MacKay, Governance and Empire during the reign of Charles V: a review essay, *Sixteenth Century Journal* XL/3 (2009), 769-779.

⁶² G P B, vol 4, Boeck 1, Titul 1 *Algemene Land-Wetten het Landt-Standt-Bestier betreffende*; also <https://www.britannica.com/topic/House-of-Habsburg>.

⁶³ The advent of these riches led to inflation. Romein, *Lage landen*, 178 mentions inflation of 30% between 1505 and 1530 in the Low Countries.

⁶⁴ Charles V borrowed on the Antwerp money-market and paid up to 30% interest to pay his army. Parker, *Revolt*, 38f.

⁶⁵ Tracy, James D. *Holland Under Habsburg Rule, 1506-1566: The Formation of a Body Politic*. Berkeley: University of California Press, c1990 1990. <http://ark.cdlib.org/ark:/13030/ft1779n76h/>

⁶⁶ <https://www.britannica.com/biography/Jan-Hus>.

⁶⁷ <https://www.britannica.com/biography/John-Wycliffe>.

⁶⁸ <https://www.britannica.com/biography/Martin-Luther>.

⁶⁹ The Anabaptists, Mennonites and the Calvinists, <https://renaissancenetherlands.com/history/origins-and-persecutions-of-dutch-anabaptists/>; G K Waite, *The Anabaptists movement in Amsterdam and the Netherlands*,

5.5 The Habsburg modernisation

5.5.1 New structures and institutions

The Habsburg government was represented in the Low Countries by a regent in Brussels, which position was made permanent by Charles V in 1531.⁷⁰ In the different provinces local grandees represented the monarchy as governors, called stadtholders.⁷¹ The regent was assisted by three newly created councils⁷² for the Dutch territories: the Council of State⁷³, the Privy Council⁷⁴ and the Council of Finance.⁷⁵

The establishment of the Council of Finance was an example of the transformation of the medieval state. While the medieval rulers had lived off the revenue of their domains, supplemented by *ad hoc* financial levies on towns in exchange for liberties and privileges, the modern princes were in constant need of more money and used their domains as security for loans from bankers and towns. In consequence, a new source had been developed, namely taxation.

Maximilian had undermined the Great Privilege and Philip I had restored the Parliament of Mechlin in 1504 as the highest court. To achieve harmonisation/unification of law Charles V in 1531 instructed the provincial courts to record the customary law applicable in their districts and to send the results to Brussels for examination for homologation.⁷⁶ However, the towns and regions defended their privileges. In consequence, this instruction was repeated several times and had little or no effect.

An important milestone at the road from composite monarchy to state⁷⁷ was the permission Charles V obtained from the Diet of the Holy Roman Empire at Augsburg to consolidate his

1531-1535: An initial investigation into its genesis and social dynamics, *The Sixteenth Century Journal*, 1987 (18 2), 249-265, <https://www.jstor.org>; Romein, *Lage landen*, 178-181.

⁷⁰ See G P B, vol 4, 1 Boeck, 1 Tit. *Articulen en Poincten* handed over by the States of Holland and Frisia to Margareta of Austria at her inauguration in the name of Charles V; Also the *Commissie* given to her in 1518 by Charles V and the *Instructie ende Commissie* of 1520, in which the institution of the Privy Council, the appointments and the regulations thereof were set out. After her death in 1530 Charles consolidated the constitution of the government in Brussels.

⁷¹ At the beginning of the troubles in the Low Countries the following nobles were governors of the relevant provinces. William of Orange was stadtholder of Holland, Zeeland, Utrecht and France-Comté and member of the council of State, <https://www.britannica.com/biography/William-I-stadholder-of-United-Provinces-of-The-Netherlands>; Lamoral, count of Egmond was stadtholder of Flanders and Artois and member of the Council of State, <https://www.britannica.com/biography/Lamoraal-graaf-count-van-Egmond>; Philip de Montmorency, Count of Hoorne was stadtholder of Guelders and Zutphen and member of the Council of State, <https://www.britannica.com/biography/Filips-van-Montmorency-count-van-Horne>; Jean de Ligne, Duke of Arenberg was stadtholder of Friesland, Groningen, Drenthe and Overijssel, <https://www.geni.com/people/Jean-de-Ligne-comte-d-Arenberg/6000000013742903767>; Florent de Montmorency, Baron of Montigny was stadtholder of Tournai.

⁷² These councils were a division of the Duke of Burgundy's council, which had advised the duke on political, financial and legal matters.

⁷³ GPB IV, 29. This council consisted of the most prominent advisers and dealt with foreign affairs, war and peace, defence, high secular and clerical appointments.

⁷⁴ A legal advice college consisting of jurists supervising justice and police and drafting of government legislation. G P B, vol 4, 1 Boeck, 1 Tit. *Ordonnantie ende Instructie* of 1531.

⁷⁵ De Monté Ver Loren- Spruit, Hoofdlijnen, 198. This Council administered the royal domains, all income and expenditure, the mint, negotiations and contracts relative to taxes and supervision of the audit offices.

⁷⁶ Monté Verloren-Spruit, 199, 206ff

⁷⁷ Stein, *passim*; J H Elliott, A Europe of composite monarchies, *Past and Present*, 1992 137, 48-71 <https://www-jstor-org.uplib.idm.oclc.org/stable/650851>; Composite state as defined by Koenigsberger in his inaugural lecture as "more than one country under the sovereignty of one ruler"; Elliott n.7.

territories in the Low Countries into one administrative unit.⁷⁸ This meant that these provinces no longer fell under imperial legislation and jurisdiction but had become independent of the Holy Roman empire. In 1549 Charles persuaded the States of each province to ratify the Pragmatic Sanction, which provided that after his death all provinces would continue to obey the same ruler and central institutions and his son Philip II was accepted by the States as his presumptive heir.⁷⁹ This important step in the policy of the Burgundian-Hapsburg dynasty in the creation of a state with modern institutions meant abandoning of the feudal structure and this was effected in collaboration with the States. After 1549 the States of all provinces united by the Augsburg Transaction attended the States-General and the rudiment of a United States of the Netherlands was created.

Resistance against these policies expressed itself in the various municipal revolts,⁸⁰ the Great Privilege of 1477⁸¹ and culminated in the Dutch revolt.

6. Dutch rebellion

Although the rise of Protestantism and the consequent persecution of ‘heresy’ in the Netherlands have been seen by some as the main cause of the revolt, thus placing the Eighty Years war within the religious wars of this period,⁸² this oversimplification ignores the political and economic factors which soon dominated the religious question.⁸³ After Philip II left for Spain in 1559 the local nobility expressed increasing concern about the persecution of heresy and the proposed ecclesiastical reorganisation. The increasing power of the government in

⁷⁸ Pirenne, *American Historical Review*, 494; Monté Verloren-Spruit, 197; Parker, *Revolt*, 30ff, the Augsburg Transaction; Soly, 50.

⁷⁹ Loi & Pragmatique de l'Empereur Charles V: Prince & Seigneur des Dix sept Provinces des Païs Bas, par laquelle à la requisition des Etats des mêmes Provinces, il établit & ordonne qu'à l'avenir elles demeureront unies & conjointes en une seule Masse sous un seul & même Prince, & qu'à cet effect l'ordre de la Representation sera suivi & observé unanimement dans tous les Cas de succeder qui ariveront. Donné à Bruxelles au Mois de Novembre 1549. <https://mjp.univ-perp.fr/constit/nl1549.htm>.

⁸⁰ Jelle Haemers, *De strijd om het regentschap over Filips de Schone. Opstand, facties en geweld in Brugge, Gent en Ieper (1482-1488)*, Gent 2014.

⁸¹ G P B, vol 2, 5 Boeck, 1 Tit, Begrypende eenige generale Handvesten, Privilegien en Wetten van dese Landen, Het eerste Deel: 1. *Privilegie van Hertoge Philips 11 Junij 1452*; 2. *Groot Privilege van Vrou Maria, de Landen van Holland en Zeelandt gegeven op den 14 Maart 1476*; 3. *Privilegie by Hertoge Maximilaen gegeven op de 26 Mey 1480*; 4. *Privilegie van Hertoge Philips 11 Junij 1452*.

⁸² Cf <https://www.britannica.com/topic/history-of-Europe/The-Wars-of-Religion>; <https://www.libertymagazine.org/article/the-reformation-and-wars-of-religion>; <https://www.oxfordreference.com/display/10.1093/oi/authority.20110803095736876#:~:text=Calvinist%20excesses%20soon%20caused%20the,a%20religious%20struggle%20for%20independence>; <http://moonapeuro.weebly.com/wars-of-religion.html>;

⁸³ Cf For example, *De Jure Praedae*, cap 11 and 13 for the explanation by Grotius, who concentrated on the constitutional and international legal aspects; Thomas, *RIDA* 2003, 375-379; Also the Edict of the States General of 1581, G P B, vol 1, 1 Boeck, 1 Tit, 1 Deel 3 in which the reasons are set out; Romein, *Lage landen*, 222-224; Parker, *Revolt*, 19-68. Cf E H Kossmann en A F Mellink, *Texts concerning the revolt of the Netherlands*, Cambridge University Press, Cambridge, 1974, 1-3 who prefer “the wars in the Netherlands” as a collective title for the decennia-long variety of disturbances fuelled by different grievances of different groups in different regions, https://www.dbnl.org/tekst/koss002text01_01/koss002text01_01_0071.php

Brussels, where the *consulta*⁸⁴ overruled the regent, the provincial governors,⁸⁵ and the existing councils also caused resistance.⁸⁶ Other serious bones of contention were the taxation necessitated by King Philip to pay his military and ward of bankruptcy.⁸⁷ The presence and costs of the Spanish troops, the territorial extension of the jurisdiction of the Parliament of Mechlin,⁸⁸ the attempts at codifying and harmonising customary law and the concomitant revoking or intrusion on local privileges⁸⁹ were additional causes for continuous dissatisfaction and showed a rift between the aristocratic governors and the municipal governments, the regents.⁹⁰ In 1566, spurred on by religious fanaticism, but fuelled by the economic recession and food shortages with the resulting escalation of prices,⁹¹ churches and monasteries were plundered and vandalised and general troubles arose, which resulted in a breakdown of law and order. The King in Spain decided to send the duke of Alba with a strong military contingent to the region to assist the government in Brussels,⁹² and in their turn the local *grandees* raised mercenary troops.⁹³ However, during the various invasions by rebel armies the towns did not rally to the cause and in 1568 the rebels under the strategic leadership of William of Orange were ultimately defeated at Jemmingen, whereafter their bankrupt leader went into exile.⁹⁴ The exile and execution of the local nobles⁹⁵ placed the leadership in the hands of the municipal and provincial leaders, the so-called regents.

This ruling caste originated from the successful merchants in the important towns who were represented on the town councils. Originally elected, these patrician families soon formed a closed oligarchy who filled the city councils and chose the replacements for vacancies rotating between their various factions and families. The city councils of the voting towns, which were

⁸⁴ The power of the councils established in 1531 was usurped by the *consulta*, a secret council established by king Philip in 1559 on his departure to Spain to assist the regent Margaretha of Parma. This council consisted of Cardinal de Granvelle, Viglius van Aytta, the president of the Privy Council, and Berlaymont, the president of the council of Finance, and became the effective government. Romein, *Erflaters*, 113.

⁸⁵ These governors were the local high aristocracy, for example Prince William of Orange was governor of Holland and Zeeland, while the count of Egmont was the governor of Flanders. This élite had enjoyed a certain measure of self-government, which fostered loyalty to the ruling dynasty.

⁸⁶ See G P B, vol 4, 1 Boeck, 1 Tit. *Remonstrantie* by the nobility p 40; G P B, vol 3, 1 Boeck, 1 Tit, 22 *Verbondt der Edelen*, November 1565.

⁸⁷ For the financial problems Philip II inherited from Charels V see Parker, *Revolt*, 37-41, 53; Romein, *Lage landen*, 219 mentions how from 1540 onwards the taxes had doubled and trebled. Nevertheless, the interest and amortisation of the state debt increased from 150 000 pound in 1552 to 1 360 000 pound in 1556 and that neither the States nor the Antwerp bankers were prepared or capable of lending more. For the different types of currencies and their values see Francis Turner, *Money and exchange rates in 1632*, <https://1632.org/1632-tech/faqs/money-exchange-rates-1632/>, which gives a good exposé on the various currencies, coins and debasement albeit for 1632, but the basics were virtually unchanged since Charlemagne.

⁸⁸ Charles V conquest and the Pragmatic Sanction extended the court's jurisdiction over all of the Seventeen Provinces.

⁸⁹ The attempt in 1556/7 by Philip II to revoke the Charter of 1421 which granted the guilds a veto right on new taxes is one striking example. Parker, *Revolt*, 39. See also G P B, vol 4, 1 Boeck, 1 Tit. *Remonstrantie by de verbondene Edelen overgegeven aen de Hertoginne van Parma, gouvernante vande Nedrelanden, 1566* as well as the following correspondence between these parties.

⁹⁰ *Ibid.*

⁹¹ Romein, *Lage landen*, 198f, 219.

⁹² Parker, *Revolt*, 84- 90, 99

⁹³ Parker, *Revolt*, 91ff.

⁹⁴ <https://www.britannica.com/topic/history-of-the-Low-Countries-prehistoric-times-to-1579-2157575/The-revolt-and-the-formation-of-the-Republic-1567-79#ref414000>.

⁹⁵ <https://www.encyclopedia.com/reference/encyclopedias-almanacs-transcripts-and-maps/egmont-lamoral-count>; <https://www.britannica.com/biography/Filips-van-Montmorency-count-van-Horne>.

later extended to eighteen in Holland,⁹⁶ sent two or more delegates to the Provincial States as compared to one delegate from the nobility. These delegates arrived with strict instructions and in case of deadlocks -unanimity was required- were to report back to the city council for fresh instructions.⁹⁷ Thus, *de facto* a few hundred wealthy families in Holland, the biggest and richest province, held the political power.⁹⁸

After the Duke of Alba had restored law and order he undertook the implementation of an unitary state in the Spanish empire: one religion, one law and one tax system.⁹⁹ The persecution of heretics was intensified. Legislation enacted by the duke in 1570 unified the criminal law and procedure in the provinces and customary law and marine matters¹⁰⁰ and insurance¹⁰¹ was codified in ordinances.

These steps were infractions on local privileges,¹⁰² but his most contentious steps dealt with taxation. In 1569 he convened the estates of the provinces and asked for three new taxes: the Tenth, Twentieth and Hundredth Pennies. The last, least controversial tax was a once-off wealth tax of one per cent on all capital¹⁰³ and collected by the central government.¹⁰⁴ The other two taxes were meant to be permanent and also collected directly by the central government, thus taking the control over the finances out of the hands of the towns.

Moreover, the Dutch trade suffered since the troubles had started and Alba had no maritime power at sea¹⁰⁵ to counter inroads made by the so-called Sea Beggars on shipping. This was a group of dissidents in exile, who in 1568 had received letters of reprisal¹⁰⁶ granted to them by William of Orange, in his capacity as sovereign of the principality of Orange.¹⁰⁷ When they were

⁹⁶ Original voting towns were Dordrecht, Delft, Rotterdam, Amsterdam, Haarlem and Leiden. In 1572 William of Orange increased the number to eighteen by adding Alkmaar, den Briel, Edam, Enkhuizen, Gorinchem, Gouda, Hoorn, Medemblik, Monnickendam, Purmerend, Schiedam and Schoonhoven.

⁹⁷ The so-called ruggespraak. G P B , vol 1, 1 Bock, 1 Tit, 1 Deel, *Corte Vertooninge*.

⁹⁸ Holland contributed fifty eight per cent to the federal budget; in reality, often more. This meant that the regents of the eighteen towns held the power in the United States of the Netherlands.

⁹⁹ J H Elliott, A Europe of composite monarchies, *Past and Present*, 1992 137, 48-71.

¹⁰⁰ G P B, vol 1, 2 Boeck, 7 Tit, *Behelsende de Zee-Rechten: Midtsgaders Wapeninge en Manninge van Schepen, Het eerste Deel. Placaet van Keyser Karel. 1. Placaet ende Ordonnantie, op . 't stuck vande Zee-Rechten, ghemaect by Keyserlijcke Majesteyt. In date den 19 Julij 1551; Placaet vanden Koninck. 2. Ordonnantie, Statuyt ende eeuwich edict, .. op 't faict vander Zee-vaert ... den eersten Octobris 1563; G P B, vol 4, 10 Boeck, Saecken van de Zee, Admiraliteyt, Convoyen.... betreffende. 1 Tit. Admiraliteyten, Zee-rechten en Manninge van Schepen. 1. Ordonnantie op de Admiraliteyt der Nederlanden, gearresteert by Maximiliaen, Roomsche Koningh, in dateder derden Maert 1492; 2. Ordonnantie op de Zeevaart der Nederlanden, by Keyser Karel gegeven to Namen dens even en twintghsten December 1540; 3. Ordonnantie, Statut en Edict, op 't faict der zeevaart , 28 Ianuario 1549 (Charles V).*

¹⁰¹ G P B, vol 4, 10 boeck, 1 Tit, *Ordonnantie, Statut en Edict, op 't faict der zeevaart , 28 Ianuario 1549, XX-XXIV Van Assurancen of Verseeckerijnen; G P B, vol 1, 2 Boeck, 7 Tit, 1 Deel. 3. Ordonnantie, Statuyt ende Policie, gemaect by den Coninck, ... op 't feyt vande Contracten vande Assurantien ende verseeckeringen in dese Nederlanden. In date den 20 Ianuarij 1570.*

¹⁰² Most recently, in 1549 Philip 2 had at his inauguration as heir of Charles V in Holland and West-Frisia sworn under oath to respect and maintain all privileges etc. granted by his predecessors; idem in the other provinces; the same in 1555 at his inauguration after the abdication of Charles. G P B, vol 4, 1 Boeck, 1 Tit. p 35 ff.

¹⁰³ For the calculation of the value of wealth Parker, *Revolt*, 115 and 294 n 38.

¹⁰⁴ The revenue was 3,628,507 florins indicating a capital investment of over 362 million fl.

¹⁰⁵ G Parker, Why Did the Dutch Revolt Last Eighty Years?, *Transactions of the Royal Historical Society*, 1976 26, 54-57.

¹⁰⁶ Thomas, *RIDA* 2003, 364, 377ff.

¹⁰⁷ These were religious and political dissidents who had fled the country. In 1568 in La Rochelle the nautical part had of these groups had been raised from pirates to privateers, Romein, *Lage landen*, 227; Parker, *Revolt*, 108: As a

expelled from British harbours by Elisabeth I¹⁰⁸ this led to the first success in the Dutch struggle for independence, namely the capture of the city of den Briel by these Watergeuzen or Sea Beggars, who were for all practical purposes pirates. Nevertheless, after den Briel they were instrumental in a number of towns¹⁰⁹ in the replacement of members of the municipal councils,¹¹⁰ which towns declared their support for the revolt. This step was legalised in a meeting of the States of Holland in Dordt, where the Prince of Orange was recognised as the lawful governor, perpetuating the fiction that the rebellion was not against Philip II, but against his delinquent councillors.¹¹¹

The chronic lack of money of the King of Spain led to mutiny of the Spanish troops in 1576.¹¹² Thereafter the States of all provinces concluded the Pacification of Ghent in order to stave off ruin and to regain their old privileges, customs and freedoms, by which trade and prosperity could return. In terms of this treaty they agreed to a general amnesty, to evict the Spanish troops, to pay the necessary taxes to do so, to suspend the edicts issued on heresy and the criminal ordinance, and to retain the Roman Catholic religion outside Holland and Zeeland.¹¹³

However, interprovincial rivalry intervened and in 1579 the Southern provinces concluded the Treaty of Arras followed by peace with Spain.¹¹⁴ In their turn the Northern provinces, Holland, Zeeland, Utrecht, Gelderland, Overijssel, Friesland, and Groningen, concluded the Treaty of Utrecht,¹¹⁵ a defensive alliance. This step was followed in 1581 by the Abjuration of Philip the Second¹¹⁶ based on his failure to respect their laws, liberties, and privileges, which pre-dated the state. This argument was also reflected in the attempts to involve foreign powers by offering the sovereignty, however subject to the old privileges. First to the Duke of Anjou earlier the same year,¹¹⁷ followed by negotiations between the States and the Prince of Orange, which

sovereign ruler he (William of Orange) was technically entitled to make war on his enemies- and Alba, who had confiscated the prince's estates..., was clearly an enemy.

¹⁰⁸ Kossman, Mellink, 17; Parker, *Revolt*, 121f.

¹⁰⁹ Flushing, Veere, Enkhuizen, Dordt, Leiden; Gouda, Naarden, Amersfoort, part of Gelre and Overijssel, Romein, *Lage landen*, 227.

¹¹⁰ Kossmann, Mellink, 17; Romein, *Lage landen*, 227f mentions a small militant part of the population and estimates that around five per cent of the population in the Low Countries were Calvinists, but that other factors hid behind religion.

¹¹¹ Kossmann/ Mellink describe reluctance to abandon the sovereign, 15f, 19ff.

¹¹² Romein, *Lage landen*, 228; Parker, *Why ... Eighty Years?*, 57- 59.

¹¹³ G P B, vol 1, 1 Boeck, 1 Tit, 1 *Fundamentele Wetten, Deel I, Placaten dende Staten Generael*, 1 Pacification van Gent; see also *Traité et Confédération dite la Pacification de Gand entre les Etats des Pays-Bas d'une part et les prince d'Orange avec les Etats de Hollande, Zelande, etc. d'autre, Faite à Gand, le 8 novembre 1576*, <https://mjp.univ-perp.fr/constit/nl1576.htm>; also Kossmann/ Mellink, 23-30, 126-133. https://www.dbnl.org/tekst/koss002text01_01/koss002text01_01_0025.php.

¹¹⁴ *Traité de reconciliation fait en la ville d'Arras followed by the Treaty of Mons, both in 1579.*

¹¹⁵ G P B, vol 1, 1 Boeck, 1 Tit, 1 Deel, 2 *Verhandelinghe vande Unie, eeuwich Verbondt ende Eendracht*, etc ; Also *Traité d'Union & d'Alliance perpétuelle entre les Pays, Provinces, Villes & Membres, de Hollande, Zelande, Utrecht, &c. qui depuis, à cause de ce traité, furent appellées les Provinces-Unies, Fait à Utrecht, le 23. janvier 1579*, <https://mjp.univ-perp.fr/constit/nl1579.htm>; <https://www.law.kuleuven.be/personal/mstorme/unievanutrecht.html>.

¹¹⁶ G P B, vol 1, 1 Boeck, 1 Tit, 1 Deel, 3 *Placaat van de Staten Generael van de Geunieerde Nederlanden : By den welcken, midts de redenenin 't lange in 't selve begrepen, men verklaert den Coningh van Spaegniën vervallen, van de Overheyt ende Heerschappye van dese voorsz Nedelanden, ende verbiedt etc, 26 Iulij anno 1581.* <https://www.law.kuleuven.be/personal/mstorme/verlating.html>.

¹¹⁷ G P B, vol 4, 1 Boeck, 1 Tit, 1 Deel. p 64- 80. The first document dates from 1578 , that is before the abjuration of the king of Spain, and is an agreement made between the Duke of Anjou and the States General. This dealt with military aid and the costs thereof and offered Anjou the title of protector. The *Articulenen Conditien, waarop*

were cut short by the assassination of the latter in 1584. Offers to the King of France, Henri III and Queen Elisabeth I also remained without success¹¹⁸ and the regents succeeded in retaining their power.

After the departure of the English regent, Leicester, the Seven Provinces had run out of options and were forced to make their own way. The States General assumed the sovereignty and under the leadership of the secretary of this body, Oldenbarnevelt¹¹⁹, and Prince Maurits, the governor of Holland and Zeeland and the supreme commander and admiral of the armed forces,¹²⁰ the new republic established herself as a European power. *De facto* recognition in 1596 by France and England,¹²¹ by Spain in 1609¹²² was followed by *de jure* recognition only in 1648 at the Peace of Munster.¹²³ The strength of the republic was derived from the commercial enterprise of the seamen and merchants of Holland, who dominated the Baltic trade, the Mediterranean and established themselves in the Far East.¹²⁴

The bare minimum government, maximum wealth policy of the ruling municipal oligarchy in Holland and Zeeland, combined with religious tolerance, brought money and attracted excellence from elsewhere to the Dutch cities and universities. This proto-capitalism, which gave the ruling regents in Holland control over the finances and thus taxes, the privatisation of their most powerful military tool, the navy¹²⁵, their use of mercenary troops, and the privatisation of the colonies¹²⁶ made the seventeenth century the Golden Age of Holland. However on the downside, this system also carried the germs of corruption, internal political strife and political and economic stagnation.¹²⁷

7. Analysis of the Dutch state

Elliott¹²⁸ has drawn attention to the fact that around 1500 AD in Europe there were about 500 independent political units, which number had shrunk to about 25 by 1900 AD. History has

met den Hertoge van Anjou is gehandelt and the *Ariticulen voor den Landt- Raed* are relevant. Parker, Why ... eighty years, 59f.

¹¹⁸The sovereignty was offered to Queen Elisabeth I, who was ambivalent and sent the earl of Leicester as protector. G P B, vol 1, 1 Boeck, 1 Tit, 2 Deel, *Placaet vande Staten Generael, Roerende de delatie van het Gouvernement aen Leycester, 6 Feb 1586*; for further details G P B, vol, 1 Boeck, 1 Tit, 1 Deel, p 80 *Resolutie van de Heeren Staten Generael ... voor den Grave van Lycester, 10 Ian 1586*; p 81 *Accord tusschen de Grave van Lycester en de Heeren Staten Generael*; p 82 *Commissie ... aen den Grave van Lycester*; pp 81- 87; p 87, *Acte van Resignatie van 't Gouvernement ... by den Grave van Lycester, 17 Dec 1587*; see also G P B, vol 3 p 35. Kossmann/ Mellink, *passim*.

¹¹⁹Romein, *Lage landen*, 231 mentions that Oldenbarnevelt became in 1586 the advocate of Holland and began to acquire the power in the republic. Romein, *Erflaters*, 157-183. Oldenbarnevelt became the pensionary (secretary and legal adviser) of Rotterdam in 1576. In this position he was the head of the Rotterdam representatives in the States of Holland. <https://www.britannica.com/biography/Johan-van-Oldenbarnevelt>.

¹²⁰G P B, vol 4, 1 Boeck, 1 Tit, *Resolutie, waer by syne Excellence den Prince Maurits van Nassau het Gouvernement als Stadthouder werdt gegeven, den 6 Februari 1587*.

¹²¹When the United Provinces joined the Triple Alliance with France and England in the war against Spain. Treatise of alliance between England, France and the United Netherlands, concluded at Greenwich in 1596.

¹²²Parker, Why eighty years, 64ff.

¹²³*Id*, 66-72.

¹²⁴E H Kossmann, The Dutch republic in the eighteenth century, in *The Dutch republic in the eighteenth century Decline, Enlightenment, and Revolution*, Margaret C Jacob and Wijnand W Mijnhardt (eds), Cornell University Press 1992, 19- 31; <https://eh.net/encyclopedia/the-dutch-economy-in-the-golden-age-16th-17th-centuries/>

¹²⁵Romein, *Erflaters* Michiel Adriaenz de Ruyter, 349-371.

¹²⁶Philip Thomas, Colonial policy of the Dutch republic, *Iura & Legal Systems*, 2015 B(7), 92-102.

¹²⁷For example the loss of naval supremacy, Romein, *Erflaters* Michiel Adriaenz de Ruyter, 349-371 ; the loss); B (of Brasil and Angola; Parker, Why ... eighty years, 65-70.

¹²⁸Elliott, *Past and Present*, 1992 137, 48-71.

been interpreted from the belief that unified nation states were the desired outcome and followed this process with admiration. He refers to Koenigsberger's thesis¹²⁹ that at the beginning most states were composite states. Elliott analyses various of these states and draws attention to pressures placed on the nation state by suppressed nationalities and regional and local identities. He offered the composite state as alternative to answer to multiple contemporary demands, which already resonated in the Low Countries, and identified war and economic depression as the prime motive for centralisation of power. This explains the policies of Charles the Bold, Charles V and his son Philip the second.

In consequence, it does not surprise that in older historiography it was held that the structure of the Dutch state represented urban and provincial parochialism. A more modern, more positive evaluation would focus on the fact that the variety of towns, regions and provinces retained their own identities. Anchored in their medieval past, the Dutch had successfully rebelled against homogenising modern times and the resulting state was a sharp contrast to the centralised autocratic monarchies in France and Spain. It would, however, be incorrect to view the Dutch as a democracy, despite the horizontal structure of the institutions.

The Treaty of Utrecht of 1579 created an alliance between seven provinces binding them to act as a single body in matters of war and peace; however, in all other matters the right to self-government of each province was guaranteed. Although often described as a constitutional document, the text makes clear that this was rather an international treaty than a constitution. To use an anachronism, this treaty was rather NATO than EU. The parties are described as allies and undertake to assist and defend each other against foreign aggression. To this end they agree to certain indirect taxes to carry the costs, to register all persons between 18 and 60 years of age and unanimity between the signatories.¹³⁰ Attempts to replace the sovereign with the Duke of Anjou were scuppered by the refusal of Holland and Zeeland. After the English failure the States-General decided to exercise the sovereign power, which was endorsed by a resolution of the same body in 1590 declaring that the States-General was the sovereign institution with no overlord except the deputies of the provincial States.¹³¹

This meant that the major towns remained small city states ruled by magistrates chosen from the ruling class, the regents. The voting towns had the right to send representatives to the Provincial States, which deputations were not allowed to depart from their instructions. Deputies from the seven Provincial assemblies formed the States-General and these

¹²⁹ H G Koenigsberger, *Dominium Regala or Dominium Politicum et Regale*, in *Politicians and Virtuosi: Essays in Early Modern History*, London, 1986.

¹³⁰ Although often described as a constitutional document, the text makes clear that this was rather North Atlantic Treaty Organisation (NATO) than European Union (EU). The parties are described as allies and undertake to assist and defend each other against foreign aggression. To this end they agree to certain indirect taxes to carry the costs, to register all persons between 18 and 60 years of age and require unanimity between the signatories.

¹³¹ The English regent Leicester and his supporters proposed the theory of the sovereignty of the people in an exposition to the States-General by the English member of the Council of State, Wilkes; The States of Holland replied with the *Korte Vertooninge* by the pensionary of Gouda, Francken, who argued that the sovereignty had rested with the States from times immemorial. This remained the ruling paradigm during the republic; Romein, *Erflaters*, 166. E H Kossman, A F Mellink, *Texts concerning the revolt of the Netherlands*, Thomas Wilkes' Remonstrance to the States General and the States of Holland, March 1587 at https://www.dbnl.org/tekst/koss002text01_01/koss002text01_01_0067.php; <https://www.historyofparliamentonline.org/volume/1558-1603/member/wilkes-thomas-1598>; Romein, *Erflaters*, 166; G P B, vol 1, 1 Boeck, 1 Tit, 1 Deel, *Corte Vertooninge van het recht*.

representatives had to refer back to their provincial assemblies before the States-General made a decision.

Kossmann¹³² identified the absence of a strong central government as a defect, but admitted that the Dutch model allowed for much better municipal and local government. As the result of the autonomy given to provinces and towns, these were the centres of authority in the Dutch state and provided efficient provincial and local government and jurisdiction which made for a well ordered society. Furthermore, the vagueness of the political system provided flexibility, which steered Dutch society through internal political crises without serious troubles.

This zeal for provincial and municipal autonomy remained one of the principal characteristics of the Dutch state, which is shown clearly in the variety of jurisdictions.

7.1 Courts

The Burgundian and Hapsburg endeavours to harmonise if not unify the law within the different provinces were undone during the republic. When as the result of the abjuration of Philip II, the Great Council of Mechelen fell away as the court of appeal, the province of Holland created the *Hoge Raad* as a court of appeal and revision in 1582.¹³³ In 1587, Zeeland accepted the jurisdiction of this court and eventually became entitled to appoint three of its ten judges.¹³⁴

The Hoge Raad also acted as court of first instance for maritime matters, in the event that these should fall outside the jurisdiction of the five colleges of admiralty.¹³⁵ It remains unclear whether the creation of the Hoge Raad in 1582 was meant to provide a supreme court of appeal for all provinces, but the effect was installation of a second court of appeal¹³⁶ in Holland and Zeeland, which made the legal process more costly and slow. Also the numerous obstacles to

¹³² Kossmann, *The Dutch republic in the eighteenth century*, 1992, 19- 31.

¹³³ G P B, vol 2, 5 Boeck, 2 Tit, 4 Deel, 1. *Ordonnantie ende Instructie vanden Hooge Raadt van Appel in Hollandt, In den date den lesten Mey 1582*; de Monte ver Loren- Spruit, *Hoofdlijnen*, 244, mention that this “Instructie” was based on the instruction of the Council of Mechelen of 1559. L van Poelgeest, *De raadsheren van de Hoge Raad van Holland, Zeeland en West-Friesland in de achttiende eeuw, Bijdragen en Mededelingen betreffende de Geschiedenis der Nederlanden/Low Countries Historical Review Review*, 1988 103, 20–51, at 22. In Holland the judges were appointed by the provincial states from a list of the candidates nominated by the court itself. In Zeeland a rotating system applied and Goes, Tholen or Vlissingen appointed the vacancies in the *Hoge Raad*. In practice, this resulted in the selling of the Zeeland positions.

¹³⁴ Philip Thomas, *Legal fragmentation in the Dutch republic during the seventeenth and eighteenth centuries*, in *Authorities in early modern law courts*, Guido Rossi (ed), Edinburgh, 2021, 204ff. In Holland the judges were appointed by the provincial states from a list of the candidates nominated by the court itself. A Resolution of the State of Zeeland of 1708, the *instrumentum pacis*, delegated the appointment to the six cities of Zeeland. All judges had studied law and nearly two thirds held doctorates from Leiden. All judges had previously practised as advocates, held office in municipalities or been members of a city council; Van Poelgeest, *De raadsheren van de Hoge Raad*, 20-51.

¹³⁵ G P B, vol 2, 5 Boeck, 2 Tit, 4 Deel, 1. ss 18–23; Punt, *Het vennootschapsrecht van Holland*, 7; H R Hahlo and E Kahn, *The South African Legal System and its Background*, Cape Town-Wynberg-Johannesburg 1973, 532, 542–543. The five “collegien van admiraliteit” were De Maze (Rotterdam), Amsterdam, Friesland (Dokkum from 1645 Harlingen), Zeeland (Middelburg), Noorderkwartier (Hoorn en Enkhuizen).

¹³⁶ The Hof van Holland was already the court of appeal for the province.

approach the *Hoge Raad*¹³⁷ don't indicate a desire to empower the judiciary in order to unify the law at the expense of the towns or provinces.¹³⁸

The courts of first instance remained the municipal courts and the colleges of bailiffs (*dijkgraven*) and the councils of *heemraden* in the countryside, and the case-load of the Hoge Raad remained limited.¹³⁹

7.2 Universities

In 1575 the rebellious Dutch established their own university, Leiden¹⁴⁰ to educate their future preachers, administrators and lawyers.¹⁴¹ By necessity the academic staff had received their qualifications elsewhere. Thus, the first professor of law at Leiden was Donellus,¹⁴² a French protestant who after his doctorate at Bourges fled after the St Bartholomew's day massacre to Geneva. He taught in Leiden from 1575-1587 when he had to move again on account of his political opinions relative to the regent Leicester. It is obvious that his knowledge of the law of Holland must have been limited if not non-existent. His successor, Everard van Bronkhorst was German educated and it is not surprising that Simon van Leeuwen, advocate in Leiden, secretary of Zoeterwoude, substitute clerk of the Hoge Raad and widely publishing author of manuals for legal practitioners, stated brazenly that he had learned nothing relevant in his law studies.¹⁴³ Van Leeuwen obviously had an artisanal approach to legal education, but clearly expressed the limited influence of Roman law in the legal practice of Holland.

More practical courses were gradually introduced in the legal curriculum. For example, Johannes Voet, whose *Commentarius ad Pandectas* enjoyed European recognition,¹⁴⁴ started a course of lectures at the university of Leiden on the basis on the *Introduction* of de Groot.¹⁴⁵ A century later the lectures of van der Keessel at the same university and on the same textbook

¹³⁷ A resolution of 1591 by the States of Holland made appeal in criminal cases virtually impossible. The courts also had to send complaints against cities to the municipal council first. Finally, a resolution of 1674 excluded jurisdiction in political affairs. G P B, vol 2, 5 Boeck, 2 Tit, 9 Deel, 1. *Resolutie bij welcken die vande Hoven verboden wort, geen provisie te verleenen tegen Crimineele Sententien der Steden. In date den 10 September 1591*; van Poelgeest, *De raadsheren van de Hoge Raad van Holland*, 47; G P B, vol 3, 3 Boeck, 1 Tit, 29, *Resolutie van de Staten van Hollandt ende West-Vrieslandt houdende dat de Hoven van Justitie haer geen saecken sullen aenmatigen de Policie betreffende, In date den twaelfden July 1674*; and 5 Boeck, 1 Tit, 45.

¹³⁸ Philip Thomas, *Fragmentation*, 202-221.

¹³⁹ *Ibid.*

¹⁴⁰ Kossman en Mellink, 21: The University Charter stated that the new institution was being founded by the only person legally entitled to do so, the sovereign, Philip II, whose stadholder William of Orange was merely acting on his behalf.

¹⁴¹ Leiden was soon followed by Franeker and in the next century by Harderwijk, Nijmegen and Utrecht.

¹⁴² <https://www.cambridge.org/core/books/abs/great-christian-jurists-in-french-history/hugues-doneau/0D38D91E268021836206BF17675D6E54>; Jean-Louis Thireau, Hugues Doneau et les fondements de la codification moderne, *Droits*, 1997 26, 81; Niels de Bruijn, *Commentarius on civil law*, in *The Formation and Transmission of Western Legal Culture: 150 Books that made the law in the age of printing*, S Dauchy, G Martyn, A Musson, H Pihlajamäki, A Wijffels (eds), Springer, 2016, 136-139.

¹⁴³ C H van Rhee, Van Leeuwen, *Abstract of the Roman-Dutch law*, in *The Formation and Transmission of Western Legal Culture*, 210-213.

¹⁴⁴ Philip J Thomas, Voet, *Commentary on the Pandects*, in *The Formation and Transmission of Western Legal Culture*, 239-242.

¹⁴⁵ Thomas, *Fragmentation*, 210, 210 n. 45.

bear testimony to the pertaining influence of municipal, regional and contemporary statutory law.¹⁴⁶

An interesting maverick was the Utrecht law professor Voorda, who published *Differentiae iuris Romani et Belgici*¹⁴⁷ and gave lectures¹⁴⁸ on the diversity of laws between the provinces and the towns and regions within them.

However, the Dutch humanist law professors developed law as a science. They placed Roman law in historical perspective, developed legal history as a valuable discipline, and by systematising and rationalising and criticising helped lay the foundations for codification and a section of modern Western legal science.¹⁴⁹

7.3 Legal practice

The eternal distinction between jurist and lawyers was deep in the Low Countries. Several coryphées within and without academia achieved international fame,¹⁵⁰ but the majority of lawyers were either self-employed or held positions in the administrations and occupied themselves with legislation and precedent.

Contemporary legislation was available in private collections, the most important of which was the Groot Placaet Boeck.¹⁵¹ This collection was limited to legislation applicable in Holland¹⁵² and Zeeland and within these provinces the municipal legislation was found in other collections. An avalanche of collections and “codes” of legislation in force in the other provinces, towns, and regions next to customary law was also used by practitioners.¹⁵³ This is

¹⁴⁶ *Id* 213f.

¹⁴⁷ *Differentiae iuris romani et Belgici secundum ordinem Digestorum strictim expositae, et auditorem caussa evulgatae*, Traiecti ad Rhenum 1745.

¹⁴⁸ These lectures have been published. In 1986 Paul van Warmelo and ML Hewett published the lectures and translation of his *Tractatus de statutis* and in 2005 his *Dictata ad Ius hodiernum* (text and translation) by ML Hewett was published. For the criticism of the Dutch contemporary van der Linden, Ph J Thomas, Book review of Voorda: *Tractatus de statutis* (A Treatise on statutes), *De Iure*, 1986 19 1, 189f; Also, ML Hewett, Voorda resurgens: An introduction to Jacobus Voorda and his unique lectures on the *Ius Hodiernum* at the University of Utrecht, 1755-1760, *Fundamina* 2003 9, 103-113.

¹⁴⁹ Ph J Thomas, A theoretical foundation for juridical humanism, *Fundamina* 1996 2 1, 57-64.

¹⁵⁰ For example Johannes Voet (supra n140) and Vinnius; see Laura Beck Varela, Vinnius, Commentary on the Institutes, in *The Formation and Transmission of Western Legal Culture*, 197-200. Also de Groot and van Bijnkershoek; Alain Wijffels, Grotius, On the law of war and peace, in *The Formation and Transmission of Western Legal Culture*, 173-177; Kinji Akashi, Bijnkershoek, Dissertation on the dominion of the sea, in *The Formation and Transmission of Western Legal Culture*, 248-250.

¹⁵¹ Groot Placaet-boeck vervattende de Placaten, Ordonnantien ende Edicten van de Staten Generael der Vereenigdhe Nederlanden ende Heeren Staten van Hollandt ende West-Vriesland mitsgaders van de Heeren Staten van Zeelandt, 9 vols and index, J. Cau, P. van Leeuwen, Scheltus (J, P and I) Lulius and van der Linden, Amsterdam, 1658-1796.

¹⁵² Also, Hollandts Placcaet-boeck: begrijpende meest alle de voornaemste placaten, ordonnantien ende octroyen / Uytgegeeven by de Edd. Groot-mogende Heeren Staten van Hollandt ende West-Vrieslandt, Jan Janssen 1645.

¹⁵³ For example, Groot Gelders Placaet-boeck inhoudende de placaten ende ordonnantien, soo by wylen Keyser Kaerle en Coninck Philips als Hertogen van Gelre ende Graven van Zutphen, als by de Edele Moogende Heeren Staeten des Furstendoms Gelre en Graeffschaps Zutphen, sedert den jaere 1543 tot den jaere 1700 uytgegeeven : als mede de principaelste resolutien raekende saecken van politie en justitie by de selve Heeren Staeten sedert den jaere 1577 tot den jaere 1700 successivelyck genomen, en voorts sodanige praeliminaire punten als by resolutien van Welgemelte Heeren Staeten den 19. Martti en 14. Junii 1699 genomen, is vast gestelt ende goet gevonden, alles door ordre van Hooghgemelte Heeren Staeten by-een versamelt, in twee deelen verdeelt, en uytgegeeven, W

not the place to list all remaining written sources¹⁵⁴, which were supplemented by private collections of decisions and a multitude of collected legal opinions.¹⁵⁵

All these signs of legal pluralism were expressions of continued resistance against the new centralised powerful modern state of which Roman law was seen as a tool.

7.4 Roman Dutch law, legal coryphées and legal reality

It is trite that the United States of the Netherlands produced several prominent jurists whose fame spread outside the republic and sometimes lingered. Hugo de Groot, Cornelis van Bynkershoek, Johannes Voet and Vinnius are names that remain. However, it should be kept in mind that in the case of de Groot and van Bynkershoek their contribution on international law was responsible for the acclaim, while the other Dutch jurists known outside the republic were read on account of their work on Roman law. It is true that Voet and his colleagues sometimes referred to more modern law, but these references were often to the European *ius commune*. Since the Dutch revolt was a reaction against the modern age, the modern state and the concomitant harmonisation or unification of law, it hardly stands to reason that practising lawyers in towns and provinces would consult the *usus modernus pandectarum* for everyday legal problems in their towns or counties. Instead they consulted the works such as *Costumen, Keuren ende Ordonnantien van het baljuschap ende lande van Rijnland*¹⁵⁶ from the prolific pen of Simon van Leeuwen.

8. Conclusion

It is ironic that the term ‘Rooms-Hollands Regt’ coined by the fecund pen of the prolific van Leeuwen took root in the second life of the jurisprudence of Holland, which took place in the nineteenth and twentieth centuries in South Africa, where it became Roman Dutch law or Romeins-Hollandse Reg.

This paper has sketched the background and causes of the Dutch rebellion and proposes that since the reception of Roman law was a tool *par excellence* in the process of modernisation, the reception in the Dutch republic was by stealth. The rebellion instigated by the nobility on account of inquisition and transgression of the privileges with the objective to restore the *status quo* of the Great Privilege of 1477 was a failure resulting in death, bankruptcy and exile. However, the baton was picked up by a coalition of hardline Calvinists and merchants, who gradually created their own vision of the past and present. The Groot Placaet Boeck shows that the powers that ruled the States General, the wealthy Calvinist merchants and entrepreneurs in the towns of Holland never intended to cede their power to another “tyrant”, be it the Duke of Anjou, the Prince of Orange or the British monarch.

In consequence, the Dutch economic miracle of the seventeenth century flourished in a loose federation of provinces and cities within these regions. The rejection of the modern state included resistance to Roman law. Thus, Hugo de Groot, the founding father of the Dutch legal system, titled his textbook *Introduction to the jurisprudence of Holland*. Although his didactic organisation followed the archetype system represented by Gaius, his choice of language and

van Loon, Nijmegen 1701. For further information S.J. Fockema Andraea, *Overzicht van Oud-Nederlandsche Rechtsbronnen* (1923), *passim*.

¹⁵⁴ Fockema Andraea, *passim*; Thomas, Fragmentation, 215, 215 n70.

¹⁵⁵ Thomas, Fragmentation, 215ff.

¹⁵⁶ Leyden-Rotterdam, 1667.

the content show the importance of the municipal and regional laws and accentuate the subsidiarity of Roman law.¹⁵⁷

It is understandable that legal historical research has focused on the decisions of the higher courts and the academic output of the law professors, but it should be acknowledged that these sources do not depict grass root reality of the law in Holland. The gap between international acclaim and everyday bread and butter legal practice was as van Leeuwen indicated, enormous.

A salient aspect of the Dutch federation was that sovereignty was never clearly defined nor was it officially decided whether it resided with the individual States, with the States-General or with the House of Orange.¹⁵⁸ The bond which united the provinces, towns and citizens was respect for their strong regional and local identities, which opposed the unbridled power of the state as embodied by the absolute monarch in all aspects of life, political, religious and economic. This individualism explains the proto-capitalistic economy of the Dutch state, which did not derive from economic theory, but from a *laissez-faire* approach promoting the self-interest of an oligarchy representing commercial wealth.

Finally, it should be noted that a gradual shift in appreciation in respect of the Dutch republic may be observed. Over a century ago Pirenne wrote dismissively about the parochialism of the Dutch Provinces and stated that centralisation and modernisation were widely supported in the Low Countries as this promoted the economy. He admitted that the United States of the Netherlands became a world power, both economically and politically during the seventeenth century; but failed to explain the Dutch economic miracle. The same applies to Kossmann, who sought to explain why the Dutch had lost this position. Mentioning the absence of a strong central government, he admitted that the Dutch model allowed for much better municipal and local government and in consequence a well ordered local society, while the vagueness of the political system provided flexibility. In conclusion, Elliott's discussion of the composite monarchies leads to the conclusion that the United States of the Netherlands were the perfect composite state without monarch, thus safeguarding identity and autonomy of social, political and economic composition.

Abstract

The term Roman-Dutch law was first used by the Dutch jurist Simon van Leeuwen, but was not current in his time or province. The nomenclature was revived after the annexation of Natalia by the British empire in 1845 and became associated with the South African legal system during the twentieth century. This paper explores why the terminology "Roman-Dutch" is not appropriate to the jurisprudence of the Dutch republic. This republic owed her existence to the resistance of the provinces in the Low Countries, to the new age and new republic emerging from the Middle Ages, which the Hapsburg monarchy attempted to introduce in these regions. The Dutch aristocracy, the wealthy urban bourgeoisie of Holland as well as the working classes clung to the medieval *status quo* in terms of which they continued to govern

¹⁵⁷ See however his opinion in *Hollandsche Consultatien*, where he did not hesitate to change this order to better his client's chances; Philip J Thomas, Roman-Dutch Opinion Practice as a Source of Law, *THRHR* 2006 69 4, 613-621.

¹⁵⁸ Cf Kossmann/Mellink, 27-32, 35-40, 45-47.

their prosperous towns and provinces retaining their identities. This resistance gave birth to an innovative paradigm of constitutional law, but continued the medieval legal pluralism. Both were reactions against the constitutional theories derived from Roman law by the absolute monarchies of the developing national states and the concomitant drive to legal unification on the basis of Roman law. In consequence, the jurisprudence of Holland rowed upstream against the tide of the times, which can be deduced from the academic lectures delivered at the university of Leiden by Dionysius van der Keessel on the eve of the incorporation of the Dutch state into the French empire of Napoleon. This paper attempts to establish the links and conflicts between the various forces in politics and socio-economics at the fault zones between communitarianism and individualism, parochialism and globalisation *avant la lettre* and unification against pluralism.

Keywords: Dutch rebellion, Roman law, feudalism, privileges, taxation, sovereignty.

Bibliography

Akashi, Kinji, Bijmkerhoek, *Dissertation on the dominion of the sea*, in *The Formation and Transmission of Western Legal Culture: 150 Books that made the law in the age of printing*, S Dauchy, G Martyn, A Musson, H Pihlajamäki, A Wijffels (eds), Springer, 2016, 248-250.

Beck Varela, Laura, Vinnius, *Commentary on the Institutes*, in *The Formation and Transmission of Western Legal Culture: 150 Books that made the law in the age of printing*, S Dauchy, G Martyn, A Musson, H Pihlajamäki, A Wijffels (eds), Springer, 2016, 197-200;

De Bruijn, Niels, *Commentarius on civil law*, in *The Formation and Transmission of Western Legal Culture: 150 Books that made the law in the age of printing*, S Dauchy, G Martyn, A Musson, H Pihlajamäki, A Wijffels (eds), Springer, 2016, 136-139.

De Iongh, Jane, *Regentessen der Nederlanden: De Hertogin, Margaretha van Oostenrijk, Hertogin van Savoie 1480–1530; De Koningin, Maria van Hongarije, landvoogdes der Nederlanden 1505–1558; Madama, Margaretha van Oostenrijk, Hertogin van Parma en Piacenza 1522–1586*, 3 vols, reprint, Amsterdam: Querido, 1981;

De Monté Ver Loren, J Ph, Spruit, J E, *Hoofdlijnen uit de ontwikkeling der rechetrijke organisatie in de noordelijke Nederlanden to de Bataafse omwenteling*, Deventer, Kluwer, 1982 ;

Gerbenzon , P/Algra, NE, *Voortgangh des rechttes*, Groningen, Tjeenk Willink, 1972;

Groot Placaet-boeck vervattende de Placaten, Ordonnantien ende Edicten van de Staten Generael der Vereenigdhe Nederlanden ende Heeren Staten van Hollandt ende West-Vriesland mitsgaders van de Heeren Staten van Zeelandt, (hereinafter, G P B), 9 vols and index, C Cau, S van Leeuwen, Scheltus (J, P and I), D Lulius and J van der Linden, Amsterdam: Johannes Allart, 1658–1796;

Haemers, Jelle, *De strijd om het regentschap over Filips de Schone. Opstand, facties en geweld in Brugge, Gent en Ieper (1482-1488)*, Historische Monografieën Vlaanderen 2, Gent 2014;

Hewett, Margaret, Voorda resurgens: An introduction to Jacobus Voorda and his unique lectures on the Ius Hodiernum at the University of Utrecht, 1755-1760, *Fundamina* 2003 9, 103-113;

Keverling Buisman, F, Hilversum 1993, *Verdrag en Tractaat van Venlo Herdenkingsbundel 1543-1993*;

Kossmann, E H, *The Dutch republic in the eighteenth century*, in *The Dutch republic in the eighteenth century Decline, Enlightenment, and Revolution*, Margaret C Jacob and Wijnand W Mijnhardt (eds), Cornell University Press 1992, 19- 31;

Kossmann, E H en Mellink, A F, *Texts concerning the revolt of the Netherlands*, Cambridge University Press, Cambridge, 1974, https://www.dbnl.org/tekst/koss002text01_01/koss002text01_01_0071.php;

Naismith, Rory, *The social significance of monetization in the early middle ages*, *Past & Present* 2014 223 1, 3-39;

Parker G, *Why Did the Dutch Revolt Last Eighty Years?*, *Transactions of the Royal Historical Society*, 1976 26, 53-72;

Parker, Geoffrey, *The Dutch revolt*, Penguin Books 1979;

Pirenne, Henri, *The formation and constitution of the Burgundian state*, *American Historical Review* 1909 (14 3), 477-502;

Romein, Jan & Annie, *The lage landen bij de zee Een geschiedenis van het Nederlandse volk*, Amsterdam, 1979, Hoofdstuk 5, 8, 10, 11, 12 and 13, 113- 132, 182-200, 219- 307;

Romein, Jan & Annie, *Erflaters van onze beschaving Nederlandse gestalten uit zes eeuwen*, Amsterdam, 1979, Filips van Leiden, 13- 33, Desiderius Erasmus, 79- 105, Willem van Oranje, 105-131, Filips van Marnix, 131-157, Johan van Oldenbarnevelt, 157-183, Huig de Groot, 231-257, Jan Pietersz. Coen, 257- 285, Michiel Adriaensz. de Ruyter, 349- 371, Johan de Witt, 371- 397, Willem de Eerste, 619-649;

Soly, Hugo, 1549 : *A year of grace for emperor Charles V and his subjects in the Low Countries*, in *European Festival Studies: 1450-1700, Charles V, Prince Philip, and the politics of succession*, Turnhout 2020, 47-61;

Tracy, James D. *Holland Under Habsburg Rule, 1506-1566: The Formation of a Body Politic*. Berkeley: University of California Press, 1990, <http://ark.cdlib.org/ark:/13030/ft1779n76h>;

Stein, Robert, *Magnanimous Dukes and Rising States: the Unification of the Burgundian Netherlands, 1380-1480*, Oxford University Press, 2017;

Thireau, J L, *Hugues Doneau et les fondamnets de la codification moderne*, *Droits*, 1997 26, 81 ;

Thomas, Ph J, Voorda: *Tractatus de statutis* (Book review), *De Iure*, 1986 19 1, 189f;

Thomas, Ph J, *A theoretical foundation for juridical humanism*, *Fundamina* 1996 2 1, 53-64;

Thomas, Philip, *Piracy, privateering and the United States of the Netherlands*, RIDA 2003, 361-381;

Thomas, Philip J, *Roman-Dutch Opinion Practice as a Source of Law*, *Tydskrif vir Hedendaagse Romeins-Hollandse Reg (THRHR, Journal for Contemporary Roman-Dutch Law)* 2006 69 4, 613-621;

Thomas, Philip, *The standpoint determines the view: Jacques Barzun's theory of aspect*, in *New Frontiers. Law and Society in the Roman world*, P J du Plessis (ed), Edinburgh 2013, 227-242;

Thomas, Philip, *Colonial policy of the Dutch republic*, *Iura & Legal Systems*, 2015 B(7), 92-102;

Thomas, Philip J, *Voet Commentary on the Pandects*, in *The Formation and Transmission of Western Legal Culture: 150 Books that made the law in the age of printing*, S Dauchy, G Martyn, A Musson, H Pihlajamäki, A Wijffels (eds), Springer, 2016, 239-242.

Thomas, Philip, *Legal fragmentation in the Dutch republic during the seventeenth and eighteenth centuries*, in *Authorities in early modern law courts*, Guido Rossi (ed), Edinburgh, 2021, 202-221;

Van der Heijden, E J J - Hermesdorf, B H D, *Aantekeningen bij de geschiedenis van het oude vaderlandse recht*, Nijmegen- Utrecht, 1968 ;

Van Poelgeest, L, *De raadsheren van de Hoge Raad van Holland, Zeeland en West-Friesland in the achttiende eeuw*, *Bijdragen en Mededelingen betreffende de geschiedenis der Nederlanden/Low countries Historical Review*, 1988, 103, 20-51;

Van Rhee, C H, Van Leeuwen, abstract of the Roman-Dutch law, in *The Formation and Transmission of Western Legal Culture: 150 Books that made the law in the age of printing*, S Dauchy, G Martyn, A Musson, H Pihlajamäki, A Wijffels, (eds), Springer, 2016, 210-213;

Waite, G K, *The Anabaptists movement in Amsterdam and the Netherlands, 1531-1535: An initial investigation into its genesis and social dynamics*, *The Sixteenth Century Journal*, 1987 (18 2), <https://www.jstor.org/stable/2541180>;

Wijffels, Alain, Grotius, *On the law of war and peace*, in *The Formation and Transmission of Western Legal Culture: 150 Books that made the law in the age of printing*, S Dauchy, G Martyn, A Musson, H Pihlajamäki, A Wijffels (eds), Springer, 2016, 173-177.