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The New Netherland Legal System
and the Law of Twenty-First
Century New York

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The United States takes great pride in its tradition of freedoms and rights, stemming back to the Bill of Rights, adopted shortly after our founding. New York State also has a proud tradition of rights granted to its citizens. New York City's continuing commitment to diversity has made for a history where tolerance and freedom were always important issues. Indeed, these rights and privileges have a history that precedes the beginning of the United States or even of New York as we know it. Even in the earliest days of Dutch rule when the colony of New Netherlands had its capital in the city of New Amsterdam on Manhattan Island, the issues of freedom and equality for women, religious tolerance, and the general rights of citizens to participate in their government were tested and debated. By tracing the developments in these major areas, we can learn to better appreciate our own freedoms and rights.

Women's rights did not become a major issue in the United States until the early twentieth century. For example, President Woodrow Wilson did not urge the Congress to pass the 19th Amendment, which granted the franchise to women, until 1920. But during the period of Dutch colonialism, women had a greater number of rights than those granted under English law. In New Netherlands, the level of women's education and literacy was high. Women were encouraged to be active members of the society, to work businesses and own property (A Legal History of New Netherland [hereinafter Legal History], 5). Their rights to hold property were upheld by laws governing both marriages and inheritances. Under the Roman-Dutch law that was in effect in Holland at this time, women had the right to choose between marrying a man, *manus* or *usus*. The *manus* marriage made a woman "subject to her husband," whereas a *usus* marriage allowed her to have "substantial legal independence from her husband" (Mays, 229). Women in *usus* marriages were able to own property in their own names, and they were also allowed to inherit property from their husbands. As a result of the marriage and inheritance laws

in the Dutch colonies, women often became business owners and played a substantial role in the society and its economy.

Women under English rule, on the other hand, did not have any rights. The English *femme couvert* law allowed only for marriages of the *manus* type mentioned above, so women were not able to own businesses or to inherit from their husbands. This, and similar laws, removed women from the economy of the society and prevented them from having any rights or autonomy (Mays, 295). This system held true in English-governed Long Island, so at the same time as women in New Amsterdam could do just about everything except hold public office, women in Long Island could not (Legal History, 5-6). The differences in the rights granted to women caused tension when the English took over New Amsterdam from the Dutch. The English did say that they would uphold the rights of women business owners (Mays, 230). However, eventually the English laws did come into play. Ironically, the Dutch laws more closely mirror today's laws concerning the rights of women than the English laws that formed the basis of the New York and United States Constitutions.

Religious freedom was also a cornerstone of Dutch law. The Netherlands was known worldwide for its tolerance: "According to Dutch law, you could not be harassed because of your religious beliefs" (Shorto, 9). However, the Dutch governor Pieter Stuyvesant was one of those Dutch who did not believe in religious freedom or tolerance. Since only the Dutch Reformed Church, a Protestant church, was officially allowed in New Netherlands, Stuyvesant persecuted anyone who tried to practice a different religion. Although his superiors in the Netherlands often overruled him, Stuyvesant wanted to make sure only the Reform religion was practiced (Legal History, 17-18). As a result, early on, citizens of New Netherlands did not experience the religious freedom so common back in Holland.

Stuyvesant's first major battle came with a group of Jews who landed in New Amsterdam from Brazil and whom he tried (unsuccessfully) to force out (Shorto, 9). However, his biggest

fight was with many English immigrants, especially Lutherans and Quakers, whose practice of Christianity he attempted to ban. These actions led to the writing of the all-important Flushing Remonstrance (Legal History, 18-19).

The Flushing Remonstrance was an open letter addressed to Pieter Stuyvesant, written and signed in Vissingen, an area which is now known as Flushing, Queens. The Remonstrance called upon "the law of love, peace and liberty" and stated that its authors "desire . . . not to judge least we be judged, neither to condemn least we be condemned, but rather let every man stand or fall to his own Master." The open-minded tolerance of the document was extraordinary, asking Stuyvesant to allow the free public and private practice of any religion. Although these principles did defend English colonists living under Dutch rule, the philosophy behind the Remonstrance was definitely Dutch in nature, calling upon the ideals recognized in the Netherlands, and certainly not held up in Britain, where religious intolerance was helping to create the massive colonization of North America (Shorto, 10). As a result, the Dutch back in Europe sided with the writers of the Remonstrance and against Stuyvesant, forcing him to take up a formal policy of religious tolerance in New Netherlands. Many believe that this episode was a major inspiration both for Article 1, Section 3 of the New York Constitution, which guarantees religious freedom, and of course, for the First Amendment to the United States Constitution, guaranteeing the free exercise of, and prohibiting the establishment of, any religion (Legal History, 10).

In addition to these important freedoms, the Dutch colony of New Netherlands, and New Amsterdam in particular, played a major role in developing the representative government structure still in practice in New York and in the United States. At first, although Holland was a pioneer in representative democracy back in Europe, they gave "complete administrative and judicial power in New Netherlands" to the Dutch West India Company (Legal History, 3). To enforce this, the Company would call together councils based on which ships were in port at that

time, following the principle of the Dutch "collective decision making process" even if there was no actual representation of the citizens of New Amsterdam (Legal History, 4). As the colony grew, these councils alone could not handle all the legal and judicial issues that arose in the governing of a city and a territory. So, in 1626, Pieter Minuit was appointed Civil Director. Decisions would still have to be approved by the Company back in the Netherlands, but this new Civil Director governed the day-to-day legislative and judicial business in the colony. Minuit convened a civil council of five men who also served as judges. This body can be viewed as the oldest ancestor of the current New York City Council (Legal History, 6-7).

For the next few decades, the Company struggled with how to continue to enforce the absolute power it had been granted despite growing populations of non-Company citizens and judges convinced of their independent power. The position of *Scout Fiscal* was particularly difficult for the Company and the Dutch, because the Company created the position as an independent agent to uphold the law even over the Council or the Director (Legal History, 10-11). Civil Director William Kieft tried to reduce both the size and the power of the Council, in an effort to return to the Company more control over the laws of New Amsterdam, but Native American attacks forced him to actually expand the Council to eight. These "Eight Men" ended up turning against Kieft's authoritarian nature and encouraged the Dutch to replace him as Director and to thus give this Council greater power in the future (Legal History, 12).

Stuyvesant continued this Council, increasing its size to nine, and granting it authority over a broad range of issues both legislative and judicial in nature. The government of the Netherlands and the Dutch West India Company faced continual conflict with this Council. However, a compromise ensued which folded the Council into a "burgher government," providing for local power but allowing for control on larger issues back in Holland (Legal History, 14).

The English, of course, tried to undo the power of this new burgher government which was loyal neither to the King nor to Parliament. But even the Duke of York could not undo the power Stuyvesant assisted the Council to gain. As a result, the English made a change in the names, a move that was "merely altering the burgomaster into a mayor" in terms of the title (Daly, 26). This was the beginning of the proud tradition of the Mayor of New York City. Through this patchwork history, the Dutch and the English succeeded in establishing a City Council, a body that was not autonomous but also not forced to uphold the rules of the Company, and the position of Mayor, a leader who was also independent without being a rogue.

Thus, certain rights and privileges first recognized or developed in the Dutch colonial period survive to twenty-first century New York City. The rights of women to own property and to freely practice one's religion were recognized by the Dutch and actually resisted by English colonists as well as early Americans after the Revolution. New York City, and perhaps the United States, owes these ideals to the laws of the Dutch legal period. Also, the struggle to make a representative, democratic government with an executive branch (the mayor) and a legislative branch (the Council) began during this Dutch period. Although the specifics of these positions in those days did not survive, the spirit of representative democracy has blossomed and continues to flourish in New York City to this day.

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