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JOHN WITTE, JR.*

The Plight of Canon Law in the Early Dutch Republic

"[S]piritual or papal laws have acquired … the force of law in these provinces." Hugo Grotius 1631.1

"[P]apal … law per se has no more authority with us than the popes themselves, [yet] certain portions have come into general practice … and continue in validity." Ulric Huber 1686.2

This Article argues that the Roman Catholic canon law remained a vital part of Dutch legal life in the decades following the Protestant Reformation. Part I analyzes the relationship of canon law and civil law, and of church courts and civil courts, on the eve of the Dutch Reformation. It shows that canon law dominated the Netherlands, both through the vast spiritual and temporal jurisdiction exercised by the church courts and through the extensive penetration of canon law into the writings of the civil jurists and the statutes of the civil authorities. Part II describes the constitutional and theoretical changes in church-state relations born of the Dutch Reformation of c. 1566 - 1581. Part III shows that, despite the polemics of the early reformers, the canon law remained an integral part of the law of both the reformed church and the reformed state. The reformed church law, though much narrower in scope, emulated basic canon law forms. The reformed state law, though filled with bold revisions, readily incorporated canon law provisions.

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1 H. Grotius, Inleiding tot de Hollandsche Rechtsgeleertheyt, I. 2, 22 (1631; F. Dorrinig / H. F. W. D. Fischer / E. Meijers, ed. 1952). A translation and commentary of this work was prepared by R. W. Lee and published as The Jurisprudence of Holland by Hugo Grotius, vol. I: Text (1926; 1953); vol. II: Commentary (1936). I have used the 1952 edition in this article.

2 U. Huber, Heedenschappee Rechtsgeleertheyt, 300 elders, als in Frieslandt gebruikelyk, I. 2, 25 (1686; Z. Huber ed. 1742). A translation of the fifth edition of this work was prepared by Percival Gane and published as U. Huber: The Jurisprudence of my Time (1939). I have used the 1742 edition in this article.
I. Canon Law on the Eve of the Dutch Reformation

On the eve of the Protestant Reformation, canon law and canon lawyers played a prominent, even predominant, role in the legal life of the Netherlands — both within the Roman Catholic Church and within the imperial, provincial, municipal, and other civil polities that comprised the state.

1. Canon Law within the Church

Until the sweeping ecclesiastical reorganization of 1539, most of the Netherlands lay within the diocese of Utrecht, a suffragan seat of the archbishopric of Cologne. The diocese was divided into eight archdeaconries and some 1600 parishes and rural deaneries. It was occupied by several hundred cloisters, hospices, almshouses, schools, and other charities operated by the clergy. A large body of spiritual and secular clergy served in the bishopric, many trained in canon law and civil law at the University of Louvain or at one of the French, German, or Italian universities.

This ecclesiastical hierarchy claimed a vast “spiritual” jurisdiction. It claimed personal jurisdiction over secular and spiritual clergy, and members of their households; transient members of society, like pilgrims, students, and foreign merchants; personae miserabiles, like widows, orphans, and the poor; and Jews and Muslims, particularly when they brought actions against Christians. The church also claimed subject matter jurisdiction over disputes concerning doctrine, liturgy, and the sacraments; ecclesiastical property, patronage, and tithes; clerical ordination, appointment, and discipline; marriage, annulment, and custody; wills, testaments, and intestacy; oral promises, oaths, and pledges of faith; and such peccata majora as blasphemy, sacrilege, iconoclasm, sorcery, witchcraft, defamation, homosexuality, sodomy, prostitution, concubinage, adultery, fornication, bigamy, abortion, and infanticide. The Bishop of Utrecht and his archdeacons repented their claims to such personal and subject matter jurisdiction in numerous letters and synodal decrees.

Original jurisdiction over most such cases was vested in the consistory court of the archdeaconry, presided over by a provisory judge or, on occasion, the archdeacon himself. Through a variety of ad hoc arrangements, however, minor disputes often came to be adjudicated by rural deans, parish priests, or monastic superiors. Major disputes involving marriage, annulment, heresy, or felonies committed by or against clergy were generally litigated in the consistory court of the bishop, presided over by his principal official. Appellate jurisdiction over such cases usually lay first with the consistory court of the archdeacon, then with the court of audience of the bishop. Cases raising particularly serious or novel questions could be appealed to the court of the archbishop, and from there to the papal curia itself. Each of these courts applied the substantive and procedural canon law — both as adumbrated in papal decretals and conciliar decrees and as elaborated in the decrees of provincial and local synods, in the various concordats between clerical and political authorities, and in the rich body of canonist writings that circulated in the late medieval Netherlands.

The church courts in the diocese of Utrecht also claimed a concurrent temporal jurisdiction over disputes that fell within the competence of civil courts. Through prorogation provisions in contracts or treaties or prorogation agreements executed on the eve of trial, parties could mutually agree to litigate their civil disputes in a church court. Through removal procedures invoked unilaterally by one party, cases could be transferred from a civil court to a church court if the civil relief available was adjudged unfair or unfit. In such cases, too, the canon law was applied. According to some observers, the majority of civil cases in the late medieval Netherlands were litigated in church courts, for parties feared the incompetence and inconsistency of the civil tribunals.

3 Small portions of the seven northern provinces also fell within the dioceses of Liege, Cologne, and Munster. For the canon laws prescribing this ecclesiastical division, see J. Joosting / S. Muller, Bronnen voor de geschiedenis der kerelleijke rechtspraak in het bisdom Utrecht, 7 vols., vols. 1 - 2 (1906 - 1924). For discussion, see R. Fruit, Geschiedenis der staatsinstellingen in Nederland, 28ff. (1901; 1922).

4 Among earlier descriptions, see P. Zypaeus, Pontificium novum sive analytica postremi iuris ecclesiastici, II, 91 - 124 (1626); P. Gudelius, Commentarius de jure novissimo optima methodo accurato ac erudite conscriptus additis harum vicinarumque regionum moribus, VI (1620; 1656); P. Peckius, Commentarius ad regulas juris canonici (1660). Several documents are collected in Historie ofte beschryving van't utrechtsche bisdom, 3 vols. (1719; hereinafter Historie ofte beschryving). Among modern accounts, see S. J. Fockema Andreana, Kerelleijke rechtspraak in Nederland in de middeleeuwen (1902) [reprinted in id., Bijdragen tot de nederlandsche rechtsgeschiedenis, vol. 5, 79 - 127 (1914)]; J. Joosting, De kerelleijke rechtspraak in het bisdom Utrecht voor het Concilie van Trente, 30 Bijdragen Meded. Hist. Gen. 82 (1909).

5 See the collection in Joosting / Muller, at vol. 3.

6 For documents detailing this ecclesiastical procedure, see Joosting / Muller, at vols. 3 - 4 passim as well as the more anecdotal evidence in Historie ofte beschryving, at vol. 1, 120 - 121; vol. 2, 63 - 91, 135 - 145, 325 - 330, 450 - 463, 710 - 712, 734 - 746; vol. 3, 42 - 30, 411 - 415. For discussion of each archdeacon’s practice and procedure, see Fockema Andreana, at vol. 5, 79ff.

7 Ibid. On late medieval and early modern Dutch legal literature generally, see Wagner, Niederlande, in Handbuch der Quellen und Literatur der neueren europaischen Privatrechtsgeschichte, vol. 2, part 2, 1399 - 1430 (H. Coling ed. 1976). See also the Short-Title Catalogue of Books Printed in the Netherlands and Belgium and of Dutch and Flemish Books Printed in Other Countries From 1470 to 1600 (1965), which includes numerous canon law titles.

8 See, e.g. Historie ofte beschryving, at vol. 1, 120 (describing the “unusually large jurisdiction” of the archdeacons in the Bishopric of Utrecht); P. de Leyden, De eura rei publicae et sortes principantis, 237 (R. Fruit / P. Molhuysen eds. 1900) [arguing that, at least in the province of Zealand, “nearly the entire jurisdiction over civil affairs fell into the hands of the provisors”). For further discussion of Philip of Leyden and his experiences and acquaintance
The civil authorities that governed the Netherlands generally respected and protected the spiritual jurisdiction of the church courts – at least until the early sixteenth century. Several late medieval concordats between dukes and bishops, and between counts and archdeacons, confirmed the list of persons and subjects over which the church courts claimed authority, and guaranteed the clergy immunities from civil taxes, services, and criminal prosecution. These concordats also ensured the church of various forms of civil aid and accommodation. When the church condemned heretics or felons, the civil authorities were to execute them. When church courts encountered contumacious defendants or witnesses, the civil authorities were to punish them. When the clergy or property of the church needed protection, the civil authorities were to supply the troops. When ecclesiastical goods were stolen or misplaced, the civil authorities were to retrieve them.

These concordats did not, however, prevent civil authorities from governing matters at the edges of the church’s spiritual jurisdiction that required reform. The famous 1540 Perpetual Edict of Charles V, for example, after decrying the exploitation and deprivation of the youth, ordered that henceforth (1) all testaments, legacies, or donations inter vivos or mortis causa made by youths that benefited their tutors, curators, or administrators be declared null and void; and (2) all youths who wanted to marry should receive consent from their parents, on pain of later forfeiting their claim to marital property. Municipal authorities in Delft, Dordrecht, and Amsterdam passed several statutes in the late fifteenth and early sixteenth centuries to regulate the care of orphans, widows, and the poor by ecclesiastical charities and to restrict abuses by the paterfamilias of his wife and children. Such scattered instances of civil regulation, however, did not change the reality of a predominantly ecclesiastical authority over spiritual affairs.

Although they generally protected the spiritual jurisdiction of the church courts, the civil authorities generally protested the temporal jurisdiction of


See the collection of concordats in Joesting / Müller, at vol. 3, 45, 83; Groot plaetseboek, 11 vols., vol. 2, 1151, 1155 (C. Can et al. eds. 1658 - 1797) [hereinafter Groot plaetseboek]; J. van der Water, Het groot plaetseboek vervattende alle placaten der HH. Staten s’Land van Utrecht, 3 vols., vol. 2, 967 (1729 - 1733); A. Matthaeus, De jure gladii tractatus et de toparchis qui exerceant id in diocesis ultrajectina 82, 467 (1689).

Eeuwich Edict van Keyser Karel in date den 4 October 1540, Arts. 12, 17, reprinted in Groot plaetseboek, at vol. 1, 311,318 - 319.


These courts. Already in the early fifteenth century, provincial and municipal authorities took steps to truncate this jurisdiction. A 1429 statute of Duveland, for example, required all parties who sought to remove their cases to church courts to petition the local magistrate court (schepengerechtshof) and demonstrate that the civil remedy was unavailable or unfair. A 1544 statute of Breskens outlawed all prorogation contracts and invalidated all contracts in which prorogation clauses were included. The imperial authorities became equally churlish of the church’s secular jurisdiction and material wealth. In a series of sweeping edicts and orders issued in the 1520s and 1530s, for example, Charles V. required civil judges (1) to nullify all testaments and legacies that left real property to the church; (2) to disregard prorogation clauses and contracts that would transfer civil disputes to church courts; (3) to avoid application or enforcement of any papal rescript that had not been formally accepted and approved by the emperor; and (4) to assume jurisdiction over all actions that had not been specifically reserved to the ecclesiastical courts by concordat. In 1528, Charles formally divested the Bishop of Utrecht – though not the lower clergy – of his temporal jurisdiction. Thereafter, he sternly prohibited all ecclesiastics from censoring the judgments and judges of the civil courts. If the complaints of canonists Petrus Guidelius and Franciscus Zypraus are any indication, these imperial orders were rather rigorously enforced, despite the protests of the episcopacy.

2. Canon Law Within the State

The influence of the canon law was not confined to the church courts alone. By the eve of the Reformation, it had also become part of the general jus commune of the Netherlands and had penetrated the civil law both of the academy and of the courts. Several factors contributed to this broader secular influence of the canon law – the training in canon law required for both the doctor juris civilis and doctor juris utrimque, the widespread circulation of writings on canon law, the skillful popularization of canon law principles through catechetical and confessional writings, the ready employment of canonists as civil judges, councillors, notaries, advocates, and judicial clerks, and other factors. The secular appropriation and application of the canon law that
resulted contributed greatly to its survival in the post-Reformation Netherlands.

The influence of the canon law can be seen both in the opinions and treatises produced by civilian jurists and in the statutes promulgated by civil legislatures.

First, the opinions (consilia, advißen) of the learned civil jurists incorporated many provisions of canon law. Both private litigants and public authorities solicited such opinions not only to dispose of issues raised in civil litigation but also to shape new civil legislation. The jurists readily availed themselves of the canon law in drafting their opinions. Nicolas Everardus's famous Consilia sive responsa juris, for example, is filled with discussions of and citations to the canon law. In an opinion "concerning the incarceration of fugitives," for example, Everardus analyzed whether a defendant who had been arrested for "scandalous misbehaviour" and who subsequently escaped "by thievery" could be released from prison on suspended payment of bail. Everardus concluded that he could not. Though the general rule is that defendants so charged are released on a promise to pay bail, Everardus reasoned, the defendant had forfeited that right and admitted his guilt to the first offense by escaping. He must, therefore, remain in prison, notwithstanding the possible danger to himself, and the possible negative inferences that a judge might draw from such imprisonment. Everardus predicated his argument not only on Roman and Romanist sources but also on several decretals and the writings of Johannes de Imola, Angelus de Aretinus, and other canonists. Several of his other opinions cite to and quote from the great canonists and penitential writers, for example, Gratian, Hostiensius, Panormitanus, Joannes Andreae, Raymund de Peñafor. - as well as a host of lesser canonists. A similar use of the canon law is evident in the opinions of the Dutch jurist Henricus Kinschotius as well as distinguished foreign jurists like Ulrich Zasius, Viglius von Zuichem, and Matthaeus Wesembecke whose opinions commanded considerable authority in the Netherlands. The opinions of these civilians - together with the numerous opinions of the canonists - gave the canon law broad currency in Dutch civil courts and councils.

Second, the topical treatises of the learned civil jurists, which summarized and synthesized the law under a number of topics (topoi, loci), also make ready use of the canon law. Everardus's equally famous Loci argumentorum legales, for example, is replete with citations to and quotations from the canonists. In a topic "concerning contracts and quasi-contracts," for example, Everardus argued that a contract can be binding only where a party has freely consented to its terms and not been subject to duress, fraud, compulsion, or other involuntary means. He predicated his argument on a blend of Romanist sources, decretals, and the treatises of Johannes de Imola, Angelus de Aretinus, and other canonists. Other loci on discrete questions of contract, property, delict, crime, inheritance, and slavery likewise set out the canonists' opinions in considerable detail. Similarly, Cornelius Neostaditis's Observationes rerum judicatarum de pactis antenuptialibus adduces an array of canonists in support of his arguments, ranging from such eminent early authorities as Panormitanus and Hostensius to a contemporary canon law authority Guido Papa.

Third, some late medieval statutes promulgated by Dutch civil authorities repeated or reflected canon law provisions. Municipal statutes on oaths, for example, repeat canonist commonplaces. An early sixteenth century statute from Erkelens required that to be valid "the oath must have three characteristics, namely, truth, legality, and justice." The very same formula appears in Gratian's Decretum and in subsequent canonist and casuistic writings. A 1454 statute of Breda prohibited all "erroneous" oaths that failed to adhere to prescribed formulae, all "casual" oaths that were sworn in taverns, marketplaces, or gamehouses, and all "horrible" oaths that were sworn "not before our dear Lord," but before some other animate or inanimate object. These (and many other) prohibitions are sprinkled throughout earlier decretales. A similar reflection and repetition of canon law provisions, as B. H. D. Hermesdorf has ably and amply demonstrated, appears in civil statutes on the

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17 On Dutch consular practice, see Wagner, at 1417 - 1430; Wessels, at 241 - 246; R. Dekkers, Het humanisme en de rechtswetenschap in de Nederland 6 (1938).
18 N. Everardus, Consilia sive responsa juris, consilium 34 (1554). On Everardus's importance in Dutch legal history, see Apeldornis, at 42 - 58.
19 See, e. g., H. Kinschotius, Respensa sive consilia iuris item de rescriptis gratiae a su- tance in Dutch legal history, see Apeldornis, at 42 - 58.
20 Among consilia of the canonists, see, e. g., F. Zyppeus, Respensa de iure canonici praeterrimum postumismo (1645); F. Zyppeus, Consilium sive canonice peregrino ex iure novi-
II. The Reformation in the Netherlands

This traditional relationship of canon law and civil law, and of church courts and civil courts, was rent asunder by the violent upheaval of the seven northern provinces from c. 1566 to 1581. The upheaval was as much political as religious in motivation, as much a revolution against royal autocracy as a reformation against papal apostacy. It was a revolt against the bloody inquisition of the Duke of Alva and Philip II, King of Spain and Lord of the Netherlands, which had claimed the lives of some 100,000 Protestants in the previous few decades. It was a revolt against Philip II's repeal of charter privileges and imposition of severe taxes and other exactions on the cities and nobility. It was a revolt against the sweeping reorganization of the Catholic ecclesiastical polity in the Netherlands in 1559, and the widespread immorality, incompetence, and opulence of the Catholic clergy that followed. It was a revolt against Philip II's insistence that the decrees of the Council of Trent be published in his name rather than the pope's. The Dutch revolt thus brought together persons of wholly different political positions and religious persuasions. Eventually, Calvinist reformers took the lead and directed the revolt to their own political and religious ends.

1. The Institutional Reform

The reformers first cast off the Spanish king and his retinue. The early attempts of some of the Dutch nobles to negotiate a settlement with the emperor were repeatedly rebuffed. In 1579, therefore, the seven northern provinces of Holland, Zeeland, Gelderland, Utrecht, Overijssel, Friesland, and Groningen confederated themselves in the famous Union of Utrecht. The Union united the military and diplomatic efforts of the provinces, but preserved the political and legal autonomy of each province. In 1581, the United Provinces declared that "Philip the Second had forfeited his right of sovereignty over the said provinces." After a bloody war, independence from the empire was ultimately gained. The reformers then turned their energies to the pope and his clergy. For a brief time, the survival of the traditional Roman Catholic polity and with it the traditional canon law seemed likely, despite the violence of the revolt. The Pacification of Ghent (1576) prohibited "all attacks on the Roman Catholic religion and its exercise," restored to the prelates their "abbeys, dioceses, foundations, and residences," and made restitution to other ecclesiastics whose properties had been confiscated and destroyed. The Religious Peace of Antwerp (1578) further guaranteed the Catholic clergy a "traditional" spiritual jurisdiction over their parishioners and ordered the civil courts to enforce both the canon law impediments of affinity and consanguinity and the canon law regulations for observance of the Sabbath and other holy days. These guarantees were repeated in several municipal statutes - albeit on the condition that "the Roman Catholic clergy and consistory courts ... behave themselves ... in political matters, without interfering in any matters of [civil] jurisdiction or ... magisterial authority." This toleration of the Catholic religion and the canon law was short-lived. The Union of Utrecht had guaranteed each province independent authority and jurisdiction over the said provinces."
over religion and the church, insisting only that they preserve the freedom of private conscience. As they were drawn to Calvinism, the provincial authorities turned against Catholicism. Placards against public Catholic worship appeared in Zeeland and Holland in 1578, and within a decade, in Utrecht, Friesland, Gelderland, Overijssel, and Groningen. Sterner measures soon followed. Payment of annates, tithes, and other ecclesiastical taxes, prohibited. Catholic sanctuaries, parsonages, and administrative buildings were destroyed or confiscated for use by the new reformed congregations. Cloisters, hospices, and almshouses were converted into state-run charities and public schools. Clerics were stripped of their immunities from civil prosecution, services, and taxes. Several clerics were martyred, and most others fled or were banished to France and the Southern Netherlands. By the turn of the seventeenth century, the traditional Catholic episcopacy had been all but banished from the United Provinces. To be sure, strong populations of Catholic laity still remained in the Netherlands after the revolt, particularly in the cities of Middleburg, Haarlem, Utrecht, and Delft, where they commanded a substantial majority. These parishioners were served by a handful of priests and missionaries, who secretly celebrated the mass in houses and barns and baptized, confessed, and married those parishioners whom they could reach. But little of the traditional ecclesiastical government survived the revolt in the United Provinces.

2. The Ideological Reform

The reformers attacked not only the traditional forms and functions of ecclesiastical and political authority, but also the theory that supported them. Building on the work of John Calvin and other earlier reformers, a series of brilliant Dutch theologians and moralists – Guilielmus Apollonius, Jacobus Triglandus, Gisbertus Voetius, Antonius Walaeus, and many others – devised a new theory of church and state, of church law and civil law, that dominated Dutch ecclesiology and political theory until well into the eighteenth century. The reformers rejected the two swords theory that supported the rule of the papacy and the canon law in the Netherlands. For centuries, the Catholic Church had taught that the pope is the vicar of Christ in whom God has vested the authority of both the spiritual and the temporal swords. The pope and his clergy had used the spiritual sword to establish the canon law. They had delegated the temporal sword to civil authorities. Civil authorities were thus subject to clerical authorities. Civil law was limited by canon law. Civil jurisdiction was subordinate to ecclesiastical jurisdiction. This two swords theory was not confined to dusty medieval tracts. It was vigorously reasserted by Franciscus Zypeaus, Robert Bellarmine, Francisco Suarez, and other Catholic apologists whose writings enjoyed broad circulation and authority in the Netherlands.

The reformers started from the premise that church and state “are two separate and independent seats of godly power and authority in the world.” They are “not subordinate but coordinate to each other. One does not depend on the other. Both depend upon God.”

God has vested in the church the spiritual power of the Word, to preach the word, to administer the sacraments, to teach the young, argue. He has called ecclesiastical officials to be His “high priests” in the world, to care for the poor and needy. He has equipped each church with independent authority to devise its own polity (potestas guberna), to define its own doctrine (potestas circa dogmata), and to discipline its own members through the spiritual means of admonition, censure, and excommunication (potestas judicans seu disciplinaris). Such authority could be exercised only over members who voluntarily joined the church and only for the purpose of maintaining the “integrity” and “continuity” of the church. The downfall of the Catholic Church, the reformers believed, was that it had extended its authority well beyond its voluntary members, had employed coercive and exploitative means of enforcing its decrees, and had insisted that adherence to the laws and traditions of the church was requisite for salvation. The Catholic Church had

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39 Unie van Utrecht, Art. 13 (1570), reprinted in Klein plukkenboek, at 120. This Article authorized the provinces of Holland and Zeeland to deal with religion “according to their discretion” and the remaining provinces to follow the Religious Peace of Antwerp (1578) or to devise their own policy, which would require ratification by the confederation. See discussion in De Jong, at 157ff. and H. Rieven, The Low Countries in Early Modern Times, 73ff. (1972).


41 See generally, Jones, at 114ff.; J. van Breeck Caikoen, Onderzoek naar den rechtstoestand der geestelijke en kerkelijke goederen in Holland na de reformatie (1910); P. Ditchfield, The Church in the Netherlands, 260ff. (1892).


44 Apollonius, at vol. 2, 282ff.; see also Triglandus, at 258.
thereby "usurped the state's authority and law," "Judaized the Christian faith," and "tyrannized the Christian conscience."45

God has vested in the state the temporal power of the sword. He has called civil officials to be His "vice-regents" in the world, to represent and reflect His authority, to appropriate and apply His law.46 Each magistrate was, in Voetius's words, the "guardian and vindicator of both tables of the [Decalogue]."47 This rendered him responsible for governing both the relationships between man and God, based on the First Table of the Decalogue, and the multiple relationships among men, based on the Second Table. Thus the magistrate was to punish all idolatry, blasphemy, false swearing, witchcraft, alchemy, Sabbath-breaking, and other sins against God, based on the Four Commandments in the First Table. He was also to promulgate criminal, property, contract, family, corporate, commercial, and other laws based on the Six Commandments of the Second Table.48

This two powers theory of the reformers, though dominant, did not always receive unqualified acceptance in the Netherlands. One group of "erastian" reformers, while accepting this basic theory, argued for a greater state authority in ecclesiastical affairs. The First Table of the Decalogue, they argued, empowered the state not only to prohibit blasphemy, idolatry, and other offenses, but also to establish one religion and to participate actively in the government and operation of the established church. A second group of "theocratic" reformers, while accepting this basic theory, argued for a greater church authority in political affairs. The church, they argued, is uniquely qualified to interpret the requirements of the godly law which the state is required to implement. It should thus participate actively in both civil legislation and civil adjudication.49

Neither the erastian nor the theocratic position ultimately came to prevail in the Netherlands. The provincial authorities did not establish the reformed religion. The ecclesiastical authorities did not dominate provincial politics. Yet there are ample theocratic and erastian tendencies in evidence in the early

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47 Quoted in Conring, at 65. See also discussion in Nobbs, 10ff., 108ff.
48 See generally J. Uytenbogaert, Tractaet van't ampl ende authoriteyt eener hooger landschton, who was influential in the Netherlands, see Berman / Witte, The Transformation of Western Legal Philosophy in Lutheran Germany, 62 Southern California Law Review 1573, 1626 - 1632 (1989).
49 See generally J. Ytenbogers, Tractaet van't ampt ende authoriteyt eener hooger christelijker overseydt in kerckelycke saecken (1647); H. Grotius, De imperio summarum potestatum circa sacra (1647); N. Vedelius, De episcopatu Constantini Magni. ... (1661); G. Vossius, Dissertatio epistolica de jure magistratus in rebus ecclesiasticis (1669). See discussion in Nobbs, at 25ff.; Bohuure, at 12ff.
50 See generally De Jong, at 179ff.; Duke / Jones, Towards a Reformed Polity in Holland, 1572 - 1578, 89 Tijdschrift voor Geschiedenis 373 (1976); H. van Gelder, Gelemperde vrijheid (1972); Geyl, De protestantiserings van Noord-Nederland, 2 Leiding 113 (1930), who argue that, for the first few generations, the Dutch republic was too religiously and politically heterogeneous to make possible the establishment of one reformed religion. The Netherlands moved toward religious establishment in 1651, when the General Assembly resolved that "the states of the respective provinces ... declare that they shall maintain and preserve, each in their own lands, the true, christian reformed religion ... as it was established by the national synod held in the year 1619." Bukhuisten van den Brink, Documenta reformata, 2 vols., vol. 1, 487 (1960). Yet, even then, the strength of dissenting Protestant and Catholic groups and the fierce independence of provincial synods and assemblies stymied the efforts of those who sought to establish a single national reformed faith.
Each congregation was governed by a separate consistiory court (kerkraad; consistorie). The reformed consistiory courts were modelled not on their Catholic predecessors, but on those developed earlier by John à Lasco in East Friesland, John Calvin in Geneva, and Martin Micronius (with Lasco) in London. The multiple responsibilities of the consistiory were divided among the four offices of preacher, doctor, elder, and deacon that Calvin had defined. Laboratory (dienaar, predikant) was responsible to preach the word, administer the sacraments, counsel the wayward, console the sick, and preside at all plenary consistiory sessions. Most ministers were trained in theology. Very few ministers were trained in law, and those that were could not readily engage in legal, political, or commercial activities. Despite the

A group of congregations within a large municipality or rural region formed a classis. The classis had its own court comprised of representatives from each consistiory court. This court generally met every few months to hear appeals from the consistiory courts, to appoint visitors to review the spiritual and material health of the classis, and to review the performance of local congregations. The classis courts also adjudicated de novo any case involving spiritual or moral corruption of a minister or doctor and any case in which the consistiory court had recommended excommunication of a parishioner.

Each of the seven provinces also had a synod or provincial church court (provinciale kerkeraad), comprised of representatives from each of the classes. The Plight of Canon Law in the Early Dutch Republic
The synods were both legislative and judicial bodies. They issued church ordinances to govern the policy, doctrine, and discipline of the church. They adjudicated cases that raised particularly novel or intricate claims or that had divided the classic courts. They set standards for ordination of ministers and appointment of doctors, and examined new candidates for each of these offices. They issued advisory opinions and orders to classic and consistory courts. In theory, each of the seven provincial synods was to convene at least annually, and a national synod was to convene biannually. In reality, after the first generation, the provincial synods rarely met more than twice a decade, and a national synod was convened only four times in the period of the republic.

The new reformed church courts were far less formal than their Catholic predecessors. They had few professional judges, notaries, advocates, or other officials trained in law. They had few formal procedures for pleading cases, hearing evidence, or registering appeals. They had few requirements for written proceedings and formal records. The ordinances promulgated by the provincial and national synods were relatively simple legal documents that listed rules and requirements categorically but left most of the details to the discretion of the officials. The opinions issued by the classical and synodical courts usually included only cryptic descriptions of the issue at hand together with the holding; little was offered by way of ratio decidendi or citation to authority. In later years, the reformed church law was rendered more systematic and formal by the learned tracts and advisory opinions (kerkelijke adviezen) of university theologians. But, in the first several decades, a good deal of this new church law was left informal and unwritten.

b) Ecclesiastical Jurisdiction

The reformed church courts also exercised a far more limited jurisdiction than their Catholic predecessors. They restricted themselves, in one synod's words, to "...matters that are wholly ecclesiastical," and left "...all matters that are partly ecclesiastical and partly political [the res mixtæ fori] ... to the judgments and authority of the magistracy." Moreover, the reformed church courts narrowed considerably the definition of "wholly ecclesiastical" matters. They did not accept the sacraments of marriage, penance, and extreme unction, and thus claimed no special subject matter jurisdiction over marriage, divorce, and annulment, over crimes, delicts, and oaths, or over testaments, trusts, and intestacy, respectively. They did not distinguish between clergy and laymen, and thus claimed no special personal jurisdiction over clerics and no special clerical immunities from civil taxation, prosecution, and services. They limited their jurisdiction to matters (1) doctrinal and liturgical; (2) moral and disciplinary; and (3) charitable and educational. These matters had also lain at the heart of the spiritual jurisdiction of the Catholic church courts.

First, the reformed church courts, like their Catholic predecessors, prescribed orthodox doctrine and liturgy for their parishioners. Ministers were instructed to preach from the Geneva Bible, the "ancient ecumenical creeds," and the Confession of 1561 (later called the Belgic Confession). Doctors were enjoined to teach from the Genevan and Heidelberg catechisms. Parishioners were instructed to read the Word and to offer prayers daily and to teach their children Christian piety and charity. The church ordinances required attendance at Sunday services and observance of the holy days of Christmas, Good Friday, and Ascension Day. They prescribed prayers, rituals, and songs for the celebration of the sacraments, the confirmation of new communicant members, and the consecration of marriages.
The church courts also proscribed "spiritual or doctrinal sin" among their parishioners. Such sin included not only idolatry, blasphemy, Sabbath-breaking, sorcery, and sacrilege, and other obvious spiritual lapses. It also included entertaining or teaching heretical doctrines, printing or selling scandalous literature, associating too closely with Anabaptists, Lutherans, or Catholics, refusing participation in the sacraments, or resisting the spiritual admonitions and instructions of the church courts.64

Much of the litigation over spiritual affairs in the reformed church courts concerned minor details of liturgical form. The early synodal and classis records are replete with inquiries concerning the minimum age for infant baptism, the appropriate form of baptism of new converts, the frequency of celebration of the Holy Supper, the standards for admission to communion, the appropriate language and length of worship services, the purpose and procedure of marital consecration, and numerous similar questions. Such issues were disposed of summarily, rarely producing an order or opinion of more than a few sentences. Later, these judgments were often woven into revised versions of the church ordinances.

On occasion, the litigation over spiritual affairs concerned more interesting issues of doctrinal formulation. The theological teachings of Caspar Coolhaas, for example, a reformed minister and theology professor in Leiden, sparked considerable controversy and litigation.65 In 1579, Coolhaas sought to accredit the Leiden magistrates greater authority in the selection and supervision of the elders and deacons that served in his consistory. When challenged by fellow ministers in Leiden, he wrote a lengthy apologia for his position and criticized sharply the reformed doctrines of church and state.66 A national synod, meeting at Middleburg in 1581, condemned his teachings and ordered him to repent.67 When he refused, a Provincial Synod at Haarlem the following year defrocked and excommunicated him.68 Later synodal and classis courts further condemned distribution of his writings and teaching of his doctrines. Similar litigation erupted over the theological teachings of Leiden theology des provinciale synodi der Kerken van Holland en Zeeland, gehouden binnen Dordrecht, items 37 - 81 (1574), in Hooijer, at 102: Kerkenordeingen ... synode der provincie van Holland te Haarlem (1582), in Reitsma / van Veen, "The examination and excommunication of Coolhaas is recounted in Memorien van den synode der provincie van Holland te Haarlem (1582), in Reitsma / van Veen, "d'ordinaire and classis courts at the turn of the seventeenth century criticized these doctrines. In 1618 - 1619, the national synod meeting at Dordrecht issued a stinging Five Articles Against the Remonstrants in which they required adherence to the doctrines of unconditional election, limited atonement, total depravity, irresistible grace, and the eternal perseverance of all the saints.69 Arminius, Grotius, and all those who entertained contrary doctrines were branded as heretics and were banned, with their families, from the church.

Second, the reformed church courts, like their Catholic predecessors, exercised a stern moral authority over their parishioners. The Catholic Church had based its authority over morality chiefly on the sacrament of penance. Baptized believers, the Church had taught, were required to confess their sins and to reconcile themselves to God, on pain of eternal punishment. The church had claimed the authority to define the vices that required confession, to hear the sinner's confession, to absolve him from eternal punishment, and to prescribe virtuous works of purgation.70 The reformed church based its jurisdiction over morality on the sacrament of the Eucharist or Lord's Supper (Avondmaal). Baptized believers, the church taught, who sought to partake of communion, were required "to examine their hearts and confess their sins," lest they "profane and pollute" the sacrament and "eat and drink judgment upon themselves" and upon the whole congregation.71 Like the Catholics, the reformed church courts assumed the authority to define the vices that required confession and to punish by spiritual means those who resisted such confession. Unlike the Catholics, however, they did not assume the authority to absolve the sinner from eternal punishment or to prescribe penitential works of purgation. Critics, like Coolhaas and Arminius, saw little substance in these distinctions and charged that the reformers had "retained a large remnant of the popish yoke" and had "restored the tyranny of Christian consciences."72

60 See generally, C. Bangs, Arminius: A Study in the Dutch Reformation (2d ed. 1985); Hoendael, Arminius en Episcopius, 60 Nederlands Archief voor Kerkgeschiedenis (n.s.) 203 (1980).
61 See the Canones synodi dordrechtae (1618/1619) together with the Sententia synodi de remonstrantibus (1618/1619), in Schaff, at vol. 3, 550 and 578 respectively.
63 The formulation is from Calvin, at IV. 17. 40 and is repeated in numerous church ordinances and synodal acts. See, e.g., the Kerkelycke wetten ... van Zeeland, items 68 - 73 (1591), in Klein plakkaatboek, at 200 - 201. See discussion in Duke, at 130ff.; Hoffmann, at 73ff.
64 See, e.g., Acta one handelingen des provincialen synodi van Zeelandt ... gehouden aan het zaal ... gesteld in den nationalen synode ... in s'Gravenhage, items 47 - 63 (1580), in Hooijer, at 376; Canones synodi dordrechtae (1618/1619), in Schaff, at vol. 3, 550.
65 See discussion of this case in J. Triglandus, Kerckelycke Geschiedenissen, 163ff. (1650); Hansen, at 122ff.; Hooijer, at 188ff.
66 Apologie. Een christelycke ende billycke verantwoordinge Caspari Coolhaessen (1580). See, e.g., Acta ... synodes, in Reitsma / van Veen, "The examination and excommunication of Coolhaas is recounted in Memorien van den synode der provincie van Holland te Haarlem (1582), in Reitsma / van Veen, "
Building on Calvin's taxonomy, the reformed church courts distinguished between private or light sins and public or grave sins. Private sins (heymlicke delicta) were those immoral thoughts or acts that caused no tangible harm to others—greed, sumptuousness, lust, masturbation, bestiality, hatred, jealousy, envy, and similar vices. Public sins were those crimes or shameful acts (scelerata, flagitia) that caused either tangible harm to others or open scandal within the church—"murder, adultery, bigamy, prostitution, robbery, theft, perjury, drunkenness, and other... open violations of the Second Table [of the Decalogue]."

Private sinners were punished by the private admonitions of the minister or an elder. Public sinners were required to confess their sins first before the consistory court, then before the whole congregation. Such public confession had a retributive, deterrent, and rehabilitative effect. It brought shame and scorn on the sinner. It warned the sinner and others of the perils and punishments of wayward living. It enabled the sinner to fortify himself with the counsel, comfort, and prayers of fellow believers. Those who refused either private admonition or public confession, or who persisted in their moral delinquency, were banned from the Eucharist and had their names posted. Recalcitrant or incorrigible parishioners were excommunicated from the church, after a period of warning.

Much of the litigation over morality within the reformed church courts dealt with marital, sexual, and sumptuary concerns—whether church members could marry other Protestants, Catholics, or Jews, whether adulterers who became widowers could marry their mistresses, whether earlier secret marriages could be formalized and consecrated, whether nonmarried couples could cohabit for reasons of necessity or convenience, whether children could disobey or leave negligent parents, whether illegitimate children could be baptized, and the like. The church courts—at least after the first generation—addressed only the morality of the parties' actions and instructed them to take up their legal questions with the local magistrate.

Several of these issues were combined in a case that came before the National Synod of s'Gravenhage (1586). From the court record and external accounts the following facts are clear. The defendant, while serving abroad in the army, committed adultery. Thereafter, he was notified that his wife had died. He secretly married his lover and cohabited with her. He then discovered that his first wife, though ill, was still alive. He decided to live in bigamy with his second wife, until his first wife died. After she died, the defendant and his second wife sought to be formally married and admitted to communion in a reformed church in Groningen. The Provincial Synod of Groningen apparently refused to formalize the marriage and to admit the couple to communion. The National Synod of s'Gravenhage reversed the Provincial Synod, holding that if the couple would publicly confess their sins of adultery, bigamy, and secret marriage to the congregation, and if they could have their marriage formalized at civil law, they would be admitted to communion in the church.

The church's jurisdiction over sin coincided closely with the state's jurisdiction over crime. In theory, the two authorities maintained strictly independent procedures and would hear nothing of a double jeopardy defense. "Criminal punishment will not absolve a sinner from ecclesiastical punishment," reads one church ordinance, "nor will ecclesiastical punishment insulate a criminal from criminal punishment." In reality, church courts and magistrate courts sometimes collaborated informally in the prosecution and punishment of guilty parties. The two courts often apprised each other of pending cases. They shared evidence gathered in the investigation of the offense and the interrogation of the defendant and witnesses. They drew on each other's personnel and expertise when dealing with particularly difficult cases. They consulted with each other in devising the appropriate punishments. Church courts would send felons who appeared before them to the magistrate courts with a strong recommendation that they be executed or forced to perform hard labor. Magistrate courts would send those guilty of "light offenses" to the church courts for reproof and prescribed community service. Some of this cooperation, particularly in Holland and Zeeland, was forced on the church by officious magistrates. Some of the cooperation was inevitable, given that officials served simultaneously on both the church courts and civil courts.

See Calvin, at IV. 12, 3, 4, 6.
See Kerkenorde in, Klein plakkaatboek, at 200.
See e.g. Acta offe handelingen des nationalen synodi der Kerken van Holland en Zeeland, gehouden binnen Dordrecht, items 88 - 89, q. 8, 11, 12, 14, 17, 18, 26 (1574), in Hooijer, at 109 - 114. Acta offe handelingen des nationalen synodi der Nederlandsen... gehouden tot Dordrecht, items 90 - 97, q. 5, 39 - 40 (1578), in Hooijer, at 145; Kerkenordeninge in den nationalen of generalen synodi... tot Middelburg, q. 36, 60, 87 (1581), in Hooijer, at 201. See generally, Nörr, Die kirchliche Gesetzgebung—Niederlande, in Coing, vol. 2, part 2, 1100 - 1101. In more erastian polities like Holland and Zeeland, the civil authorities included marriage and family provisions in the church ordinances they promulgated and delegated to the church courts, as their agents, some authority to enforce them. See, e.g., Kerzelijke wetten... van Holland, items 23 - 29 (1583), in Hooijer, at 225.

See Kerkenordeninge... gesteld in den nationalen synode... in s'Gravenhage, q. 11 (1586), in Hooijer, at 282 along with discussion in L. Ippel, Kerkesgeschiedenis in s'Gravenhage, 144 - 147 (1877).

See e.g., Acta offe handelingen des nationalen synodi der Nederlandsen... gehouden tot Dordrecht, item 92 (1578), in Hooijer, at 157 - 158; see also Kerkenordeninge van Zeeland, item 72 (1591), in Klein plakkaatboek, at 201.

See generally, Fockema Andreae, De kerk op wereldlijke terrein onder de republiek, 39 Nederlands Archief voor Kerkesgeschiedenis (n.s.) 146, 151 - 156 (1952/3) [hereinafter Fockema Andreae, De kerk].

See generally, John Witte, Jr. The Plight of Canon Law in the Early Dutch Republic.
Third, the reformed church courts, like their Catholic predecessors, exercised broad authority over education, poor relief, and other forms of public charity. The Catholic Church had vested its charitable authority in cloisters, chantries, rural deans, and parish priests, the latter three of which were subject to the general supervision and visitation of the archdeacon. Funding for their charitable work had come from both diocesan contributions and private gifts and inheritances. The reformed church vested charitable authority in the congregational consistory courts, each of which was subject to the general supervision and visitation of the classis. Funding for their charitable work came from a portion of the weekly congregational tithes that was deposited in a designated "benevolent fund."

The congregations and consistory courts discharged a variety of charitable functions within the community. Church meetinghouses and chapels were used not only to conduct religious services, but also to host town assemblies and political rallies, to house the community library, and to hold certificates of birth, marriage, and death. Parsonages were used not only to house the minister and his family, but also to harbor orphans and widows, the sick and the aged, and victims of abuse and disaster. Ministers served not only as preachers in their churches, but also as chaplains in local prisons, hospitals, and asylums. Doctors of theology served not only to catechize parishioners in the congregation but also to organize schools in the community for theological and humanistic education. Deacons served not only to control the finances of the church, but also to distribute alms to the poor and to coordinate the work of local almshouses, hospitals, orphanages, and other charitable organizations.

The reformed church courts regarded such charity not only as a form of ministry, but also as a form of mission. On the one hand, they insisted that their charitable services cross denominational lines. "No distinction may be made," one church ordinance put it, "between persons of different faiths in giving or distributing poor relief, food, or other alms." On the other hand, they insisted that such charity serve the end of spreading the reformed gospel. Thus ministerial chaplains not only dispensed comfort and counsel but also distributed Geneva Bibles and reformed pamphlets. Day schools hired only those teachers who "accepted the confession of faith of the Dutch churches" and who "taught not only language and the arts, but also and primarily the Christian catechism." Charitable organizations generally accepted the services only of those who professed the reformed faith.

In some communities at least, the reformed ecclesiastical and civil authorities collaborated in the dispensing of public charity. The civil authorities would supply a portion of the monastic or other property that they had confiscated from the Catholic Church during the Dutch revolt. The ecclesiastical authorities would supply the staff and volunteers to operate the charity. In 1582, the authorities in Leiden forged an even closer alliance. They established a common charitable fund comprised of both church tithes and state taxes. They also established a common governmental body, comprised of both ecclesiastical and civil officials, that coordinated the work of charity throughout the city.

2. Canon Law Within the State

The Dutch Reformation transformed not only the law of the church but also the law of the state. The abolition of papal and Spanish royal authority required the provinces and municipalities to assume jurisdiction over numerous subjects and persons previously beyond their competence. The doctrines of the reformers required them to develop laws and policies that were consonant with Scripture and natural law. Thus, in the early decades of the Dutch republic, civil legislatures and councils promulgated a welter of new statutes and codes. Civil courts assumed jurisdiction over such subjects as marriage and family, testaments and charities, moral and religious crimes and over such persons as church officials, heretics, and personas miserabiles. Civil jurists produced systematic syntheses of the new civil laws and offered learned opinions in explication and elaboration of the new codes and cases.

The reformers did not begin, however, on a tabula rasa. They drew upon the entire legal tradition of the Netherlands, preserving what they could of the past. The canon law was an essential part of this legal tradition, whose subjects and persons previously beyond their competence. The doctrines of the reformers required them to develop laws and policies that were consonant with Scripture and natural law. Thus, in the early decades of the Dutch republic, civil legislatures and councils promulgated a welter of new statutes and codes. Civil courts assumed jurisdiction over such subjects as marriage and family, testaments and charities, moral and religious crimes and over such persons as church officials, heretics, and personas miserabiles. Civil jurists produced systematic syntheses of the new civil laws and offered learned opinions in explication and elaboration of the new codes and cases.

The reformers did not begin, however, on a tabula rasa. They drew upon the entire legal tradition of the Netherlands, preserving what they could of the past. The canon law was an essential part of this legal tradition, whose use, as Apeldoorn put it, "was never expressly prohibited by the reformed authorities." It thus remained an important source of the civil law of the early Dutch republic, as it had been prior to the Reformation.

The canon law manifested its influence after the Reformation in four types of Dutch legal writings inherited from pre-Reformation times: the learned

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81 Among provisions on the charitable and educational responsibilities of the churches, see, e.g., Kerzelijke wetten van ... Holland en Zeeland, items 32 - 33, 35, 40 (1576), in Hooijer, at 125 - 126; Acte ofte handelingen des nationale synodi der Nederlanders, items 47 - 52 (1576), in Hooijer, at 152; Kerzelijke wetten ... te s'Gravenhage, items 25, 26, 30 (1591), in Hooijer, at 345 - 348. See generally Fockema Andreae, De kerk, at 146ff.; Tukker, at 67ff.; Groenhuis, at 145ff.; Duke, at 128ff.; A. Kunst, Van Sint Elisabeths- Gasthuis tot Gereformeerd Burgerweeshuis (1954).
82 Quoted in Kunst, at 119.
83 Acte ofte handelingen des nationale synodi der Nederlanders ... gehouden tot Dordrecht, items 47, 50 (1578), in Hooijer, at 152.
85 See Jones, at 121.
86 L. van Apeldoorn, Geschiedenis van het nederlandsche huwelijksrecht voor de invoering van de fransche wetgeving, 76 (1925) [hereafter Apeldoorn, Geschiedenis].
opinions and treatises of civil jurists together with the judicial opinions and statutes of civil magistrates.

First, the numerous new opinions of the Dutch civil jurists drew upon the canon law. Johan Schrassert's famous five volume collection of opinions of Dutch jurists reflects this dependence already in its subtitle: "[a collection] wherein different cases, questions, and points of law out of the fatherland . . . are clarified on the basis of both the written Roman (keyserlycke) and canon (pauslycke) laws." Though many of the opinions in Schrassert's collection make no reference to the canon law - or, for that matter, to any law - those of the more learned jurists are replete with such references. Likewise, the opinions of Hugo Grotius draw on the canon law. A 1616 opinion of Grotius, for example, posed the question whether a defendant who had extracted a usurious rate of interest from a loan, disguised as a purchase and sale, could be sued in delict. Citing Panormitanus and several decretals, Grotius concluded that he could be so charged since "the word usury . . . applied to all contracts whereby one made unjustifiable profit through extortion from needy persons." Citing another decretal, he recommended a "heavier punishment" for the defendant, since his repeated extortions of "usurious profit" betrayed a "delinquent spirit." A 1632 opinion of Grotius analyzed whether a woman had furnished sufficient proof of her husband's adultery to divorce him. The husband had confessed that he was "dissatisfied with her" and that "he had had a connection with" another woman. Several witnesses had testified that he was a man of "ill repute" who was known to frequent houses of "ill fame." Citing the work of the canonist Johannes de Imola on the law of evidence, Grotius concluded that the woman had proved the adultery and could be granted at least a separation from bed and board, if not an outright divorce. A similar dependence on canon law sources is evident in dozens of opinions by Grotius and other seventeenth century Dutch jurists.

Second, the canon law also found a place in the numerous new treatises on Dutch law produced by judges and jurists after the late sixteenth century. Such treatises included both (1) systematic summaries of provincial law, modern
and historical canonists. The cases both followed and departed from the canon law. In a 1619 case, for example, a magistrate court in Holland was asked to determine the appropriate punishment for a woman convicted for “deliberately asphyxiating her slow [i.e., retarded] infant child.” The Court aduced several canonists and confessional writers - Gratian, Johannes Andreae, Angelus de Clavasio, Jacobus Almainus, and Petrus Peckius - to support its ruling that “infanticide is a mortal sin and capital crime.” It then ordered the woman to be executed, after “a period of reflection.” A 1606 case before the Supreme Court of Friesland posed the following facts. A testator devised certain real property to her husband, in violation of a local statute that prohibited testators from depriving legal heirs of their patrimonial estates without just cause. The legal heirs took possession of the property. The devisee husband sued the legal heirs for the value of the property. The Court held for the legal heirs. Friesland generally follows the canon law rule that allows a devisee to collect the value of the devised property if he cannot get possession, the Court reasoned, citing Joannes de Imola, Jacobus de Arena, Petrus Peckius, and other canonists. Yet this devise was in “open and knowing violation of an express statute” and so the general rule did not apply.

Fourth, the canon law helped to shape the new statutes on morals, inheritance, and marriage that were promulgated in the early decades of the republic. The provincial estates set to work immediately after the Reformation, promulgating, inter alia, the Politieke Ordonnantie van Holland (1580), the Politieke Ordonnantie van Zeeland (1583), the Ordonnantie van Utrecht (1584), the Echtordnunch van Gelderland (1597), the Plaeçaet op ’t stuk van de successien ab intestato (1599), the Landrecht van Drenthe (1600; 1614), the Statuten, ordoonnantien, en costumens van Friesland (1602), the Ordonnantie van Overijssel (1603), and numerous amendments and emendations to the same. The estates-general of the United Provinces added the famous Egtreglement in 1664.

The new statutes prohibited many moral offenses that had traditionally been governed largely by the canon law and the church courts. New Sabbath-day laws prohibited all forms of unnecessary labor and uncoth leisure on Sundays and holy days and required faithful attendance at services. New spiritual laws prohibited blasphemy, sacrilege, witchcraft, sorcery, magic, alchemy, false oaths, and similar offenses. New sumptuary laws proscribed immodest apparel, wasteful living, and extravagant feasts and funerals. New sexuality laws forbid “unnatural” sexual relationships such as incest, bigamy, polygamy, homosexuality, and prostitution and “undignified” sexual acts, such as masturbation, bestiality, sodomy, pornography, exhibitionism, and the like. New entertainment laws placed strict restrictions on public drunkenness, boisterous celebration, wild dancing, and gambling and other games that involved fate, luck, and magic.

Neither the state’s emphasis upon these moral offenses nor its definition of them strayed far from the formulations of the canon law.

The new statutes that treated testate and intestate succession incorporated several canon law provisions. To be sure, much of this new statutory law was drawn directly from Roman and Romanist sources. Yet certain provisions unique to the canon law and contrary to the Roman law also found their place. For example, parents could disinherit children who had adopted heretical or heathen beliefs, or who had “spurned” or “violated” them. Illegitimate children, though generally prohibited from taking any inheritance directly or indirectly, could receive a portion of the estate for their “necessary maintenance.” Legitimate children, who were made both heirs and fideicommissaries under the canon law, could receive a portion of the estate for their “necessary maintenance.” The new statutes that treated testate and intestate succession incorporated new provisions that reflected the reformed theology of marriage. Building on the writings of the Geneva Calvinists, John Calvin and Theodore Beza, and the German Lutherans, Philip Melanchthon and Martin Bucer, the Dutch reformers rejected the Catholic sacramental concept of marriage and the traditional subordination of the marital estate to the celibate state. Marriage, the reformers taught, though created by God was a “worldly, secular institution,” in which all were encouraged to participate.

109 See, e.g., Politieke ordoonnantie van Zeeland, items 2 - 5, 24 - 39 (1583), in Klein plakkaatboek, at 176, which was emulated in many provinces.

110 See, e.g., Politieke ordoonnantie van Holland, items 19 - 33 (1580), in Klein plakkaatboek, at 126; Plaeçaet op ’t stuk van de successien ab intestato (1599), in Mini-Plakkaatboek, at 39; Landrecht van Drenthe, 11. 12 - 38, in Ennik, at 43. See also discussion in Grotius, at 11. 16 - 20.

111 Apeldoorn, at 9 - 14.

112 See, e.g., Acte ofte handelingen des provinciale synodes, etc. gebonden binnen Dordrecht, items 88 (1574), in Hooijer, at 108 - 109; Voetius, at I. 3. See the rich collection of quotations and discussion in Apeldoorn, Geschiedenis, at 70 - 122. For Calvinist conceptions, see particularly T. Beza, Tractatio de repulis et divortiis (1569; 1651). For Lutheran
The civil law accepted the canon law definition of the formal betrothal or engagement (verloving, trouwbeloften) as the first step to marriage. It also accepted the canon law impediments to betrothal that allowed either party to break the engagement without issue: if one party became a heretic or lunatic, became engaged to or abducted a third party, became physically or emotionally abusive of the other, or became impotent or deformed. It rejected, however, the canon law rule that prior or subsequent religious vows to celibacy automatically voided the betrothal. It also insisted on far more stringent formal requirements for the betrothal, each enforced by stiff fines. Couples, under the age of majority, were required to receive consent from both sets of parents (or guardians, tutors, or curators). They were required to announce their betrothals before at least two good and honorable witnesses. They were required to register their betrothal with the consistory court of the local reformed church, to receive spiritual instruction on marriage from the minister or an elder, and to request the minister to announce their betrothal from the pulpit for at least three successive Sundays. They were required to petition the local magistrate in their domicile for a certificate showing that they were single, in good standing, and free from communicable disease and criminal delinquency. These changes in the law of betrothals reflected the reformers' axiom that marriage was an inherently public institution, in which parents, peers, and pastors all played a vital role.

The civil law also accepted the basic canon law definition of the marriage itself (huwelijkssluiting) as a free consensual heterosexual union between two fit parties. It accepted the canon law impediments that protected the free consent of both parties and annulled marriages based on fear, duress, fraud, and errors of person and quality. It accepted the physical impediments recognized at canon law that annulled marriages where one party was rendered impotent or physically impaired. It accepted the canon law impediments of consanguinity and affinity, but only to the third degree, or in some jurisdictions to the second degree. It rejected the canon law impediments that annulled marriages where one party had departed from the faith or committed a mortal sin. It also rejected canon law impediments that prohibited remarriage to anyone who had previously married a cleric, monk, or nun. These changes in the law of


107 The following discussion of the new civil law of marriage and divorce draws upon Plak-kaart, betreffende huwelijk, echthoudende enz. (1574), in 39 Nederlands archief voor kerkges- schiedenis (n.s.) 121 (1952/3); Politieke ordonnantie van Holland, items 1 - 28 (1580), in Klein plakkaatboek, at 126; Politieke ordonnantie van Zeeland, items 6 - 23 (1583), in Klein plakkaatboek, at 129; Kerzelijke wetten der staten van Holland, items 23 - 40 (1583), in Hoorn, at 22; Landrecht van Drenthe, Ill. 1 - 11, in Ensik, at 39 - 43; Egremement (1664). See also Apeldoorn, Geschiedenis, at 84 - 122, 125 -170, 180 - 188, 195 - 198.
be left until [one has engaged in] the study of canon law. It is surely absurd to style oneself a doctor juris utriusque, and at the same time to know nothing of the canon law.\footnote{J. van der Linden, Institutes of Holland, or Manual of Law, Practice, and Mercantile Law, xi - xli (H. Juta trans. 1884).}