

THE CATHOLIC ORIGINS AND CALVINIST ORIENTATION OF DUTCH REFORMED CHURCH LAW

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G. K. Chesterton once wrote that our appetite for history is a function of our security. "The less certain we are of our future, the more interested we become in our past." The recent struggles among Reformed Christians over church polity and property bear out Chesterton's aphorism.¹ The ancient history of the Dutch Reformed church with its dusty collection of canons and court records has rarely received such an avid reading, as proponents and opponents of ecclesiastical change seek to prove the vintage and veracity of their arguments.

Such anecdotal inquiries, however, have yielded a number of anachronistic interpretations of our Dutch ecclesiastical heritage. A fuller historical understanding might well be edifying to participants in the current struggles. Those who cite so confidently the distinctly Reformed character of the early Dutch Calvinist churches might be discomfited to learn that a good deal of this Reformed polity and law was rooted in Roman Catholic canon law and ecclesiology. The Dutch Reformers did not, and could not, begin on a *tabula rasa*. Those who dismiss so easily the modern relevance of this history might be surprised to learn that the basic law and polity of the Reformed church forged in the later sixteenth century remains in place among many Reformed churches still today. The Reformers' ecclesiastical work has withstood centuries of criticism. Those who dismiss so cavalierly church law and ecclesiastical government should note that it was the distinctive legal reification of classic Reformed theology that rendered

1. For a good summary see H. De Moor, "Schism and Property Settlement," *Calvin Theological Journal* 28 (1993), 131.

it so powerful and permanent — in North America as well as in Europe. The Reformers understood that churches without laws cannot readily maintain order and orthodoxy.

This article retraces briefly the evolution of early Dutch Reformed law and government — against the background of the Roman Catholic canon law tradition and in the context of the Dutch Calvinist Reformation and its aftermath. Part 1 recounts the prominent role of Roman Catholic ecclesiastical structures and canon law in Dutch legal life on the eve of the Reformation. Part 2 analyzes the new constitutional and theoretical changes in church structure and church-state relations born of the Dutch Reformation of c. 1566-81. Part 3 shows how the law and polity of the early Dutch Reformed church was forged out of Catholic prototypes and Calvinist principles. The Conclusion harvests a few contemporary lessons from this historical material.

I. ON THE EVE OF THE DUTCH REFORMATION

On the eve of the Protestant Reformation in the late 1550s, the Roman Catholic church with its canon law played a prominent, even predominant, part in the legal life of the Netherlands. Until the sweeping ecclesiastical reorganization of 1559, most of the Netherlands lay within the diocese of Utrecht, a suffragan province of the archbishopric of Cologne. The diocese was divided into eight archdeaconries and some 1600 parishes and rural deaneries, and served by several thousand spiritual and secular clergy, many of them trained as canon lawyers.

The Roman Catholic church claimed a vast "spiritual" jurisdiction — that is, spiritual law-making and law-enforcing power.² It claimed *personal* jurisdiction over clerics and members of their households; transient members of society, like pilgrims, students, and foreign merchants; disadvantaged persons like widows, orphans, and the poor; and Jews and Muslims. 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; "major sins" such

2. On prevailing Roman Catholic concepts of jurisdiction, see U. Wolter, "Amt und Officium in mittelalterlichen Quellen vom 13. bis 15. Jahrhundert," *Zeitschrift der Savigny Stiftung* (Kan. Ab.) 105 (1988), 246; H. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge: Harvard University Press, 1983), 205-24.

as blasphemy, Sabbath-breaking, sacrilege, iconoclasm, sorcery, witchcraft, defamation, homosexuality, sodomy, prostitution, concubinage, adultery, fornication, bigamy, abortion, and infanticide.³

Most cases were first heard in the archdeacon's consistory court usually presided over by a provisory judge. 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. Appeals lay first with the court of audience of the bishop, from there with the court of the archbishop, and ultimately, in rare cases, with the papal rota.⁴ Each of these courts applied the substantive and procedural canon law — both as adumbrated in general papal decretals and conciliar decrees and as elaborated in the decrees of local Dutch synods, in the concordats between Dutch clerical and political authorities, and in the numerous writings of the canonist jurists.⁵

The Roman Catholic church 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 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 procedural and substantive canon

3. See J. Joosting & S. Muller, *Bronnen voor de geschiedenis der kerkelijke rechtsspraak in het bisdom Utrecht* ('s-Gravenhage: Martinus Nijhoff, 1906-24), vols. 1-2; F. Zypaeus, *Ius pontificium novum sive analytica postremi iuris ecclesiastici* (Coloniae, 1626), bk. 2, 91-124; P. Gudelinus, *Commentarium de jure novissimo optima methodo accurate ac erudite conscriptum additis harum vicinarumque regionum moribus* (Amstelodami, 1656), bk. 6; P. Peckius, *Commentarius ad regulas juris canonici* (Amstelodami, 1660); Hugo F. von Heussen, *Historie ofte beschryving van 't utrechtsche bisdom* (Leiden, 1719). Among modern accounts, see S. J. Fockema Andreae, "Kerkelijke rechtsspraak in Nederland in de middeleeuwen," reprinted in id., *Bijdragen tot de nederlandsche rechtsgeschiedenis* (Haarlem: De Erven F. Bohn, 1914), 5:79-127; J. Joosting, "De kerkelijke rechtsspraak in het bisdom Utrecht voor het Concilie van Trente," *Bijdragen Meded. Hist. Gen.* 30 (1909), 82.

4. See documents in Joosting & Muller, *Bronnen*, vols. 3-4 passim and Huessen, *Historie*, 1:120-21; 2:63-91, 135-45, 325-30, 450-63, 710-12, 734-46; 3:22-30, 411-15 and discussion in Fockema Andreae, *Bijdragen*, 5:79ff.

5. See title lists in U. Wagner, "Niederlande," in *Handbuch der Quellen und Literatur der neueren europäische Privatrechtsgeschichte*, ed. H. Coing (München: C. H. Beck'sche Verlagsbuchhandlung, 1976), 2/2:1399-1430; *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* (London: Trustees of the British Museum, 1965).

law was applied.⁶ According to some observers, the majority of civil cases in the late medieval Netherlands were litigated in church courts. Not only were the church courts considered more competent and consistent than their civil rivals, church courts also dealt with both the morality and legality of the cases before them, allowing litigants to reconcile themselves both to God and to their neighbors.

The multitude of civil authorities that governed the Netherlands generally respected and protected the spiritual jurisdiction of the church courts. Several late medieval concordats 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.⁷

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 Emperor Charles V, for example, after decrying the exploitation and deprivation of the youth, introduced sweeping changes in the church's testamentary and marital laws.⁸ 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, children,

6. See, e.g., Huessen, *Historie*, 1:120; P. de Leyden, *De cura rei publicae et sorte principantis*, ed. R. Fruin and P. Molhuysen ('s-Gravenhage: Martinus Nijhoff, 1915), 237. Among modern writers, see, e.g., R. Fruin, *Geschiedenis der staatsinstellingen in Nederland*, 2d ed. ('s-Gravenhage: Martinus Nijhoff, 1922), 28ff.; J. Wessels, *History of the Roman-Dutch Law* (Grahamstown: African Book Company, Ltd., 1908), 138. But cf., Fockema Andreae, *Bijdragen*, 5:107-8, 122-27.

7. See the collection of concordats in Joosting & Muller, *Bronnen*, 3:45, 83; *Groot plaacaet-boeck*, ed. C. Cau et al. ('s-Gravenhage, 1658-1796), 2:1151, 1155; J. van de Water, *Groot plaacaetboek vervoattende alle placaten . . . van Utrecht* (Utrecht, 1729-1733), 2:967; A. Matthaeus, *De jure gladii tractatus et de toparchis qui exercent id in diocesi Ultrajectina* (Lugduni, 1689), 82, 467.

8. Eeuwich Edict van Keyser Karel in date den 4 October 1540, Arts. 12, 17, in *Groot plaacaet-boeck*, 1:311, 318-19.

and servants.⁹ Such scattered instances of civil regulation, however, did not alter the reality of a predominantly ecclesiastical authority over spiritual affairs.

Although they generally protected the church's spiritual jurisdiction, Dutch civil authorities generally protested the church's temporal jurisdiction and took steps to truncate it. A 1429 statute of Duiveland, for example, required all parties who sought to remove their cases to church courts to petition the local magistrate court and demonstrate that the civil remedy was unavailable or unfair. A 1544 statute of Breskens outlawed all prorogation contracts and invalidated all contracts and treaties in which prorogation clauses were included.¹⁰ In a long series of statutes, Charles V required civil judges: to nullify testaments that left real property to the church; to disregard prorogation clauses and contracts that would transfer civil disputes to church courts; to ignore papal rescripts that he had not formally accepted and approved; and in general, to assume jurisdiction over actions not specifically reserved to the church by concordat.¹¹ In 1528, Charles formally divested the Bishop of Utrecht of his temporal jurisdiction and circumscribed rather narrowly the ambit of his spiritual jurisdiction. Thereafter, he sternly prohibited all ecclesiastics from censuring the judgments and judges of the civil courts.¹² In retrospect, these instances of civil circumscription of the church's temporal jurisdiction can be seen as storm signals of the Reformation.

II. THE NEW REFORMED THEORIES OF CHURCH AND STATE

The traditional predominance of Roman Catholic ecclesiastical structures and canon law in Dutch legal life was rent asunder by the violent upheaval of the seven northern provinces from 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 apostasy. It was a revolt against the bloody inquisition of the Duke of Alva

9. See Fockema Andreae, *Bijdragen*, 5:104-8; R. Jones, "Reformed Church and Civil Authorities in the United Provinces in the Late Sixteenth and Early Seventeenth Centuries as Reflected in Dutch State and Municipal Archives," *Journal of the Society of Archivists* 4 (1970), 109, 117-18.

10. Quoted in Fockema Andreae, *Bijdragen*, 5:125.

11. See van de Water, *Groot placaatboek*, 2:965; *Groot placaet-boeck*, 1:311, 373, 1588.

12. *Groot placaet-boeck*, 1:311; F. Zypaeus, *Notitia juris belgici* (Antwerpi, 1665), bk. 1, 1-6; Gudelinis, *Commentarium*, bk. 6, 1-3.

that had claimed the lives of thousands of Protestants in the previous few decades. It was a revolt against Philip II's repeal of ancient 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 Roman Catholic ecclesiastical polity in the Netherlands in 1559 and the widespread clerical corruption and confusion 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. It was a revolt against a sacramental system that had rendered the pious believer too dependent on the church for his salvation and the church too dependent on the believer for its finances.¹³ 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.

The Reformers first cast off the Spanish emperor and his retinue. The early attempts of some of the Dutch nobles to negotiate a settlement with the emperor were repeatedly rebuffed.¹⁴ 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 independence of each province.¹⁵ In 1581, the United Provinces declared that "Philip the Second had forfeited his right of sovereignty over the said provinces."¹⁶ After a bloody war, independence from the empire was ultimately gained.

The Reformers quickly turned their energies to the pope and his clergy as well. For a brief time, the survival of the traditional Roman Catholic ecclesiastical polity and canon law seemed likely, despite the

13. See, e.g., P. Geyl, *The Revolt of the Netherlands (1555-1609)* (London: Williams & Norgate, 1932), 50-79; M. Dierickx, *De oprichting der nieuwe bisdommen in de Nederlanden onder Filips II, 1559-70* (Amstwerpen, N. V. Standaard Boekhandel, 1950); R. Post, *Kerkelijke verhoudingen voor de Reformatie van c. 1500 tot 1580* (Utrecht: Spectrum, 1954).

14. See generally *Texts Concerning the Revolt of the Netherlands*, tran. and ed. E. Kossmann and A. Mellink (Cambridge: Cambridge University Press, 1974), 53ff.

15. Unie van Utrecht (January 29, 1579), in A. de Blecourt & N. Japiske, *Klein plakkaatboek van Nederland* (Groningen: J. B. Wolters, U.M., 1919), 120. See also P. F. M. Fontaine, *De raad van state. Zijn taak, organisatie en werkzaamheden in de jaren 1588-1590* (Groningen: J. B. Wolters, 1954).

16. Acte van Afzwering van Philips II (July 26, 1581), reprinted in Blecourt & Japiske, *Klein plakkaatboek*, 137. See further discussion in R. Feenstra, "A quelle époque les Provinces-Unies sont-elles devenues indépendantes en droit à l'égard du Saint-Empire," *Tijdschrift voor Rechtsgeschiedenis* 20 (1952), 30-63, 182-218.

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.¹⁷ A 1578 Antwerp treaty further guaranteed the Roman Catholic clerics a "traditional" spiritual jurisdiction over their parishioners and ordered the civil courts to enforce both the canon law marital impediments of affinity and consanguinity and the canon law regulations for observance of the Sabbath and other holy days.¹⁸

This initial inclination to toleration was short-lived. The Union of Utrecht, and its prototypes, had guaranteed each province independent authority over religion and the church, insisting only that they preserve the liberty of private conscience.¹⁹ As they were drawn to Calvinism, the provincial authorities turned against Roman Catholicism. Placards against public Roman Catholic worship appeared in Zeeland and Holland already in 1578, and, within a decade, in the five other provinces as well. Sterner measures soon followed. Payments of annates, tithes, and other ecclesiastical taxes to Rome were prohibited. Catholic sanctuaries, parsonages, and monasteries were destroyed or confiscated for use by the magistrates or the new Reformed congregations. Cloisters, hospices, and almshouses were converted into state-run charities and public schools.²⁰ Clerics were stripped of their immunities from civil prosecution, services, and taxes. Several clerics were savagely martyred, and most others fled or were banished to France and the Southern Netherlands (now Belgium).²¹ By the turn of the seventeenth century,

17. *Pacificatie van Gent*, Arts. 3-5, 20-21 (November 8, 1576), in Blecourt & Japiske, *Klein plakkaatboek*, 113.

18. [Religious Peace of Antwerp], Arts. 2-3, 8-10, 15-18 (July 22, 1578), in E. van Meteren, *Historien de Nederlanden* (Utrecht, 1647), bk. 8, folio 141-42.

19. *Unie van Utrecht*, Art. 13 (1579), in Blecourt and Japiske, *Klein plakkaatboek*, 120. See discussion in O. De Jong, "Unie en Religie," in *De Unie van Utrecht. Wording en werking van een verbond en van een verbondsacte*, ed. S. Groenveld and H. Leeuwenberg (Utrecht, n.p., 1979), 157ff.; H. Rowen, *The Low Countries in Early Modern Times* (New York: Harper & Row, 1972), 73ff.

20. See generally L. J. van Apeldoorn, *De kerkelijke goederen in Friesland* (Thesis, Utrecht, 1915); D. Rengers Hora Siccama, *De samenhang in het recht bei den strijd over de Utrechtsche kapitalen* (Inaugural Address, Utrecht, 1906).

21. See generally, Jones, "Reformed Church and Civil Authorities," 114ff.; J. van Beeck Calkoen, *Onderzoek naar den rechttoestand der geestelijke en kerkelijke goederen in Holland na de Reformatie* (Amsterdam: J. H. de Bussy, 1910).

the traditional Roman Catholic episcopacy had been all but banished from the United Provinces. To be sure, strong populations of Roman Catholic laity still remained in the Netherlands after the revolt, particularly in the cities of Middelburg, Haarlem, Utrecht, and Delft. 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.²² But little of the traditional ecclesiastical government survived the revolt.

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, Theodore Beza, and other earlier Reformers, a series of brilliant Dutch Calvinist theologians and moralists — Guilielmus Apollonius, Jacobus Triglandus, Gisbertus Voetius, Antonius Walaeus, among others — devised a new theory of church and state, and of church law and civil law, that came to dominate Dutch ecclesiology and political theory until well into the eighteenth century.²³

The Reformers rejected the two-swords theory that supported the traditional rule of the papacy and the canon law in the Netherlands. Since the later twelfth century, the Roman 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

22. See generally L. Rogier, *Geschiedenis van het katholicisme in Noord-Nederland in de zestiende en zeventiende eeuw* (Amsterdam: Urbi et Orbi, 1947); W. Knuttel, *De toestand der nederlandsche katholieken ten tijde der republiek* ('s-Gravenhage: Martinus Nijhoff, 1892); J. Dauvillier, "Les diverses formes extraordinaires du mariage et l'absence totale de forme dans le droit de l'Église d'Orient et de l'Église d'Occident," in *Mélanges à Pierre Herbert* (Paris: n.p., 1981), 273, 283-92.

23. See G. Apollonius, *Jus maiestatis circa sacra, sive tractatus theologicus de jure magistratus circa res ecclesiasticas* (Medioburgi, 1642/3); J. Triglandus, *Dissertatio theologica de civili et ecclesiastica potestate et utriusque ad se invicem tum subordinatione tum coordinatione* (Amstelodami, 1642); G. Voetius, *Politica ecclesiastica* (Amstelodami, 1663-1676). For secondary accounts see E. Conring, *Kirche und Staat nach der Lehre der niederländischen Calvinisten in der ersten Hälfte des 17. Jahrhunderts* (Neukirchen-Viuyn: Neukirchener Verlag des Erziehungsvereins, 1965); J. Bohatec, "Das Territorial- und Kollegialsystem in der holländischen Publizistik des XVII. Jahrhunderts," 66 *Zeitschrift der Savigny-Stiftung (Kan. Ab.)* 66 (1948), 1; D. Nobbs, *Theocracy and Toleration. A Study of the Disputes in Dutch Calvinism from 1600-1650* (Cambridge: Cambridge University Press, 1938).

two-swords theory was not confined to dusty medieval tracts. It was vigorously reasserted by a number of respected Dutch Catholic apologists.

The Dutch Calvinist 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."²⁴

God has vested in the church the spiritual power of the Word, the Reformers argued. He has called church officials to be His "high priests" in the world to preach the Word, to administer the sacraments, to catechize the young, to care for the poor and needy. He has equipped each church with independent authority to devise its own polity, to define its own doctrine, and to discipline its own members through the spiritual means of admonition, censure, and excommunication. Such disciplinary 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 Roman 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 Roman Catholic church had thereby "usurped the state's authority and law," "Judaized the Christian faith," and "tyrannized the Christian conscience."²⁵

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.²⁶ Each magistrate was called to be the "guardian and vindicator of both tables of the [Decalogue]."²⁷ This rendered the magistrate responsible for governing both the relationships between persons and God, based on the First Table of the Decalogue, and the multiple relationships among persons, based on the Second Table. Thus the magistrate was to punish

24. Apollonius, *Jus maiestatis*, 2:282ff.; see also Triglandus, *Dissertatio theologica*, 258.

25. See Voetius, *Politica ecclesiastica*, 1:114ff., 241ff.; 3:783ff.; Triglandus, *Dissertatio theologica*, 305; Apollonius, *Jus maiestatis*, 1:120; 2:314ff.; 3:372.

26. See Triglandus, *Dissertatio theologica*, 14ff.; Voetius, *Politica ecclesiastica*, 1:123ff.; Apollonius, *Jus maiestatis*, 2:262ff.

27. Quoted in Conring, *Kirche und Staat*, 65. See also discussion in Nobbs, *Theocracy and Toleration*, 10ff., 108ff.

all idolatry, blasphemy, false swearing, witchcraft, alchemy, Sabbath-breaking, and other sins against God, based on the First Table. He was also to promulgate criminal, property, contract, family, corporate, commercial, and other laws based on the Second Table.²⁸

This two-powers theory of the Reformers, though dominant, did not 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.²⁹

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 ample Erastian and theocratic inclinations prevailed in the early decades of the Dutch republic. The Reformed church, though not established, was favored throughout the Netherlands and subject to considerable civil control, particularly in Zeeland, Holland, and Gelderland.³⁰ The provincial and municipal authorities, though not

28. Ibid. See also H. J. Berman and J. Witte, Jr. "The Transformation of Western Legal Philosophy in Lutheran Germany," *Southern California Law Review* 62 (1989), 1573, 1626-32.

29. See generally J. Uytenbogaert, *Tractaet van't ampt ende autoriteyt eener hooger christelijker overheydt in kerckelycke saecken* (Leyden, 1647); H. Grotius, *De imperio summarum potestatum circa sacra* (Lvtetiae Parisiorvm, 1647); N. Vedelius, *De episcopatu Constantini Magni . . .* (Delphis, 1661); G. Vossius, *Dissertatio epistolica de iure magistratus in rebus ecclesiasticis* (Amstelodami, 1669). See discussion in Nobbs, *Theocracy and Toleration*, 25ff.; Bohatec, "Das Territorial- und Kollegialsystem," 12ff.

30. See generally De Jong, "Unie en Religie," 179ff.; A. Duke & R. Jones, "Towards a Reformed Polity in Holland, 1572-1578," *Tijdschrift voor Geschiedenis* 89 (1976), 373; H. van Gelder, *Getemperde vrijheid* (Groningen: Wolters-Noordhoff, 1972); P. Geyl, "De protestantisering van Noord-Nederland," *Leiding* 2 (1930), 113, 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

dominated by the Reformed ecclesiastical officials, often cooperated with them in the promulgation and enforcement of civil law, particularly in Friesland and Groningen.

III. THE NEW REFORMED LAWS OF ECCLESIASTICAL POLITY

The Reformation transformed, *inter alia*, the polity and law of the Dutch church. Reformed church officials promulgated a welter of new ordinances and opinions to define and govern the internal affairs of the church and the activities of their clergy and parishioners. The Reformed church records produced during the first two generations alone bow several long book shelves. This ecclesiastical transformation, however, was not nearly so radical as the early Reformers had envisioned. The Reformed ecclesiastical polity, though lacking papal superior and episcopal divisions, nonetheless maintained basic Roman Catholic forms and functions. The Reformed church law, though far narrower in scope than the Roman Catholic canon law, still included basic canon-law principles.

The Reformers' emulation and accommodation of Roman Catholic prototypes could only be expected. Roman Catholic ecclesiastical structures had, after all, ruled effectively and efficiently in the Netherlands for centuries. Roman Catholic canon law was a sophisticated and subtle system of law well-known to the jurists and theologians who joined the Reformed cause and a regular course in both the law faculties and theology faculties of the Dutch universities, even after the Reformation. Moreover, use of the canon law, the great legal historian L. J. van Apeldoorn tells us, was "never expressly prohibited by the Reformed authorities [in the Netherlands]."³¹ Theologically offensive ecclesiastical structures and legal provisions, such as those rooted in notions of papal supremacy or spurned sacraments, were naturally discarded. What remained, however, was readily used in service of Calvinist principles of church and law.

Like their Roman Catholic predecessors, the Dutch Calvinist Reformers developed a hierarchical church polity. Instead of parishes,

own lands, the true, Christian Reformed religion . . . as it was established by the national synod held in the year 1619." Bakhuizen van den Brink, *Documenta Reformata* (Kampen: J. H. Kok, 1960), 1:487. 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.

31. L. J. van Apeldoorn, *Geschiedenis van het nederlandsche huwelijksrecht voor de invoering van de fransche wetsgeving* (Amsterdam: Uitgeversmaatschappij Holland, 1925), 76.

deaneries, and archdeaconries, the Reformers used analogous congregations, classes, and synodical provinces each with its own courts and officials, and bound together into a system of appeal and review.³² This basic parallel in ecclesiastical polity was not accidental. It had been recommended by delegates to the so-called Synod of Teur (1563) to ease the transition from a Catholic to a Calvinist polity — a recommendation taken to heart by subsequent synods.³³

Each congregation of the new Dutch Reformed church was governed by a separate consistory court (*kerkraad*), modeled on those courts developed earlier by John à Lasco in East Friesland, John Calvin in Geneva, and Martin Micronius (with John à Lasco) in London.³⁴ The multiple responsibilities of the consistory were divided among the four offices of preacher, doctor, elder, and deacon that Calvin had defined.³⁵ (1) An ordained minister (*predikant*) was responsible to preach the

32. On the organization of the Dutch Reformed churches in the early decades of the republic, see generally Apeldoorn, "De kerkelijke goederen," *passim*; Siccamo, *De samenhang in het recht*; A. Duke, "The Ambivalent Face of Calvinism in the Netherlands, 1561-1618," in *International Calvinism*, ed. M. Priest (Oxford: Clarendon Press, 1985), 109, 121ff.; T. Haitjema, *Nederlands hervormd kerkrecht* (Nijkerk: G. F. Callenbach, 1951); W. Ellemeet, "De organisatie der utrechtse gereformeerde kerken voor de invoering der dortdse kerkenorde," *Nederlandsch Archief voor Kerkgeschiedenis* (n.s.) 36 (1948), 247; S. De Jong, *The Hierarchical Order in Holland at the Time of the Reformation* (Ph.D. Diss. Gregorian, 1938); H. Hoffmann, *Das Kirchenverfassung der niederländischen Reformierten bis zum Beginne der dordrechter Nationalsynode von 1618/1619*, 2d ed. (Tuebingen: J. C. B. Mohr, 1907).

33. M. Hansen, *The Reformed Church in the Netherlands Traced From 1340 to 1840* (New York: Board of the Reformed Church of America, 1884), 94.

34. On East Friesland, see E. Sehling, *Die evangelischen Kirchenordnung des XVI. Jahrhunderts*, 16 vols. (Tuebingen: J. C. B. Mohr, 1902-78), 7/1:307ff.; Hoffmann, *Das Kirchenverfassung*, 1-13. On London, see W. Dankbaar, *De christelijke ordinancien der nederlantscher ghemeinten te Londen (1554)* ('s-Gravenhage: Martinus Nijhoff, 1956); A. Kuyper, *Kerkeraads-protocollen der Hollandsche gemeente te Londen, 1569-1571* (Utrecht: Kemink, 1870). On Geneva, J. Bergier, *Registres de la compagnie des pasteurs de Geneve au temps de Calvin* (Geneva: Librairie Droz, 1964), 1-13.

35. J. Calvin, *Institutio christianae religionis* (1559), bk. 4, 3, reprinted in *Corpus Reformatorum* (Brunsvigae: C. S. Schwetschke et Filium, 1864), 30:2. See the delineation and definition of these four offices in, e.g., *Acta synodi ecclesiarum belgicarum . . . habitae Embdae* (1571), items 13-17, in F. Rutgers, *Acta van de nederlandsche synoden der zestiende eeuw* ('s-Gravenhage: Martinus Nijhoff, 1889), 55; *Acta ofte handelingen des nationalen synodi der Nederlandschen . . . gehouden tot Dordrecht (1578)*, items 1-46, in C. Hooijer, *Oude kerkordeningen der nederlandsche hervormde gemeenten (1563-1638)* (Zalt-Bommel: Joh. Noman en Zoon, 1865), 145 and *Kerkenordeninge der nederlandsche gereformeerde kerken . . . gesteld in den nationalen synode . . . in 's-Gravenhage, (1586)*, items 2-25, in Hooijer, *Oude kerkordeningen*, 270. See also Hoffmann, *Das Kirchenverfassung*, 95-124.

Word, administer the sacraments, counsel the wayward, console the disadvantaged, and preside at all plenary consistory sessions. Most ministers, already in the early years of the Reformation, were trained in theology. Very few ministers were trained in law; those that were, received little encouragement to pursue any legal, political, or commercial activities while they held office.³⁶ Despite the church's protests, civil rulers, particularly in Zeeland and Holland, took an active hand in selecting and supervising the ministers.³⁷ (2) One or more doctors of theology served to catechize the young, to organize parochial schools within the community, and to help adjudicate disputes concerning doctrine and liturgy that arose within the congregation. Their appointments, too, were sometimes subject to uncomfortably close civil scrutiny and control. (3) Several elders (*ouderlingen*) were chosen to maintain orthodoxy and order within the congregation. In the early years, these elders were generally men of high office and notable respectability — lawyers, doctors, university professors, prominent businessmen, and the like. The elders regularly visited the homes of parishioners to ensure that they were faithful in their devotional life, church attendance, and private morality. They examined new members who sought to participate in the congregation or to partake of the communion. They adjudicated, usually with the minister presiding, all cases involving spiritual or moral disputes or offenses that arose within the church.³⁸ They also supervised, usually at some distance, the work of the ministers and doctors. (4) Several deacons (*diakonen*) served as financial officers of the

36. See, e.g., *Acta ofte handelingen des provinciale synodi der kerken van Holland en Zeeland, gehouden binnen Dordrecht (1574)*, q. 4, in Hooijer, *Oude kerkordeningen*, 109-110; *Acta synodi particularis van Suydthollandt, gehouden in den Briel, (1593)*, item 28, in J. Reitsma & S. van Veen, *Acta der provinciale en particuliere synoden*, 8 vols. (Groningen: J. B. Wolters, 1892), 3:11. See generally G. Groenhuis, *De predikanten. De sociale positie van de gereformeerde predikanten in de republiek der vereenigde Nederlanden voor c. 1700* (Groningen: Wolters-Noordhoff, 1977).

37. See, e.g., *Kerkelijke wetten . . . van Holland en Zeeland (1576)*, items 1-18, in Hooijer, *Oude kerkordeningen*, 121; *Kerkelijke wetten . . . van Holland (1583)*, items 1-4, 7, in Hooijer, *Oude kerkordeningen*, p. 233; *Kerkenordering van Zeeland (1591)*, items 2-17, in Blecourt & Japiske, *Klein plakkaatboek*, 193. Zeeland later established a so-called *collegium qualificatum*, comprised of both civil and ecclesiastical officials, to appoint ministers. See W. de Beaufort, *De verhouding van den staat tot de verschillende kerkgenootschappen in de republiek der vereenigde Nederlanden, 1581-1795* (Utrecht: Kemink, 1868).

38. See A. van Ginkel, *De ouderling. Oorsprong en ontwikkeling van het ambt van ouderling en de functie daarvan in de gereformeerde kerk der nederlanden in de 16e en 17e eeuw* (Amsterdam: Ton Bolland, 1975); T. Hoekstra, *Het Huisbezoek*, 3d ed. (Kampen: J. H. Kok, 1923), 52ff.

church, who collected the tithes, coordinated the maintenance of church properties, and made distributions to the poor and needy within and without the church.

A group of congregations within a large municipality or rural region formed a classis. The classis had its own court comprised of representatives chosen from each consistory court. This classis court generally met every few months to hear appeals from the consistory 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 consistory court had recommended excommunication of a parishioner.³⁹

Each of the seven provinces also had a synod or provincial church court (*provinciale kerkraad*), comprised of representatives from each of the classes. The synods were both legislative and judicial bodies. They issued church ordinances to govern the polity, doctrine, and discipline of the church. They adjudicated cases that raised particularly novel or intricate claims or that had divided the classis courts. They set standards for ordination of ministers and appointment of doctors and examined new candidates for these offices. They issued advisory opinions and orders to classis and consistory courts.⁴⁰ In theory, each of the seven provincial synods was to convene 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 national synods were even rarer events.

As is still largely the case today, the new Reformed church courts were far less formal than their Roman 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

39. See esp. *Acta ofte handelingen des provinciale synodi der Kerken van Holland en Zeeland, gehouden binnen Dordrecht (1574)*, items 9-11, 73, in Hooijer, *Oude kerkordeningen*, 98; *Kerkenordre van landschap Drenthe (1638)*, items 45-55, in Blecourt & Japiske, *Klein plakkaatboek*, 257.

40. The synodical ordinances are collected in Hooijer, *Oude kerkordeningen*; Rutgers, *Acta*; Reitsma en van Veen, *Acta*; P. C. Knuttel, *Acta de particuliere synoden van Zuid-Holland, 1621-1700*, 6 vols. ('s-Gravenhage: Martinus Nijhoff, 1908-1916); N. Wiltens en P. Scheltus, *Kerkelijke Plakkaatboek*, 5 vols. (Utrecht, 1722-1807). Most of the synodical opinions are simply appended to these ordinances under the titles "*particularia*" or "*quaestiones*."

provincial and national synods were simple legal documents that listed rules and requirements categorically but left most of the details to the discretion of ecclesiastical officials. The opinions issued by the classical and synodical courts to resolve cases before them 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 of university theologians. But, in the first several decades, a good deal of this new Reformed church law was left informal and unwritten.

The Reformed church courts also exercised a far more limited jurisdiction than their Roman Catholic predecessors.⁴¹ 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 . . . to the judgments and authority of the civil magistracy."⁴² 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 laity, or maintain a separate sacrament of ordination, and thus claimed no special personal jurisdiction over clerics and no special clerical immunities from civil taxation, prosecution, and services. The Reformed church courts limited their jurisdiction to matters (1) doctrinal and liturgical; (2) moral and disciplinary; and (3) chari-

41. I am using the term "ecclesiastical jurisdiction" here in the modern sense of the authority or power of church officials to declare, interpret, and enforce rules and regulations to govern doctrine and discipline within the church. Many of the Reformers, building on Calvin, spoke of "ecclesiastical power" (*potestas ecclesiasticae*), which they divided into: (1) "doctrinal power," that is, "the authority to lay down dogmas and interpret them"; (2) "legislative power," that is, the power to make laws that protect "decency" and "dignity" in the church and "humanity" and "moderation" in the community at large; and (3) "jurisdiction [which] pertains to the discipline of morals [and promotes] an order framed for the preservation of the spiritual polity." Calvin, *Institutio*, bk. 3, 8, 10, 11. See also, e.g., Voetius, *Politica ecclesiastica*, 1:114ff., 340ff.; 3:783ff.

42. Acta ofte handeligen des provinciale synodi der Kerken van Holland en Zeeland, gehouden binnen Dordrecht (1574), item 5, in Hooijer, *Oude kerkordeningen*, 97-98; see also id., item 88. In the province of Holland ministers were required to swear oaths that they would defer to and respect the civil law, on pain of defrockment. See Kerkelijke wetten . . . van Holland (1583), items 4-5 in Hooijer, *Oude kerkordeningen*, 235.

table and educational.⁴³ These matters had also lain at the heart of the spiritual jurisdiction of the Roman Catholic church.

First, the Reformed church courts, like their Roman 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 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 faithful attendance at Sunday services and observance of the holy days of Christmas, Good Friday, Easter, Ascension Day, and Pentecost. They prescribed prayers, rituals, and songs for the celebration of the sacraments, the confirmation of new communicant members, and the consecration of marriages.⁴⁴

The church courts also proscribed "doctrinal sin" among their parishioners. Such sin included not only idolatry, blasphemy, Sabbath-breaking, sorcery, sacrilege, and other obvious spiritual lapses. It also included entertaining or teaching heretical doctrines, printing or selling scandalous literature, associating too closely with Anabaptists, "evangelicals" (i.e., Lutherans), or Roman Catholics, regularly refusing participation in the Lord's Supper, or resisting the spiritual admonitions and instructions of the church courts.⁴⁵

Much of the litigation over spiritual affairs during sessions of the early Reformed church courts concerned minor details of liturgical

43. This definition of the church's jurisdiction was consistent with the influential Confession of Faith of 1561 (later called the Belgic Confession), which declared that the church be governed by "a spiritual polity," that "it is useful and beneficial that those who are rulers of the church institute and establish certain ordinances among themselves," and that, "by these means," (1) "the true religion may be preserved and true doctrine everywhere propagated"; (2) "transgressors [may be] punished and restrained by spiritual means"; and (3) "the poor and distressed may be relieved and comforted." *Confessio Belgica*, Arts. 30, 32 (1561), reprinted in P. Schaff, *The Creeds of Christendom* (New York: Harper, 1882), 3:383.

44. See, e.g., *Acta ofte handelingen des provinciale synodi der Kerken van Holland en Zeeland, gehouden binnen Dordrecht (1574)*, items 37-81, in Hooijer, *Oude kerkordeningen*, 102; *Kerkenordeninge der nederlandsche gereformeerde kerken . . . gesteld in den nationalen synode . . . in 's-Gravenhage (1586)*, items 47-63, in Hooijer, *Oude kerkordeningen*, 276; *Canones synodi dordrechtanae (1618/1619)*, in Schaff, *Creeds*, 3:550.

45. See, e.g., *Acta ofte handelingen des provincialen synodi van Zeelandt . . . gehouden binnen Middelburgh (1591)*, items 62-63, in Hooijer, *Oude kerkordeningen*, 317, and discussion in Hoffmann, *Das Kirchenverfassung*, 78ff.

form. The early synodical 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 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.⁴⁶ In 1579, Coolhaas sought to accord 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 for this invitation to civic officiousness, Coolhaas wrote a lengthy apologia for his position and criticized sharply the prevailing Reformed doctrines of church and state.⁴⁷ A national synod, meeting at Middelburg in 1581, condemned his teachings and ordered him to repent.⁴⁸ When he refused, a Provincial Synod at Haarlem the following year defrocked and excommunicated him.⁴⁹ Later courts further condemned distribution of his writings and teaching of his doctrines. Similar litigation erupted over the theological teachings of Leiden theology professor Jacob Arminius and other so-called Remonstrants (including the famous Dutch jurist Hugo Grotius). The Remonstrants taught conditional election on the ground of foreseen faith, universal atonement, partial depravity, resistable grace, and the possibility of lapsing from grace. Several synodical and classis courts at the turn of the seventeenth century criticized these doctrines. In 1618-19, the national synod meeting at Dordrecht issued a stinging *Five Articles Against the Remonstrants* in which they required adherence to the doctrines of unconditional

46. See discussion of this case in J. Triglandus, *Kerckelycke Geschiedenissen* (Leyden, 1650), 163ff.; Hansen, *The Reformed Church*, 122ff.; Hooijer, *Oude kerkordeningen*, 188ff.

47. *Apologie. Een christelycke ende billycke verantwoordinge Caspari Coolhaessen* (Leyden, 1580).

48. Hooijer, *Oude kerkordeningen*, 188ff.

49. The examination and excommunication of Coolhaas is recounted in *Memorien van den acten . . . den synode der provincie van Hollandt te Haarlem (1582)*, in Reitsma en van Veen, *Acta*, 1:89-113.

election, limited atonement, total depravity, irresistible grace, and the eternal perseverance of all the saints.⁵⁰ Arminius, Grotius, and all those who entertained contrary doctrines were branded as heretics and were banned, with their families, from the church — and, in some provinces, from the community altogether.

Second, the Reformed church courts, like their Roman Catholic predecessors, exercised a stern moral authority over their parishioners. The Roman 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 or her from eternal punishment, and to prescribe virtuous works of purgation.⁵¹ The Reformed church based its jurisdiction over morality on the sacrament of the Lord's Supper or Eucharist. 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.⁵² Like the Roman 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 Roman 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."⁵³

Building on Calvin's taxonomy, the Reformed church courts distinguished between private or light sins and public or grave sins.⁵⁴ Private

50. See the *Canones synodi dordrechtanae* (1618/1619) together with the *Sententia synodi de remonstrantibus* (1618/1619), in Schaff, *Creeeds*, 3:550, 578.

51. See generally, P. Anciaux, *The Sacrament of Penance* (New York: Sheed & Ward, 1962); K. Rahner, *Theological Investigations*, trans. C. Ernest (Baltimore: Helicon Press, 1963), 2:135ff.

52. See Calvin, *Institutio*, bk. 4, 17.40; *Kerkelijke wetten . . . van Zeeland* (1591), items 68-73, in Blecourt & Japiske, *Klein plakkaatboek*, pp. 200-201. See discussion in Duke, "The Ambivalent Face," 130ff.; Hoffmann, *Das Kirchenverfassung*, 73ff.

53. Quoted in Duke, "The Ambivalent Face," 131.

54. See Calvin, *Institutio*, bk. 4, 12.3,4,6.

sins (*heimlicke delicta*) were those immoral thoughts or acts that caused no tangible harm to others or open scandal — greed, sumptuousness, lust, masturbation, bestiality, hatred, jealousy, envy, and similar vices. Public sins were those crimes or shameful acts (*scelera, 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].”⁵⁵

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 or herself 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 in the church. 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 and family questions — 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 wives could leave drunken or abusive husbands, 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.⁵⁶

55. Kerkelijke wetten . . . van Zeeland (1591), items 62-67, in Blecourt & Japiske, *Klein plakkaatboek*, 200.

56. See, e.g., *Acta ofte handelingen des provinciale synodi der Kerken van Holland en Zeeland, gehouden binnen Dordrecht (1574)*, items 88-89, qq. 8, 11, 12, 14, 17, 18, 26, in Hooijer, *Oude kerkordeningen*, 109-114; *Acta ofte handelingen des nationalen synodi der Nederlandschen . . . gehouden tot Dordrecht (1578)*, items 90-97, qq. 5, 39-40, in Hooijer, *Oude kerkordeningen*, 145; *Kerkenordeninge in den nationalen of generalen synodi . . . tot Middelburg (1581)*, qq. 36, 60, 87, in Hooijer, *Oude kerkordeningen*, 201. In more

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 gravely 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 to the congregation their sins of adultery, bigamy, and secret marriage, and if they could have their marriage formalized at civil law, they would be admitted to communion in the church.⁵⁷

The church's jurisdiction over sin coincided closely with the state's jurisdiction over crime. In theory, the two authorities maintained 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."⁵⁸ In reality, church courts and magistrate courts 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 each other in devising appropriate punishments. Church courts would send felons who appeared before them to the magistrate courts with a strong

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., *Kerkelijke wetten . . . van Holland* (1583), items 23-39, in Hooijer, *Oude kerkordeningen*, 225.

57. See *Kerkenordeninge . . . gesteld in den nationalen synode . . . in 's-Gravenhage* (1586), q. 11, in Hooijer, *Oude kerkordeningen*, 282 along with discussion in L. Ippel, *Kerkgeschiedenis von 's-Gravenhage* ('s-Gravenhage: Martinus Nijhoff, 1877), 144-47.

58. *Acta ofte handelingen des nationalen synodi der Nederlandschen . . . gehouden tot Dordrecht* (1578), item 92, in Hooijer, *Oude kerkordeningen*, 157-58; see also *Kerkenordening van Zeeland* (1591), item 72, in Blecourt & Japiske, *Klein plakkaatboek*, 201.

recommendation that they be executed, ostracized, or consigned to hard labor. Magistrate courts would send those guilty of "light offenses" to the church courts for reproof and prescribed community service.⁵⁹ 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.

Third, the Reformed church courts, like their Roman Catholic predecessors, exercised broad authority over education, poor relief, and other forms of public charity. The Roman Catholic church had vested its charitable authority principally in cloisters, chantries, rural deans, and parish priests, under 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 its charitable authority in 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 education in religion, science, and the liberal arts. 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.⁶⁰

59. See generally, Fockema Andreae, "De kerk op wereldlijke terrein onder de republiek," *Nederlands Archief voor Kerkgeschiedenis* (n.s.) 39 (1952/3), 146, 151-56.

60. See, e.g., *Kerkelijke wetten van . . . Holland en Zeeland* (1576), items 32-33, 35, 40, in Hooijer, *Oude kerkordeningen*, 125-26; *Acte ofte handelingen des nationalen synodi der Nederlandschen . . . gehouden tot Dordrecht* (1578), items 47-52, in Hooijer, *Oude kerkordeningen*, 152; *Kerkelijke wetten . . . te 's-Gravenhage* (1591), items 25, 26, 39, in Hooijer,

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."⁶¹ 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."⁶² Charitable organizations generally accepted the services only of those who professed the Reformed faith.

IV. CONCLUSIONS

To bring to light this ancient history is neither to wax nostalgic about the golden birth of the Dutch Reformed church, nor to offer a panacea to crises within current Reformed churches. We cannot delude ourselves with unduly romantic accounts of the birth of our Reformed tradition, or seek simply to transpose the vision of our ecclesiastical founders into modern times. Our founders did not establish their churches only through private initiative and personal sacrifice. They also appropriated hundreds of church properties and endowments left by Catholic believers who had been killed or made refugees. Our founders did not derive their ecclesiastical polity only from new spiritual visions and biblical insights. They also adopted a good deal of the ecclesiastical polity and canon law of the Roman Catholic tradition. Our founders did not always resolve their intrachurch disputes within the shelter of the sanctuary or the synod. They occasionally invoked civil courts and magistrates to help them, leading to bitter schisms and ostracisms. Our belief in a providential view of history should render us respectful of the roots and routes of the Reformed tradition. But our beliefs in the constant

Oude kerkordeningen, 345-48. See generally Fockema Andreae, "De kerk," 146ff.; Groenhuis, *De predikanten*, 145ff.; Duke, "The Ambivalent Face," 128ff.; A. Kunst, *Van Sint Elisabeths-Gasthuis tot Gereformeerd Burgerweeshuis* (Utrecht: Vesta, 1954).

61. Quoted in Kunst, *Van Sint Elisabeths-Gasthuis*, 119.

62. *Acte ofte handelingen des nationalen synodi der Nederlandschen . . . gehouden tot Dordrecht* (1578), items 47, 50, in Hooijer, *Oude kerkordeningen*, 152.

reality of sin should render us suspicious of attempts to idealize or to idolize any one era in that tradition, even the founding era. As Jaroslav Pelikan reminds us, "[t]radition is the living faith of the dead; traditionalism is the dead faith of the living."⁶³

Even with these caveats in mind, however, this ancient history offers lessons even for our day.

On the one hand, the early Reformers respected the *rule of law* within the visible church. They devised laws that defined their doctrines and disciplinary standards, the rights and duties of their officers and parishioners, their procedures for legislation and dispute resolution. The church was thereby protected from the intrusions of state law and the sinful vicissitudes of their members. Officials were limited in their discretion. Parishioners understood their spiritual duties. When new rules were issued, they were discussed, promulgated, and well-known. Issues that were ripe for review were resolved by church tribunals, not delegated or dithered over. Parties that had cases to be heard exhausted their remedies at church law; they did not turn to public opinion polls or civil courts for judgment. Disgruntled individuals and families that departed from the church left their private pews and personal properties behind them. Dissenting congregations that seceded from the fold left their properties in the hands of the corporate body. To be sure, this principle of the rule of law within the Reformed church was an ideal that too often has been honored only in the breach. Yet this principle was one of the pillars of reformed ecclesiology, guaranteeing order, organization, and orthodoxy within the Reformed church. Many combatants in the current struggles in North America could profit from a greater respect for this first principle.

On the other hand, the early Reformers respected the *democratic process* within the visible church. Pastors, elders, and deacons were elected to their offices by the congregation. Congregations periodically held collective meetings to assess the performance of their church officers, to discuss new initiatives within their bodies, to debate controversies that had arisen. Delegates to the classes and synods were elected by their peers. Classis and synod proceedings were open to the public, gave standing to parishioners to press their claims, and welcomed interventions from the gallery. Implicit in this democratic process was a willingness to entertain changes in doctrine, liturgy, and polity, to accommodate new visions and insights, to spurn ideas and institutions

63. Jaroslav Pelikan, *The Vindication of Tradition* (New Haven: Yale University Press, 1984), 65.

whose utility and veracity were no longer tenable.⁶⁴ This principle was a second pillar of reformed theology, guaranteeing constant reflection, renewal, and reform within the Reformed church. Many combatants in the current struggles in North America could also profit from measuring their conduct against this principle.

It was the genius of the early Reformers to juxtapose these two cardinal principles of ecclesiology. Democratic processes prevented the rule-of-law principle from promoting an ossified and outmoded orthodoxy. The rule of law prevented the democratic principle from promoting a faith swayed by fleeting fashions and public opinions. Together, these two principles allowed the church to strike a unique perpetual balance between freedom and law, spirit and structure, innovation and order.

This delicate ecclesiastical machinery does not inoculate the Reformed church against dissent and schism. The Reformed church has experienced schisms in the past and will know schisms in future. But it is an ecclesiastical machinery that has rendered the pluriform Reformed church remarkably resilient over three centuries and in numerous countries and cultures. Its time-tested insights and institutions should not be lost on us today as we struggle to repair our old ecclesiastical orders and to form new ones.

64. See further discussion in J. Witte, Jr., ed., *Christianity and Democracy in Global Context* (Boulder: Westview Press, 1993), 5-7, 12-13; J. Witte, Jr., "How to Govern a City on a Hill: Puritan Contributions to American Constitutionalism," *Emory Law Journal* 39 (1990): 41, 55-62.