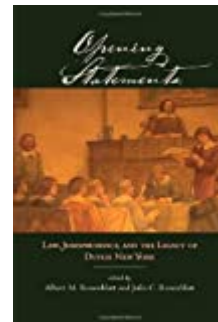




Albert M. Rosenblatt, Julia C. Rosenblatt, eds. *Opening Statements: Law, Jurisprudence, and the Legacy of Dutch New York*. Albany: State University of New York Press, 2012. xxiv + 243 pp. \$35.00 (cloth), ISBN 978-1-4384-4657-8.



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Dutch Treat

How much of the credit should the Dutch of New Netherland share for shaping subsequent American institutions? If scholars have underestimated the Dutch legacy, legal history may provide a useful corrective because of the paper trail and precedents that law generates. Set in their cultural and material milieu, subtle legal doctrines might even be a vehicle for broader historical understanding. That is certainly the case in this relatively brief, beautifully designed volume. Thirteen essays and dozens of vivid illustrations reanimate a lost world that will stir the imagination of early Americanists and New York history buffs, while inviting those interested in the legal history of freedom of religion, arbitration, the right of petition, republican sovereignty, and multiculturalism to undertake their own fresh investigations of Dutch New York.

The stable of experts contributing to *Opening Statements* are not alone in arguing that New Netherland deserves greater attention from historians. As the forward and the introduction note, the significance of Dutch New York has come in and out of focus over the centuries. A

decade ago, journalist Russell Shorto made a widely read case for the importance of New Amsterdam in his popular *The Island at the Center of the World: The Epic Story of Dutch Manhattan and the Forgotten Colony That Shaped America*. The predilection for zeroes may have prompted further interest; 2009 marked the four hundredth anniversary of the Henry Hudson Dutch-sponsored voyage that presaged subsequent ventures sponsored by the West India Company (WIC). Meanwhile, scholarship has been facilitated by the translation over the last several decades of documents from seventeenth-century Dutch to modern English, notably, the New Netherland Project under the auspices of the New York State Library.[1] Taken together, the essays and images in this collection demonstrate that painstaking historical reconstruction depends on the accessibility of high quality archival material.

The New Netherland that these writers reconstruct is one of contested authority—over land, between races, regarding the free exercise of religion, and concerning executive prerogatives. While the same could be said of

other seventeenth-century colonies along North America's Atlantic Coast, no one reading these essays will think they have accidentally stumbled into New England or the Chesapeake. The book establishes that the Dutch-run colony had a unique texture that has made New York a reservoir of provincially articulated European, African, and American traditions. While men and women in New Netherland recognized the power vested in higher office, probing the limits of that authority became a fixture of legal culture—even though a revolutionary expansion of human liberty generally remained unrealized in the Dutch period and beyond.

Joep de Koning's essay makes the most overt case for celebrating New Netherland as a beacon of religious toleration. He argues that the struggles of the Low Lands to throw off the yoke of Spanish Catholic absolutism led to a Dutch Republic that explicitly applied to its colonial venture the liberal proviso that "Catholics or Jews must be left free without interference or investigation in their consciences or homes" (p. 177). As de Koning and other essayists note, what Dutch authorities themselves labeled "the freedom of ... conscience" meant only that people could believe what they wanted and practice how they pleased in private (p. 175). Such an understanding nonetheless represented a huge advance over the Spanish Inquisition's attempts to expose hidden heretics.

Principles of toleration combined with the secular commercial mission of the WIC to encourage some settlers in New Netherland to test the limits of their freedom. The striking ethnic, linguistic, and religious diversity of New Netherland is well known. But the step from diversity to modern pluralism, as several essays in the collection make clear, was an exceedingly long one. For Dutch Reformed authorities, the presence of Christians from other Protestant sects, let alone of Jews, represented a challenge to ordered hierarchy. Lutherans, Quakers, and Israelites learned that the Dutch notion of religious tolerance was not an open invitation to worship freely and publicly. In the case of the Jews and the ordained Lutheran minister Johannes Ernestus Gutwasser, their very presence in the colony raised serious concerns. Dutch history in both Europe and America tilted toward toleration, to be sure, but operating outside the Reform orbit took gumption. Peter R. Christoph reports in his essay "Lutherans and the Law in New Netherland: The Politics of Religion," that the WIC in 1640 specifically prohibited non-Reformed Church worship in public. Petrus Stuyvesant, the colony's director general, thought matters should stay that way, but the colony's Lutherans, drawn from a variety of European lands had other ideas.

In 1656, an Albany congregation incurred fines for worshipping openly. Stuyvesant even tried to crack down on private Lutheran worship, though company officials told the governor that such restrictions went too far. Matters became even more complicated when the Dutch absorbed New Sweden along the Delaware River, in the process absorbing more Lutherans. The arrival of Gutwasser in New Netherland provoked an almost comical game of cat and mouse, at one point the Lutheran minister trying to avoid deportation by hiding out in Queens.

In his too short essay "Prosecution or Persecution? The 1657 Flushing Incident," Charles Gehring, the New Netherland Project director, highlights that gauging religious tolerance in the seventeenth century is an exercise in relativity. Stuyvesant punished town officers on Long Island for permitting Quakers to gather privately. Gehring suggests that the governor's objection was as much political as religious because "Quakers were viewed by civil authorities as seditious anarchists"; therefore, tolerance of them by Flushing official Tobias Feake amounted to, in the historian's words, "insubordination" (p. 124). Gehring rightly points out that Stuyvesant's actions—he also later deported a Quaker—fell well short of Puritan Massachusetts's ignoble record of hanging members of the sect. He also notes that WIC officials criticized him for this latter action. A similar story line played out with Jewish emigrants, whose origins Leo Hershkowitz probes in another essay. The Jewish presence is a testimony to pragmatism and precedent over prejudice; Jews found sanctuary in the Netherlands, the WIC had a small but not insignificant number of Jewish investors, and New Amsterdam seemed like a potentially hospitable destination. But, predictably, Stuyvesant denied these newcomers the right to build a synagogue. Soon all but one of the initial Jewish arrivals to Manhattan left. Taken as a whole, the case for toleration is not only relative but also prospective—positive signs, mixed precedents, and the historians' knowledge that a more religiously permissive future in this diverse province would eventually follow.

With regard to race and slavery, however, neither initial diversity nor the colonial future offers such hopeful news, only the bittersweet reminder that a rigid legal system of racial bondage was preceded by an earlier period of fluidity and aspiration for African laborers. Joyce D. Goodfriend describes how the parents of dozens of African American infants had their children baptized in the Dutch Reformed Church in hopes of securing their freedom. Here the WIC takes on a far less benign role than in conflicts over religious tolerance; a 1644

law allowing some black adults the trappings of freedom demanded that their children "shall be bound and obligated to serve the Honorable West India Company" (p. 31). Still, black parents hoped that baptism would make it hard to justify holding Christian children in bondage. Sadly, Reformed clergy stopped baptizing slave children in the mid-1650s, thus more neatly aligning religious and racial distinctions. As Goodfriend notes, this was hardly the end of black efforts to reverse their fortunes in the colony. English rule in New York saw religious tolerance gaining traction for some sects, but the slave regime and the types of resistance grew dramatically more confrontational toward one another.

As in other colonies, New Netherland demonstrated that liberty for whites and blacks followed divergent paths. Essays on the practice of petitioning governmental officials and the use of arbitration to settle disputes establish that a rights culture existed in Dutch colonies and was not solely an English inheritance. As Martha Dickinson Shattuck describes, once Stuyvesant set up a colonial council in 1647 and then a system of municipal government in 1653, inhabitants revived Dutch traditions of petitioning. Most of the requests, perhaps predictably, involved matters of narrow commercial interest. Petitioners also raised public concerns; in Beverwyck (the future Albany) petitioners requested a ban on golf in the streets as too many windows had been broken. Twenty-first-century readers reflecting on precedents for their experience of local government might relate more to the colonial Dutch petitioner than to the participant in a colonial New England town meeting. More ominously, a nasty fight between former colonial director Willem Kieft and his detractors that landed in the lap of Stuyvesant and his council showed that government officials held the whip hand. The council authorized the torture of a witness. As for Kieft's chief nemeses Cornelis Melijn and Jochem Pietersz Kuyter found out, there was little sympathy from the new executive for questioning the actions of high officials. The two men found themselves accused of a capital offense for launching a direct challenge to governmental authority, though the council ruled to temporarily banish these former councilors and would-be whistle-blowers. Historian Jaap Jacobs takes care to place these events in the context of then prevalent ideas about political hierarchy and to show that more than Stuyvesant's heavy hand was at work. Finding a way to sort out claims of executive malfeasance is clearly complicated in any era.

An essay on arbitration, written by a law professor and a lawyer, seeks a more positive legacy for the Dutch legal tradition. Troy A. McKenzie and Wilson C. Free-

man go beyond historical reconstruction to propose that courts and arbitrators coordinate their efforts rather than serve as mutually exclusive forms of conflict resolution, drawing on the New Netherland model. Here the best way to honor the Dutch legacy is to make use of it. As David William Voorhees's strong closing essay "English Law through Dutch Eyes: The Leislerian Understanding of the English Legal System in New York" suggests, employing Dutch precedents in colonial times could be a dicey business. The Protestant zealot and merchant Jacob Leisler lost his life in part by imagining that William of Orange, the newly crowned English king, would be grateful for a Dutch-style militia-led takeover of the province and that English law would become more like Dutch law. Leisler's fatal miscalculation notwithstanding, Voorhees argues that the traces of Dutch heritage penetrated New York legal culture in a variety of ways, from the "decentralized" judicial and political system that privileged local "autonomy in legal affairs" (p. 220) to the chain of Hudson Valley manors originally envisioned by the Dutch, to the ways in which particular craftsmen coalesced to advocate for their interests, echoing a Dutch guild mentality. Americans forthrightly jostling for their interests has, perhaps, something to do with New York's Dutch legacy.

A more sweeping argument for the Dutch impress on American law and identity, however, requires moving from legal practice to political theory. And for that the volume revives the argument that the Declaration of Independence has Dutch roots. The argument has two prongs: one, that the 1581 Dutch Act of Abjuration, asserting the right to separate from rule by Spanish King Philip II served as a prototype for the U.S. founding document; and two, that Dutch philosophers influenced John Locke and the Enlightenment thought that inspired the founders. Dutch scholar Wijnand W. Mijnhardt outlines the case for the Dutch contribution, noting that such founders as Thomas Paine, Thomas Jefferson, Benjamin Franklin, and others expressed familiarity with the Dutch revolt and the Dutch Republic. The structural and substantive resemblance between the Act of Abjuration and the Declaration of Independence cannot be ignored. In both instances, a people renounce tyrannical authority of a distant monarch failing to live up to his responsibilities over those he rules, invoke natural law, and list specific grievances that necessitate a dramatic political break. As Mijnhardt concedes and as Harvard historian David Armitage argues in his book *The Declaration of Independence: A Global History*, there is only "circumstantial" not direct documentary evidence that Jefferson and

his colleagues drew on the Dutch document. Moreover, both these scholars recognize the American document as more radical: the act did not envision a people governing themselves but rather pledged allegiance to another prince, the Duke of Anjou; moreover, the fundamental equality, universality, and naturalness of rights was embraced in the American but not the Dutch document (p. 62). [2] Still, giving due consideration to the Dutch Act of Abjuration mitigates against a narrow Anglo-American legal or philosophical exceptionalism, a point that Minjhardt drives home by noting not only Locke's Dutch sources but also a broader Dutch Radical Enlightenment tradition of egalitarian liberalism (p. 63). Moreover, as Voorhees notes at the end of his essay, the work of Hugo Grotius remained the standard legal text in the mid-eighteenth century at Manhattan's Kings College (p. 222), where no less a figure than future Chief Justice and diplomat John Jay studied. As early American history continues to reorient itself as Atlantic history, room for Dutch precedents expands. As other essays show, New Netherland provided its own variants on almost every colonial theme, from the dispossession of Indian land to marriage law.

The striking illustrations, almost eighty, distributed throughout the book, make a statement of their own about the materiality of life in a colony rooting itself in American soil but only comprehensible as part of the wider Atlantic basin. These illustrations offer an eclectic, but intelligent mix of seventeenth-century primary sources, subsequent attempts to commemorate America's Dutch heritage, and present-day artist reimaginings of what life looked like almost four centuries ago. Reproductions of archival documents like the Act of Abjuration, the letter reporting the supposed Indian sale of Manhattan, and the Flushing Remonstrance mostly serve to remind the reader of the brittle substance on which historians rely. Seventeenth-century maps, reproduced in full color, drive home that the transfer of law to this new land was part of an imperial project to turn a Native American world into a European one. Recognizing the craftsmanship and creativity of this geography does not diminish the tragedy of the tri-racial exchange such mapping facilitated, as a troika of images in Goodfriend's essay on slavery makes clear—one a watercolor of the Luanda slave port, another a map of Elima slave castle and its vicinity, and a third an engraving of three

New York City slaves ca. 1700. Seventeenth-century watercolors and drawings from the perspective of an approaching ship make the place where the Dutch forged their legacy look at once modest and substantial. With so much archival imagery in place, the series of bolder renderings in our own time by L. F. Tantillo supplement the reader's conjuring of the past rather than dominating or determining what we see in the mind's eye. Meanwhile, other illustrations encourage a useful humility even as they subtly make the case for reconsidering the Dutch legacy; thus, the editors treat the reader to postcards from 1909, a postage stamp from 1957, and other retrospective commemorations of Dutch New York's signal place in U.S. history. Nostalgic kitsch can be transformed in serious history just as serious history sometimes becomes nostalgic kitsch. While there is only one essay in the volume explicitly on material culture—two archaeological anthropologists describe New Amsterdam's first city hall—the whole book, even at its most theoretical, concerns itself with law as a tangible aspect of everyday life.

The very nature of a project like *Opening Statements* is to challenge received wisdom, even if that occasionally means stretching a point as far as it can go. No matter how much or little a reader credits each individual argument and the overall case for a Dutch legacy in New York and American jurisprudence, the editors have assembled a book that is more than the sum of its parts. The essays require careful consideration to catch all their subtleties, while New Netherland leaps off the page as a diverse, vibrant society, rife with edifying conflict.

Notes

[1]. Russell Shorto, *The Island at the Center of the World: The Epic Story of Dutch Manhattan and the Forgotten Colony That Shaped America* (New York: Doubleday, 2004), 1,4-7, 52, 142-143, 151, 271, 312, 322-325, pays tribute to the work of the New Netherland Project and translator Dr. Charles Gehring.

[2]. David Armitage, *The Declaration of Independence: A Global History* (Cambridge: Harvard University Press, 2007), 42-43; for a translation of the act itself, see Oliver J. Thatcher, ed., *The Library of Original Sources* (Milwaukee: University Research Extension Company, 1907), 5:190-197.

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