

## INTRODUCTION

During its colonial period in the 17<sup>th</sup> to 19<sup>th</sup> centuries, the Dutch part in the inhumane trade of enslaved persons from (largely) Africa to plantations in the Americas is estimated at over half a million people.<sup>1</sup> Following an emancipation movement starting in the 18<sup>th</sup> century, the Dutch abolished slavery in 1863 (which was later than some other European colonial powers, such as the UK in 1833 and France in 1848). Given that Utrecht University was founded in 1636 and slavery was abolished in 1863, the two institutions overlapped for some 225 years. What were the connections between Utrecht University's School of Law and slavery in that time? What are the consequences and legacies of that involvement and how are they accounted for today? These are some of the core questions addressed in this volume. Through a variety of sources, including scholarly books, case law and legislation, researchers have shed light on the School of Law's connections with slavery, from deep into the past up until recent times.

Despite being abolished in the Netherlands 161 years ago, the legacies of slavery persist to the present day. It is perhaps unsurprising that an institution that existed for over 400 years and saw the violent transfer and brutal enslavement of some 10 to 15 million people across the Atlantic<sup>2</sup> cannot be erased so quickly. Contemporary manifestations of this history, as well as institutionalized racism, in the Netherlands include the representations of 'Black Pete',<sup>3</sup> the disproportionate number of people of color who died during the Covid pandemic,<sup>4</sup> and the stark

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1. Africa Studies Centre Leiden, Dutch involvement in the transatlantic slave trade and abolition, 3 July 2023, available at: <https://www.ascleiden.nl/content/webdossiers/dutch-involvement-transatlantic-slave-trade-and-abolition>, accessed 3 May 2024.
  2. United Nations, Slave Trade, available at <https://www.un.org/en/observances/decade-people-african-descent/slave-trade> accessed 4 May 2024.
  3. As discussed by the UN Committee on the Elimination of Racial Discrimination in the Concluding Observations to the Kingdom of the Netherlands, CERD/C/NLD/CO/22-24 (16 November 2012) paras 27-28.
  4. See, for example, Liza Coyer, Elke Wynberg, Marcel Buster, Camiel Wijffels, Maria Prins, Anja Schreijer, Yvonne van Duijnhoven, Alje van Dam, Mariken van der Lubben and Tjalling Leenstra, Hospitalisation rates differed by city district and ethnicity during the first wave of Covid-19 in Amsterdam, the Netherlands, *BMC Public Health* 21 (2021); Felix Patience Chilunga, Brent Appelman, Michele van Vugt, Kirsten Kalverda, Patrick Smeele, Josien van Es et al. Differences

absence of professors of color.<sup>5</sup> While wealth acquired from the profits of slavery was inherited by white generations, enslaved people and their descendants had little to nothing to build on.<sup>6</sup> Exacerbating this is the fact that when slavery was abolished, plantation owners were compensation by the Dutch State for their loss of ‘property’, while enslaved persons and their descendants are yet to receive reparation. As such – and compounded over the decades – the distribution of wealth and opportunities in the Netherlands between racialized groups remains unequal.

Today, societies accept that slavery, in all its forms, should be condemned and prohibited. It is one of the few practices that is absolutely prohibited under international law as a *jus cogens* norm.<sup>7</sup> On 19 December 2022, Prime Minister Mark Rutte apologized for the actions of the Dutch government in this time.<sup>8</sup> And, yet, for decennia, societies around the world operated with some sort of slavery structure – though racialized chattel slavery was by far the most evil and expansive in scope – that was condoned and supported by their legal institutions. Grotius – renowned as the father of international law – was a legal advisor to the VOC and his legal writings in the 17<sup>th</sup> century accepted slavery, albeit with conditions.<sup>9</sup> Slavery was institutionalized within Dutch society and, as such, was (more often) accepted within the university than denounced (more rarely). For example, one of the rooms of the university’s Academic Building is named after Belle van Zuylen, whose family wealth was derived from the VOC, WIC and plantations in Suriname. Moreover, it appears from her writings that, while an ardent advocate of women’s rights, Belle’s social critiques did not extend to the

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in incidence, nature of symptoms and duration of long Covid among hospitalised migrant and non-migrant patients in the Netherlands: a retrospective cohort study *The Lancet Regional Health Europe* vol 29 (2023).

5. Ozan Ozavci, On Black Lives and Empty Seats: It’s Time to Walk the Talk, DUB 4/8/2021, available at <https://dub.uu.nl/en/analyse/black-lives-and-empty-seats-its-time-walk-talk>, accessed 3 May 2024.
6. Government of the Netherlands, The history of slavery in the Kingdom of the Netherlands, available at <https://www.government.nl/topics/discrimination/history-of-slavery/the-history-of-slavery-in-the-kingdom-of-the-netherlands>, accessed 3 May 2024.
7. See the Slavery Convention adopted in Geneva, Switzerland 25 September 1926; entered into force 9 March 1927; Erika de Wet, *Jus Cogens and Obligations Erga Omnes*, in Dinah Shelton (ed) *Oxford Handbook on Human Rights* (Oxford University Press 2013) p 543.
8. Government of the Netherlands, Speech by Prime Minister Mark Rutte about the role of the Netherlands in the history of slavery (19 December 2022) available at <https://www.government.nl/documents/speeches/2022/12/19/speech-by-prime-minister-mark-rutte-about-the-role-of-the-netherlands-in-the-history-of-slavery> accessed 3 May 2024.
9. Gustaaf van Nifterik, Arguments related to Slavery in seventeenth century Dutch legal theory, *Tijdschrift voor Rechtsgeschiedenis* (2021) p 168-170.

practice of slavery.<sup>10</sup> This silence stands in contrast to the persistent rebellion of enslaved persons in place like Suriname.<sup>11</sup>

The history, sources and location of the law provides at least some clues as to understanding (not justifying) the law on racialized chattel slavery. Some of these formative details are singled out in our analyses. For example, who were the persons involved? Who held power? What type of work did they produce? What were the accepted legal sources? Which concepts and rules were key? A starting point is to examine Roman-Dutch law, which was the applicable law relating to slavery until 1809 in the European part of the Netherlands, until 1848 in the colonies in the Eastern hemisphere and 1869 in the Western hemisphere. This legal framework provides us with the local and universal blueprint that sets the chiaroscuro scene: freedom as a typical and universal ideal, yet bondage and enslavement as likewise real and universal. Roman law came to shape the civil law tradition through its reception in the Netherlands. More obsolete parts of Roman law, like those dealing with enslaved persons, had no force of law in the Netherlands in Europe, but *were* applied in the occupied territories in the East and West. Towards the end of its life-time, the Roman law practice in colonial actions of manumission stood in stark contrast with Roman law in the books.

Why did this contrast between the principles of freedom articulated in the Enlightenment and present in the Dutch Civil Code since 1838 not evoke more academic inquiry among legal scholars to understand the force of law allowing slavery in the colonies? Regretfully, legal debates and scholarship concerning the abolition of slavery were muted. For example, Utrecht scholar C.W. Opzoomer held that slavery in the colonies was *sui iuris* and not part of the patrimony of the Dutch Civil Code, which was at least partially determined by prevailing legal theory and methodology. Just as slavery and colonialism were far from abundant in scholarly literature, few cases reported by the higher courts addressed the topic – and those that did were on conflicts concerning compensation rather than slavery itself.

The legal treatment of persons enslaved under Colonial Roman-Dutch law is key and will be dealt with particularly from scholarly sources from an Utrecht provenance, such as father and son Voet (see the chapter by E.G.D. van Dongen and J.M. Milo). The law as posited by legislature – particularly in its codification of laws – provides a normative ideal, but in order to fully understand the law, one must understand how it operates in practice. It requires empirical research as

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10. See for example Christiane Solte-Gresser, Wat Belle van Zuylen schreef over slavernij, ILFU (23 September 2021) available at <https://ilfu.com/alle-artikelen/wat-belle-van-zuylen-schreef-over-de-slavernij> accessed 3 May 2024.

11. Anton de Kom, *We Slaves of Suriname* (Polity Press 2022).

a method, in its modern 18<sup>th</sup> and 19<sup>th</sup> century cloak of statistics and economy. In addition, legally trained scholars were walking this path of early realism in law schools, in which chairs in economy and statistics were appearing and slavery as an institution finally caught academic attention. It is this domain that gave birth to the work of one of the leaders of Dutch abolitionism and professor at Utrecht University: Jan Ackersdijck (see the chapter by J.M. Milo). The main lecture theater for the Law School at Janskerkhof 2-3 in Utrecht is now named after Jan Ackersdijck.

Unfortunately, Ackersdijck did not live to see slavery abolished in the Netherlands in 1863. When that moment came for the Dutch Western colonies, enslaved persons were freed, but kept under surveillance in forced labor conditions for ten additional years. Former slave-owners, however, were compensated by the Government, because under the law their property had been ‘taken’. The road toward this compensation act and the payments made under it have been critically analyzed in this volume by F. Neumann. Today, in our contemporary legal framework, the issue of reparations for those enslaved is taking center-stage. But how can the legal claims be advanced and how should reparations be made? Should it be administered individually or communally? Should it perhaps also include non-monetary reparations? (M. Bornebroek). What role would apologies play in reparation and reconciliation? (K. Newton). Who is the debtor of these possible obligations: should the contemporary Dutch State be held liable for the damages done in the past? (L. Jacquemijns).

Despite the global prohibition on slavery, the practice is still alive today in modern forms. The International Labor Organization estimates that some 28 million people today are in forced labor.<sup>12</sup> J. Chrispijn therefore looks at modern slavery at sea and examines what role the international law of the sea – pioneered by Grotius – can play in addressing it. Finally, how should our current law curricula address this traumatic past? What you teach is what you get. Slavery has been part of the law curriculum at Utrecht University but at most in the margins. M. Zweers in her contribution argues that it needs to have a more prominent place in the curriculum. This volume should conclude with some optimism. We are facing a road to travel – we think we know where we are heading, but we do not. However, knowing from whence we came, having collected some memories as part of our shared inheritance, the cobbled roads become just a bit more predictable, allowing to more confidently walk together under a mild sun of justice.

The editors

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12. International Labor Organization, Data and Research on Forced Labor, available at <https://www.ilo.org/topics/forced-labour-modern-slavery-and-human-trafficking/data-and-research-forced-labour>, accessed 3 May 2024.