

Maiestas in the Dutch Republic

The law of treason and the conceptualisation of state authority in the
Dutch Republic from the Act of Abjuration to the expiration of the
Twelve Years' Truce (1581 – 1621)

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Contents

Part I – Introduction and Historiography	2
1. Introduction	3
2. State of the art & theory	5
Part II - Reconstructing the legal framework of treason	15
3. Roman law	17
4. The constitution of the Dutch Republic	23
5. Statutory law of treason	33
6. Summary of the reconstructed legal framework	43
Part III – Five cases of treason	45
7. Cornelis de Hooghe (1583)	47
8. Jacob Spensis (1601)	51
9. Johan van Oldenbarnevelt, Hugo de Groot, and Rombout Hogerbeets (1619)	54
10. Jacob Mom, Adriaen van Eynthouts, and Elbert van Botbergen (1621)	67
11. Reynhart van Tijtfort, Rempts ten Ham, and Jorjen Stuyver (1621)	73
12. Summary of the case studies	78
13. Conclusion	84
Bibliography	86

Part I
Introduction and Historiography



*Allegory depicting Atlas, Kronos and Historia. Title page to: N. Gueudeville, *Le Nouveau Theatre du Monde* (Leyden 1713). Print by François van Bleyswijck. Rijksmuseum RP-P-BI-1234.*

Chapter 1: Introduction

Waiting for the metro to arrive one summer night in Rotterdam, a line of graffiti sprayed on one of the walls of the tunnel caught my eye. “*Question all Authority*” – it read in giant red letters. Just below it, this time in black, there was a written response: “*Why?*”. Not just an amusing quip, this exact question leads to the core of all political theory, and its history: to whom is obedience owed? And most importantly, why? Authorities are legitimized in different ways, in different times. The different possible answers to the question as to why authority should be considered legitimate therefore have a history of their own.

These conceptual changes in the world of legal and political theory are the subject of this study, which will be looking at the ways in which state power was legitimized using various legal arguments. The main focus will be on the development of several concepts that were crucial to both legal argument and political thought and the changes that its application underwent in the 17th-century Dutch Republic. In particular, this work will discern the influence of different legal arguments on the rhetoric of legitimate state authority (and vice versa) in the Dutch Republic between 1581 and 1621. While many commentators have approached this topic through theories of ‘absolutism’ and ‘republicanism’, this study seeks to steer away from these two theories of political thought and instead approach the topic from the angle of legal argument: using selected treason trials to uncover changes in legal and political thought.

Tracking the application of the legal framework of treason through several decades, we will discern momentous shifts in argumentation and legitimization of state power. We will see how pragmatic politics necessitated the replacement of existing legal doctrines with newly invented theories of ‘fundamental laws’ and of *raison d’état*, which empowered political bodies in their recently usurped authority - bringing about a great rift in the constitutional history of the United Provinces.¹

In order to be able to support these claims, we will have to descent into the somewhat arcane depths of the history of political and legal theory. Because this research attempts to bring

¹ For the sake of readability, the terms *United Provinces* and *Dutch Republic* will be used interchangeably to signify the whole of the collaborating eight provinces (of which only seven were allowed a vote). As chapter 4 will make clear, however, the term *United Provinces* ought to be preferred to *Dutch Republic* when considering their constitutional arrangements. Furthermore, whenever reference is made to States’ decisions, these will be *provincial* states, rather than the States-General (or: *Generality*), except when stated otherwise. “*Constitution*” in this study relates to those political and legal structures and doctrines which are deemed to structure a commonwealth on a fundamental level – not to the modern concept of a single written document.

together subjects as diverse as the histories of criminal law, of political thought, and of philosophical concepts, a rather elaborate historiography is necessary (Chapter 2).

Axiomatic to this thesis is the claim that one can deduce changes in political theory from changes that have occurred in the application of legal argument. Paragraph 2.5 will substantiate further the reasons for taking this approach. When applying this approach to researching 17th-century Dutch political thought, this means tracking the application of legal doctrines through contemporary cases. Concordantly, in order to be able to spot these changes, we will have to reconstruct the legal framework that was being applied (Chapters 3 – 6). Only when we equip ourselves with a thorough understanding of the subtleties inherent in this legal discourse, can we hope to understand the transformations the legal doctrines underwent during their application in the selected trials (Chapters 7 – 11). We will closely follow the changes that occurred in the adjudication of treason trials between 1581 and 1621, and uncover various changes that the conceptualisation of legitimate state authority underwent.

This thesis' concluding chapter (Chapter 13), will synthesize all the remarkable effects different legal arguments have had on the conceptualisation of political power in this period. Furthermore, it hopes to encourage a shift in focus in researching the foundations of the modern state. Hopefully, it can draw more attention to the ways in which contemporary legal constraints shaped legal argument and how these arguments consequently transformed the theoretical underpinnings of the legitimacy of state power.

Chapter 2: State of the Art & Theory

2.1 State of the art - introduction

Considering its crucial place within Early Modern political thought, it is nothing short of astounding that to this date, there is not a thorough monograph on the reception and the development of the concept of *maiestas* in Early Modern Europe. Similarly understudied is the larger whole of the reception of Roman (criminal) law in the Early Modern Dutch Republic. Although several works have been written on particular niches of this legal history, a comprehensive, critical and encompassing study on this key topic remains to be written.² There is still a dire need for works recounting the history of the theoretical underpinnings of criminal law that transcends theories of the state formation, its monopoly on violence, and the Marxist contention that it is just a mechanism for control which disciplines a resisting proletariat.³ The result of these lacunae is that we simply have no thorough understanding of the ways in which the Early Modern legal landscape of the Dutch Republic warranted its public authority, or to what extent the exercise of power was legitimized through Roman or Dutch legal doctrines.

2.2 The praise of the Dutch Republican constitution

This is all the more remarkable, when one considers the praise the constitutional trappings of the Republic have received in the last years. Following centuries of scorn, the constitutional system of the United Provinces has of late been described as striking a perfect balance between small-scale politics which needed local and urban consent, and large-scale national financial and military cooperation.⁴ One would expect this to result in an increased interest in the institutional history of the republic, its changes and continuities, and the ways in which public authority was legitimized. Sadly, this has not been the case.

² For the history of criminal (procedural) law in the Netherlands: P. van Heijnsbergen, *De pijnbank in de Nederlanden* (Groningen 1925); P. van Heijnsbergen, *Het inquisitoire proces* (Groningen 1927); J. de Monté Verloren, *Geschiedenis van de wetenschap van het strafrecht en strafprocesrecht in de Noordelijke Nederlanden voor de codificatie* (Amsterdam 1942) 104 – 124; On (the lack of) policing in the Dutch Republic: P. Spierenburg, *Judicial violence in the Dutch Republic* (Amsterdam 1978); B. Jacobs, *Justitie en politie in 's-Hertogenbosch voor 1629* (Assen 1986); C. Fijnaut, P. Spierenburg (eds.), *Scherp toezicht: van 'Boeventucht' tot 'Samenleving en criminaliteit'* (Arnhem 1990); G. Martyn, G. Donker, S. Faber (eds.), *Geschiedenis van de advocatuur in de Lage Landen* (Hilversum 2009).

³ On the monopoly on violence and its relation to criminal law, see: M. Weber, *Politik als Beruf* (Munich 1919); M. Foucault, *Surveiller et Punir: naissance de la prison* (Paris 1975) 5 – 24, 164 – 189; D. Melossi, M. Pavarini, *The prison and the factory: origins of the penitentiary system* (London 1981) 3 – 18, 24 – 33; P. Spierenburg, *The Spectacle of suffering: executions and the evolution of repression. From a preindustrial metropolis to the European experience* (Cambridge 1984), 180 – 209.

⁴ M.R. Prak, *Gouden Eeuw: Het raadsel van de Republiek* (Nijmegen 2002) 4 – 28, 156 – 189, 244 – 274, 320 – 341.

The aforementioned study even takes for granted the view that this much lauded constitutional framework has remained the same from its rise until its fall, in the 1790'ies. Though this does echo the great monograph of Maurice of Orange by A. Th. Van Deursen, who also maintained the great crisis of 1618 - 1619 did not affect the constitutional design of the Dutch Republic too much, these claims run counter to those of several other scholars, one of whom has even claimed this period “*marked one of the most fundamental shifts of the Golden Age*”.⁵

This contradiction is all the more interesting when taking into view the great revision Van Deursen brought about in the established conceptions of the struggle between Oldenbarnevelt and Maurice. He argued that the root of their animosity was not formed by their respective theological views, but instead by their views on the constitutional position of the Public Church within Holland and the United Provinces as a whole.⁶ Yet the matter of constitutional developments from the years following the Revolt up to 1620 remain hopelessly understudied.

2.3 The ‘treason’ of Oldenbarnevelt

As a result, there is still no definitive answer to the question of whether or not Oldenbarnevelt and his political allies have been convicted for treason, or for another (perhaps not explicated) crime. Scholars have answered this question in incredibly disparate ways. None of them, however, not even the seminal work of Den Tex, have attempted to place the exact legal argumentation that is deployed in the verdicts in the context of the contemporary legal frameworks.

The result is, that some scholars argue that the whole trial was a sham, some argue that Oldenbarnevelt was executed on grounds of treason, and some recount some of the protagonists’ relief when they discovered the convictions did *not* contain accounts of treason.⁷ The standard work by Den Tex argues that the trial was too political to be analysed in a thoroughly legal fashion. It argues that both public opinion and political pressure had already sealed their fate either the moment the judges were appointed, or following

⁵ J.I. Israel, *The Dutch Republic: Its rise, greatness and fall 1477 – 1806* (Oxford 1995) 450 – 451; A. Th. Van Deursen, *Maurits van Nassau: de winnaar die faalde* (Amsterdam 2000) 107 – 108, 264 – 328.

The intricacies of the constitutional system of the United Provinces and the question of its continuity in the face of the crisis of 1618 – 1619 will be discussed at length in chapters 4, 5, 6, 12 and 13.

⁶ J. Den Tex, *Oldenbarnevelt* (3 vol., Haarlem 1960 – 1966); Van Deursen, *Maurits van Nassau*, 260 – 285.

⁷ H. Gerlach, *Het proces tegen Oldenbarnevelt en de ‘maximen in den staet’* (Delft / Haarlem, 1965); Israel, *The Dutch Republic. Its rise, greatness and fall 1477 – 1806* (Oxford 1995) 448 - 466; H. Nellen, *Hugo de Groot: Een leven in strijd om de vrede (1583 – 1645)* (Amsterdam 2007) 364 – 372.

continuous public protest from the remaining Remonstrants.⁸ On the subject of treason, however, Den Tex commends the judges on their ‘honourable exclusion from their verdict of the degrading accusation of treason’ – arguing they were not convicted for treason.⁹ Finally, Janssen argues that the judges couldn’t prove high treason and that this qualification is missing in the verdict, but equally states that the punishment to which Oldenbarnevelt was sentenced did have all the appearances of a verdict for treason.¹⁰ Some even go as far as saying that “... *Oldenbarnevelt was declared guilty on most other points, including crimen laesae maiestatis and crimen perturbationis reipublicae*”.¹¹ Clearing up this confusion is one of the key elements of this thesis. In the course of this study, following an analysis of the actual verdicts of Oldenbarnevelt c.s. which takes into account the relevant legal contexts, we will be able to place this question in its proper contexts and show this last claim is wrong on a fundamental level.

By analysing the influence Roman and Dutch laws of treason have had on the ways in which legitimate political authority was conceptualized, we can therefore shine a light on several understudied topics. Firstly, it can serve as an indicative study of the reception of Roman criminal law in the Dutch Republic, especially concerning the reception of the concept of ‘maiestas’. Secondly, by analysing the question of constitutional change and that of the ‘treason’ of 1619, this study will also provide us with information about the conceptual changes that have occurred in the legitimization of state authority between 1581 and 1621.

2.4 The history of political thought

Recent scholarship has focussed on the discursive and contextual environments in which political concepts have been deployed. Considering the popularity of the ‘Cambridge School’ of political thought, focussing on the performativity of political thought, it is highly

⁸ Den Tex, *Oldenbarnevelt III: Bestand 1609 – 1619* (Haarlem 1966) 682 – 689.

⁹ Den Tex, *Oldenbarnevelt III*, 691: “*En het strekt de rechters tot eer dat zij (...) de onterende beschuldiging van landverraad uit de sententie hebben geweerd.*”. Den Tex, however, notes two instances from which can be incurred that the case revolved around the crime of *laesio maiestatis*. Firstly, there is the refusal of the States-General to send documents relating to the case to Oldenbarnevelt’s son in law: Den Tex, *Oldenbarnevelt III*, 694. Secondly, Den Tex mentions casually that the judges condemned Oldenbarnevelt for both *laesio maiestatis divinae* and *laesio maiestatis* of the States-General, without explaining his analysis on this point or its relationship to the laws of treason: Den Tex, *Oldenbarnevelt III*, 716.

¹⁰ Den Tex, *Oldenbarnevelt III*, 690 - 703; J. Den Tex, A. Ton, *Oldenbarnevelt* (The Hague, 1980) 238 – 250; G.H. Janssen, *Het stokje van Oldenbarnevelt* (Hilversum 2001). Janssen seems to base this analysis on a confusion of two distinct types of treason he uses interchangeably (*landverraad* and *hoogverraad*), whereas commonly a distinction is made between the two: *hoogverraad* signifying internal affairs and *landverraad* treason committed with the help of a foreign enemy. These differences do not translate well into the Common Law concepts of petty- and high treason.

¹¹ F. Sierhuis, *Religion, politics and the stage in the Dutch Republic. The literature of the Arminian Controversy* (Oxford 2015) 147 - 158.

remarkable that the adjudication of treason trials has not received due attention.¹² Not even Van Gelderen's seminal study on the political thought of the Dutch Revolt takes this into account, though clearly the legal instrument of the treason trial has had a crucial impact on the Revolt. It was the legal backdrop for the heresy trials of the Inquisition, for the Council of Troubles (*Raad van Beroerten*) and their executions of Egmond and Horne (and over a thousand others), and for the 1580 edict that declared William of Orange an outlaw – legitimizing his murder (which took place in 1584).¹³

Rather, the best-known examples of the recent, contextual histories of ideas have focussed on conceptual changes on the purely theoretical level, most famously on the history of the 'modern-day theory of the state'. It seeks to uncover the genealogy of the notion of the abstract, impersonal state.¹⁴ It argues that our notion of 'the state' has emanated from the ideas of 'a state' of a princely ruler, which he had to maintain if he wished to stay in power. From the last decades of the 16th century onwards, this led to the notion of 'the state', which entailed the abstract fiction of a single legal person, which was the holder of sovereignty and the seat of political power.¹⁵ Tracking this notion of the state, it is argued that Hobbes and Von Seckendorff were key figures in the consolidation of this development. Hobbes is considered (one of) the very first to have argued for a purely artificial notion of the state.

¹² G.H. Sabine, *A history of political theory* (New York 1937, ed. T.L. Thorson 1973); J.G.A. Pocock, *The ancient constitution and the feudal law: a study of English historical thought in the seventeenth century* (Cambridge 1957); J.G.A. Pocock, *The Machiavellian moment: Florentine political thought and the Atlantic republican tradition* (Princeton 1975); Q. Skinner, *The foundations of modern political thought: Volume II: The age of Reformation* (Cambridge 1978); A. Pagden (ed.), *The languages of political theory in Early-Modern Europe* (Cambridge 1987); J.G.A. Pocock, *Politics, language and time: essays on political thought and history* (Chicago 1989); K. Haakonssen, *Natural law and moral philosophy. From Grotius to the Scottish Enlightenment* (Cambridge 1996); Q. Skinner, *Liberty before liberalism* (Cambridge 1998); J. Coleman, *A history of political thought: from ancient Greece to early Christianity* (Oxford 2000); J. Coleman, *A history of political thought, from the Middle Ages to the Renaissance* (Oxford 2000); and especially Q. Skinner, *Visions of politics I: Regarding method* (Cambridge 2002); Q. Skinner, 'From the state of princes to the Person of the state', in: *Visions of politics: Volume II: Renaissance virtues* (Cambridge 2002); Q. Skinner, B. Stråth (eds.), *States and citizens: history, theory, prospects* (Cambridge 2003).

For a critique on Pocock's 'Machiavellian Moment', see: P. Rahe, *Against throne and altar: Machiavelli and political theory under the English Republic* (Cambridge 2009).

¹³ M.E.H.N. Mout, 'Van arm vaderland tot eendrachtige republiek: De rol van politieke theorieën in de Nederlandse Opstand', *BMGN - Low Countries Historical Review* 101, 3 (1986) 345–365; M. van Gelderen, *The political thought of the Dutch Revolt (1555 – 1590)* (Cambridge 2002). The analysis of Van Gelderen traces the political thought of (pamphlets of) the Dutch Revolt from the 1550'ies to the 1580'ies – this study takes the 1580'ies as its starting point.

¹⁴ Q. Skinner, *The Foundations of modern political thought: Volume II: The age of Reformation* (Cambridge 1978); 'The State', in: T. Ball, J. Farr, R.L. Hanson (eds.), *Political innovation and conceptual change* (Cambridge 1989); *Liberty before liberalism* (Cambridge 1998); 'From the state of princes to the person of the state', in: *Visions of politics: Volume II: Renaissance virtues* (Cambridge 2002); Q. Skinner, B. Stråth (eds.), *States and citizens: history, theory, prospects* (Cambridge 2003); 'A genealogy of the modern state', *Proceedings of the British Academy*, 162, 325 (2009).

¹⁵ Q. Skinner, *Visions of politics III: Hobbes and civil science* (Cambridge 2002) 194 – 204.

Regarding the history of the state in the German empire, it is Von Seckendorff that is accounted crucial importance. With a strong emphasis on the protection of property rights, his *Teutscher Fürsten Stat* strongly establishes the territoriality of the German state – detaching it from its dependence on the volatile world of dynastic succession.¹⁶

When one considers the key publications which recount the history of the development of the concept of the state, it becomes apparent that attention is paid almost exclusively to authors of political theory of the 1640'ies and 50'ies, and not to any sources which actually had to apply the concept. This way, the actual politicians and lawyers who had applied notions of legitimate authority in their daily lives remain obscure. Much less attention has been given to the earlier transformation of the concept itself, or of the ways in which actors on the legal and political stage themselves actually legitimized their exercise of power. This study seeks to make a start with addressing these issues from the perspective of those involved, rather than those observing.

The application of this shift in focus, from the political authors towards the actual lawyers and politicians operating within these power structures, has thoroughly revised the established histories of political concepts when it was applied to the history of the English Civil Wars and the Stuart constitution.¹⁷ One of the first of these concepts has been that of royal or divine 'absolutism'. The idea that the famous, majestic kings and queens of these centuries exercised a type of legally unbound rule over their subjects, is no longer tenable.¹⁸ Following several studies analysing the actual legal trappings of these monarchic regimes, 'absolutism' has also been labelled "*fundamentally misleading*" as a political philosophy,

¹⁶ R. von Friedeburg, *Luther's legacy: The Thirty Years War and the modern notion of 'state' in the Empire, 1530s to 1790s* (Cambridge 2016) 28 – 35, 326 – 329, 336 – 341, 354 – 367.

The ensuing debate on the historical processes which have led away from a personalized account of legitimized authority towards the impersonal, abstract idea of the state and its legal sources has seen a tremendous amount of contributions. Most of these however are concerned with political theory and the relevance Skinner's account has for *modern-day* conceptions of the state, rather than focussing on the historical processes Skinner sought to explain: K.H.F. Dyson, *The state tradition in Europe: A study of an idea and institution* (New York 1980); D. Runciman, 'What kind of person is Hobbes's state? A reply to Skinner', *Journal of Political Philosophy*, 8, 2 (2000); P.J. Steinberger, *The idea of the state* (Cambridge 2004); G. Hammil, *The mosaic constitution: Political theology from Machiavelli to Milton* (Chicago 2012); J. Martin, *Politics and rhetoric: A critical introduction* (London 2014).

¹⁷ N. Henshall, *The myth of absolutism: Change and continuity in early modern European monarchy* (London, 1992) 4 – 22; Alan Orr, *Treason and the state*, 14 - 23; G. Burgess, *Stuart constitution*, 3 – 28.

¹⁸ D. Wyduckel, *Princeps Legibus Solutus : eine Untersuchung zur frühmodernen Rechts- und Staatslehre* (Berlin 1979) 44 – 62; G. Burgess, *Absolute monarchy and the Stuart constitution* (New Haven / London 1996) 1 – 4, 17 – 34, 91 – 108, 127 – 144, 209 – 225, throughout the work emphasizing the gap between political theorists and legal and political histories.

because, contrary to what it implies, the legitimization of public rule was at all times clearly constrained by law.¹⁹

The following decades, its mirrored image took central stage in the quest for theories that are able to explain ideological changes within the history of political thought: the theory of ‘Republicanism’. Recounting a shared political heritage emphasizing the value of political liberty, only to be obtained through individual participation in public governance, its influences and tendencies were rapidly being discovered in every nook and cranny of Early Modern political thought.²⁰ As a necessary consequence of its popularity, suddenly every past conceptualisation of political power was in one way or another ‘republican’ – including even histories of proto-nationalism, political economy, and even monarchic political theory.²¹

2.5 Theory

With both absolutism and republicanism considered highly problematic as theories that can recount European-wide blueprints that recount the history of the legitimization of political power, this thesis seeks to apply the aforementioned approach that proved fruitful in the case

¹⁹ Burgess, *Absolute monarchy*, 1, 128 – 136; H.M. Scott (ed.), *Enlightened absolutism : reform and reformers in later eighteenth-century Europe* (Manchester 1990) 4 - 43; R. G. Asch, H. Duchhardt (eds.), *Der Absolutismus--ein Mythos? Strukturwandel monarchischer Herrschaft in West- und Mitteleuropa (ca. 1550-1700)* (Vienna, 1996) 25 - 53; B. William, *Absolutism and society in seventeenth-century France: state power and provincial aristocracy in Languedoc* (Cambridge 1997) 3 – 31, 77 – 98, 117 – 123, 179 – 186, 329 - 340; C. Cuttica, G. Burgess (eds.), *Monarchism and absolutism in Early Modern Europe* (London, 2012) 2 – 9, 117 – 131, 147 – 158.

²⁰ J.G.A. Pocock, *The Machiavellian moment: Florentine political thought and the Atlantic republican tradition* (Princeton 1967) 83 – 155, 423 – 568; E.O.G. Haitsma Mulier, *The myth of Venice and Dutch republican thought in the seventeenth century* (Assen 1980) 120 - 164; H. Baron, *In search of Florentine civic humanism: Essays on the transition from medieval to modern thought. Volume I: An anatomy of Florentine civic humanism* (Princeton 1988) 4 – 42, 134 – 155, 226 - 252; H. Blom, ‘Virtue and Republicanism: Spinoza’s political philosophy in the context of the Dutch Republic’, in: H. Koenigsberger (ed.), *Republiken und Republikanismus im Europa der Frühen Neuzeit* (München 1988) 195 – 212; E.O.G. Haitsma Mulier, *Het Nederlandse gezicht van Machiavelli: twee en een halve eeuw interpretatie 1550 - 1800* (Hilversum 1989) 5 - 34; G. Bock, Q. Skinner, M. Viroli (eds.), *Machiavelli and republicanism* (Cambridge 1990) 65 - 88; M. Van Gelderen, ‘The Machiavellian moment and the Dutch Revolt: the rise of neo-Stoicism and Dutch Republicanism’, in: G. Bock e.a. (eds.), *Machiavelli and Republicanism* (Cambridge 1990) 205 – 224; M.L. Colish, ‘Republicanism, religion, and Machiavelli’s Savonarolan moment’, *Journal of the History of Ideas*, 60, 4 (1999) 597 – 616; Q. Skinner, M. Van Gelderen, *Republicanism: a shared European (2 vols.)* (Cambridge 2002) 4 – 38.

²¹ S.R.E. Klein, ‘Republikanisme en patriottisme’, *Tijdschrift voor Geschiedenis*, 106, (1993) 179 – 207; A. Weststeijn, *Commercial Republicanism in the Dutch Golden Age: the political thought of Johan & Pieter De La Court* (Leiden 2012) 2 – 24, 279 – 284, 345 - 359; H.J. Helmers, *The royalist republic. Literature, politics, and religion in the Anglo-Dutch public sphere, 1639 – 1660* (Cambridge 2015) 2 – 24, 124 – 148, 259 - 266. A powerful critique of some of these works, is: P. Rahe, *Against throne and altar* (Cambridge 2009) 1 – 28, 321 - 356.

of English history.²² It is this different approach, that leads us to the legal history of the laws of treason.

When taking the application of the law of treason as our sources, we find ourselves at the crossroads of political theory and legal- and political history. Because committing treason signified committing a crime against the legitimate authorities, the theoretical notions of what exactly constituted such legitimate authority are key here. By looking at a conviction for the crime of treason, one therefore focusses on an act in which legitimate power structures are vindicated. Concerning changes within this corpus of legal thought can consequently be indicative of larger shifts in political theory in the ways in which legitimate authority is conceptualized in actual verdicts.²³

By applying this approach, this study will be able to steer clear of the hazardous semantic minefield of (political) ‘liberties’.²⁴ Moreover, it will give due attention to the actual legal structures within which all political discourse took place. All key political actors have always needed to legitimize their decisions and actions. At all times, they were acutely aware of the legal boundaries that constrained them. Why then overlook these very practical aspects of the history of political thought, paying attention solely to the ‘political theorists’ and their observations? In this view, treason trials are situated at the crossroads of the ‘outsider theorist’ on the one hand, and the ‘insider politician’ on the other. In these trials, highly abstract political concepts engaged with one another in a very real legal arena. Utilising the notion that every such trial can contain manifestations of particular views on legitimate public authority, this study seeks to analyse changes in these views in the Dutch Republic between 1581 and 1621. Naturally, focussing solely on verdicts that have been passed provide only a very narrow scope on these issues – as with anything in history, even conceptual changes do not occur in a vacuum. Nonetheless, this thesis hopes to show that

²² E.H. Kossmann, ‘Het probleem van de vrijheid in de zeventiende-eeuwse Nederlandse Republiek’, in: *Vergankelijkheid en continuïteit: Opstellen over geschiedenis* (Amsterdam 1995) 63 - 86; P. Zagorin, ‘Republicanism’, *British Journal for the History of Philosophy*, 11, 4 (2003) 702 – 710; R. von Friedeburg, ‘Republics and Republicanism’, in: Hamish Scott (ed.), *The Oxford handbook of Early Modern Europe* (Oxford, 2015), 542 – 558.

²³ G. Burgess, *The politics of the Ancient Constitution: an introduction to English political thought 1603- 1642* (Basingstoke, 1992) 2 – 21, 35 - 47; Alan Orr, *Treason and the state*, 3 – 19.

²⁴ Openly admitting that several of its notions of liberty are contradictory, see: Q. Skinner, M. van Gelderen, *Freedom and the construction of Europe. vol. I: Religious and constitutional liberties* (Cambridge 2013) - especially the contributions by Van Gelderen, Kainulainen, Dawson, Stanton, Lee and (in volume II) Brett, pages 1 – 10, 38 – 56, 115 – 133, 134 – 154, 256 – 272, and (*Volume II: Free persons and free states*, (Cambridge 2013)) 9 – 26 respectively.

even this limited sample of sources can reveal remarkable changes in the interaction between legal and political theory in the 17th century.

2.6 Historiography of Treason

Seemingly, studies recounting the history of the reception of the Roman laws of majesty and their influence on the political thought of Early Modern Europe, have only taken as their subject Mediaeval France, the late Mediaeval Holy Roman Empire, and Civil War England.²⁵ This in marked contrast to the study of Roman law in the Middle Ages.²⁶ None of the seminal works to date which analyse the reception of Roman law in Europe have taken into account the specific relationship between the Roman law of treason and the evolution of legal and political theory in Early Modern times.²⁷ A comprehensive analysis of the reception of the *lex iulia maiestatis* in Early Modern Europe is missing altogether.

One of the few available works citing the history of treason in the Dutch Republic, in fact analyses the (attempted) safeguarding of state secrets rather than treason.²⁸ Furthermore, it argues its formal constitution was of little importance, considering its pliability.²⁹ Concerning legal theory, it argues that the law of treason was a “*multi-headed monster*”, used primarily in the elimination of political enemies and lacking clear legal demarcations.³⁰ The focus of the work is very much its analysis of the everyday goings-on of the complicated political machinery of the Dutch Republic. Consequently, it does not concern itself with exact

²⁵ Despite lamenting over this lack of scholarly attention as early as 1963: H.G. Gundel, ‘Der Begriff Maiestas im politischen Denken der römischen Republik’, *Historia: Zeitschrift für Alte Geschichte* 12, 3 (1963) 283 - 320. On Mediaeval France, see: S.H. Cuttler, *The law of treason and treason trials in later Medieval France* (Cambridge 1976) 3 - 17; D. Wyduckel, *Princeps Legibus Solutus: Eine Untersuchung zur Frühmodernen Rechts- und Staatslehre* (Berlin 1979) 2 - 28, 50 - 56. On Civil War England, see: Alan Orr, *Treason and the state: Law, politics and ideology in the English Civil War* (Cambridge 2002) 2 - 14. On the influence of the Roman law on *laesio maiestatis* on the categorization of criminal law in Beccaria and the Dutch penal codes, see L. Winkel, ‘Enige rechtshistorische opmerkingen in vogelvlucht over de indeling van strafbare feiten’, in: E. Bleichrodt e.a. (eds.), *Onbegrensde strafrecht: Liber amicorum Hans de Doelder* (Oisterwijk 2013) 499 - 508.

²⁶ E.H. Kantorowicz, *The kings two bodies: a study in Medieval political theology* (Princeton 1957) 3 - 24, 42 - 97, 314 - 383, 480 - 497.

²⁷ P. Koschaker, *Europa und das Römische Recht. 3 vols.* (Munich 1966) 2 - 11, 288 - 294; P.A. Brunt, ‘The role of the Senate in the Augustan regime’, *The Classical Quarterly* 34, 2 (1984) 423 - 444; P.G. Stein, *The character and influence of the Roman civil law: historical essays* (London 1988) 2 - 18, 51 - 68, 422 - 442.

²⁸ G. de Bruin, *Geheimhouding en verraad. De geheimhouding van staatszaken ten tijde van de Republiek (1600-1750)* (Den Haag 1991) 5 - 24, 164 - 202, 546 - 564.

²⁹ De Bruin, *Verraad*, 546 - 562. This is, of course, in stark contrast to the importance Prak accounts to the constitutional system of the Dutch Republic.

³⁰ De Bruin, *Verraad*, 558 - 564.

histories of the ideas of state power or that of treason, muddles key political concepts, and, notwithstanding its title, none of the sources used in the work predate 1645.³¹

Another work which does focus on the history of treason, and relating it to crucial changes in political thought, is the aforementioned work of Alan Orr. His work tracks four state treason trials throughout the English Civil War, culminating in the trial and execution of Charles Stuart, King of England. Analysing the arguments employed during these treason trials, Orr studies the relationship between political thought and political (and legal) action in England between 1640 and 1649. He shows convincingly how both sides shared many assumptions regarding both the constitutional laws of England and notions of sovereignty. Nonetheless, they employed key concepts radically different – each reflecting their own factions’ political goals. It shows how, during the political crises of the 1640’ies, the legal framework of treason trials was the arena in which differing political theories, under the guise of legal argumentation, engaged with one another to great historic effect.³²

2.7 State of the art and theory: synthesis

By analysing several treason trials also while focussing explicitly on the influence that Roman law and ‘Dutch’ constitutional law exercised on the (re-)shaping of core concepts of political thought, this study attempts to address some of the aforementioned questions and debates.

Two fields of historical enquiry are clearly in need of more explorative research. Firstly, we know little about the ways in which concepts of Roman law have shaped both political thought and legal argument in Early Modern Europe, especially concerning the crucial concept of *Maiestas*. Secondly, there is the history of the laws of treason, which has provided such valuable insights into the development of English political theory, but sadly has been overlooked in the context of the Dutch Republic.

This is all the more remarkable when we consider that the climax of the Dutch Republic’s most profound constitutional crisis of the first half of the 17th century was the trial and execution of the Grand Pensionary of Holland. By analysing the legal frameworks of the laws of treason, its application in the 1618/1619-crisis, and the ways in which it recounts for legitimate state authority, this study attempts to contribute to three historical debates: that of

³¹ De Bruin, *Verraad*, 560 – 561. Even arguing legal scholars of the 17th century saw no difference between such a thing as ‘the state’ (his rendition of “*res publica*”) and the broader ‘state authority’ (which is his rendition of “*princeps*”), substantiating this statement with a citation of one 18th-century (!) lawyer.

³² Alan Orr, *Treason and the state*, 2 – 17, 26 – 39. 233 – 257.

the ‘treason’ of Oldenbarnevelt, that of the ‘Constitutional Continuity’ of the Dutch Republic, and that of changing attitudes towards legitimate public authority and ‘the state’.

Because of reasons of feasibility, as well as because this thesis attempts to steer clear of the debates about the ‘republicanism’ of 17th-century (Dutch) political thought, it will not pursue an analysis of the exact relations between the political concepts of *res publica*, *civitas*, and *πόλις* (and their relation to *the state*). It is the ways in which Dutch lawyers conceptualized and legitimized public authority that is the aim of this thesis – investigating the delicate differences between these various concepts of political theory is beyond the scope of this master thesis.

Part II

Reconstructing the legal framework of treason

“ (...) de ce que les mêmes mots étaient utilisés de part et d'autre dans les luttes politiques, il ne s'ensuit pas nécessairement, comme on le dit parfois trop hâtivement, qu'ils n'aient été que des slogans vides de sens.”³³



³³ J.L. Ferrary, 'Les origines de la loi de majesté à Rome', *Comptes rendus des séances de l'Académie des Inscriptions et Belles-Lettres*, 127, 4 (1983) 571.

Image above: The title page of an edition of Cicero's *Orationes*, printed in Paris in 1520 by Jodocus Badius, woodcut print made in Nuremberg in the school of Albrecht Dürer – *Rijksmuseum*, RP-P-1886-A-11360.

Part II – Reconstructing the legal framework of treason

This study therefore approaches the question of conceptual change in the legitimization of state power through changes in (the application of) the laws of treason. Before we can recognize patterns or differences in the ways crimes against the authorities were dealt with by the courts, however, we must understand the legal framework that has been applied in these cases. In order to be able to accurately analyse the conceptualisation of state authority in the treason cases, this part will reconstruct the legal structures and doctrines of the laws of treason of the 17th-century Dutch Republic. Unfortunately, there exists remarkably little literature on this topic and, consequently, chapter 5 will also recount the several most important primary sources.

The first section (Chapter 3) provides the reader with a brief history of the Roman laws of treason. Without these, it is impossible to reach an understanding of (Early Modern) European legal discourse as a whole, and its laws of treason in particular. The second, much more elaborate, section, will be an account of the laws of treason of the United Provinces. Due to the complicated relationship between the laws of treason and the legal-political landscape, this second part will first explain the foundations of the constitutional law of the Dutch Republic (Chapter 4). Following this is an analysis of the statutory laws of treason (Chapter 5), including its use of the concept of ‘the state’ (5.7). Chapter 6 provides the reader with a summary of the reconstruction.

We will see how the constitutional structure of the Dutch Republic and its statutory laws of treason reworked the age-old maxims of the Roman laws of treason and how, departing from these commonly shared notions, the state of Holland developed its very own ideas about the ways treason constituted a crime against the authorities.

Chapter 3: Roman law

3.1 *Laesio Maiestatis* in Republican Rome

The true legacy of the Roman laws of treason is formed by the reception of the doctrine of *laesio maiestatis*.³⁴ Literally, this translates as damage to, or violation of majesty, with ‘*maiestas*’ indicating the very highest form of pre-eminence and dignity in Roman society.³⁵ Throughout Roman history, it had been a crime to diminish those certain embodiments of grandeur and prestige that held *maiestas*. Just what authorities could rightfully claim to possess it naturally changed through the centuries, colouring the legal relations between Rome and its allies, Rome and its dominions and internally between patricians and plebeians.³⁶ Because most Roman laws kept their original titles even after being changed or amended by *senatus consultum*, reconstructing the history of Roman treason laws is a complex and arduous task. This discussion will therefore be limited only to their most important features.³⁷

The earliest Roman sources in which *maiestas* is used in legal terms, are mid-3rd century B.C. phrases. These texts contain the phrase *maiestas populi Romani*, when speaking of the glory and grandeur of the Roman people, though these are not connected to the crime of treason.³⁸ The first actual piece of legislation to contain *laesio maiestatis* in its recognizable legal form, is the *Lex Appuleia de Maiestate* of 103 B.C.³⁹ It was enacted against Roman magistrates who obstructed either legislative procedures or the execution of decisions taken by other political bodies.⁴⁰ This law was elaborated upon by the dictator Sulla with his 81 B.C. *Lex*

³⁴ J.L. Ferrary, ‘Les origines de la loi de majesté’, 557; C. Williamson, ‘Crimes against the state’, in: C. Ando, P.J. Du Plessis, K. Tuori (eds.), *The Oxford handbook of Roman law and society* (Oxford 2016) 333 – 343.

³⁵ Th. Mommsen, *Römisches Strafrecht* (Leipzig 1899) 538: “*Maiestas bezeichnet die Höherstellung, die von dem Geringeren Rücksicht heischende Überordnung, nicht die höhere Macht, sondern das höhere Ansehen*”. Cf: F.S. Lear, ‘The idea of Majesty in Roman political thought’, in: F.S. Lear, *Treason in Roman and Germanic Law: Collected Papers* (Austin 1965) 168 - 198.

³⁶ Gundel, ‘Der Begriff *Maiestas*’, 295: “*Maiestas bezeichnet also außenpolitisch in einem Verhältnis zu einem Partner die Überlegenheit, was aus dem komparativen Wort heraus im Verhältnis einer als Positiv aufgefaßten Umwelt ohne weiteres verständlich ist*”; E. Frézouls, ‘De la *maiestas populi Romani* à la majesté impériale’, in: H. Duchhardt, R.A. Jackson, D. Sturdy (eds.), *European Monarchy: Its evolution and practice from Roman Antiquity to modern times* (Stuttgart 1992) 17 – 27.

³⁷ Mommsen, *Römisches Strafrecht*, 535 – 542; Gundel, ‘Der Begriff *Maiestas*’, 284 – 288; Ferrary, ‘Les origines de la loi de majesté’, 556 – 561.

³⁸ Gundel, ‘Der Begriff *Maiestas*’, 283 – 285; Ferrary, ‘Les origines’, 556 – 559, 563.

³⁹ Gundel, ‘Der Begriff *Maiestas*’, 296 – 298, 300 – 304; O. Robinson, *The criminal law of ancient Rome*, (Baltimore 1995) 74 – 78; R. Seager, ‘*Maiestas* in the Late Republic: some observations’, in: J.W. Cairns, O.F. Robinson (eds.), *Critical studies in Ancient law, comparative law and legal history: Essays in honor of Alan Watson* (Oxford 2001) 144 – 151. For arguments against this exact date, see: Ferrary, ‘Les origines’, 556 – 564.

⁴⁰ Ferrary, ‘Les origines’, 557 – 561; Seager, ‘*Maiestas* in the late Republic’, 144 – 151; Williamson, ‘Crimes against the state’, 335 – 336. Ferrary argues the phrase *maiestas populi Romani* was used in this piece of legislation to undermine a rival political concept; *auctoritas senatus*. See; Ferrary, ‘Les origines’, 568 – 569.

Cornelia de Maiestate, most famously with provisions ordering governors of far-away provinces to step down when their successors arrived.⁴¹ Cicero's commentaries on this law seem to state that it accorded majesty to the combined agency of the people of Rome and its Senate (the famous "*S.P.Q.R.*"). It was in this age that *maiestas* became the key political concept of the Roman republic.⁴²

With the republic on its last legs, Cicero still attributed this high dignity to the whole of the Roman people in the 1st century A.D. The two most famous quotations in this regard are those equating *maiestas* with (1) the dignity, highness and power of the Roman people, or those they have empowered, and (2) with whatever relates to their greatness and power:

*"Maiestatem minuere est de dignitate, aut amplitudine, aut potestate Populi aut eorum quibus Populus potestatem dedit, aliquid derogare"*⁴³,

and

*"quoniam Maiestas est magnitudo quaedam populi Romani in eius potestate ac iure retinendo"*⁴⁴.

Around the same time, Gaius Iulius Caesar amended the earlier laws of treason of Sulla by enacting the *Lex Iulia Maiestatis*.⁴⁵ It is this law that has been hailed as the Roman law which formed "*the historical and legal foundation of the dogmatic construction of crimen laesae maiestatis*" for centuries to come.⁴⁶ It granted *maiestas* to the entirety of the Roman people 'and their security', subsequently designating a whole range of acts as detrimental to the *res publica* and thus as violations of its majesty. These acts included forming armed mobs,

⁴¹ Seager, '*Maiestas* in the late Republic', 144 – 151.

⁴² Gundel, '*Der Begriff Maiestas*', 314 – 320; E. Frézouls, '*De la maiestas populi Romani à la majesté impériale*', in: H. Duchhardt, R.A. Jackson, D. Sturdy (eds.), *European Monarchy: Its evolution and practice from Roman Antiquity to modern times* (Stuttgart 1992) 17 – 27.

⁴³ "*to detract somehow from the dignity or sway or power of the people or of those to whom the people have granted powers, is to diminish maiestas*" [WD]; H.M. Hubbell (ed.), *Marcus Tullius Cicero, De inventione: de optimo genere oratorum II* (Cambridge Mass. 1976), §53.

⁴⁴ "*since Maiestas is that form of greatness which should be for the Roman people, in their legal capacity, to hold*" [WD]; J.W. Crawford (ed.), *Marcus Tullius Cicero, Partitiones oratoriae: The fragmentary speeches: an edition with commentary. Vol II* (Atlanta 1994) 78.

⁴⁵ Whether or not the *Lex Iulia Maiestatis* was proclaimed by Julius Caesar has been the subject of considerable debate. The overall consensus now seems to be that Caesar did enact these treason laws, but that they were subsequently amended by treason laws promulgated by his adopted son Augustus (Octavianus). See also: S.H. Cuttler, *The law of treason and treason trials in later medieval France* (Cambridge 1981) 5 – 9; Frézouls, '*De la maiestas*', 22; O. Robinson, *The criminal law of Ancient Rome*, 74 – 80; citing both Caesar and Augustus as possible legislators; Williamson, '*Crimes against the state*', 335 – 338.

⁴⁶ J.E. Allison, J.D. Cloud, '*The Lex Iulia Maiestatis*', *Latomus*, xxi (1962) 711 – 731; J.D. Cloud, '*The text of Digest xlvi, 4, Ad legem Iulia Maiestatis*', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, romanische Abteilung*, lxxx (1963), 206 – 232; Cuttler, *law of treason*, 5 – 10; F. Dal Vera, '*Quietis publicae disturbatio: Revolts in the Political and Legal treatises of the sixteenth and seventeenth Centuries*', in M. Griesse (ed.), *From mutual observation to propaganda war: Premodern revolts in their transnational representations* (Bielefeld 2014) 273 - 308.

disobeying appointed magistrates, sedition, surrendering fortified places and obstructing the submission of enemies.⁴⁷

3.2 *Laesio Maiestatis* in the Roman Principate and Dominate

Following the fall of the Republic and the gradual establishment of the Principate by Augustus, the possession of *maiestas* slowly shifted away from the Roman people. Even though Augustus took close care to maintain the republican constitutional façade, the array of official titles and prerogatives he bore (*imperator, imperium consulare, tribunicia potestas, imperium proconsulare maius, princeps civitas*), as well as his unrivalled *auctoritas*, brought about the attribution of *maiestas* to the emperor himself because as supreme magistrate he became the backbone of the Roman state.⁴⁸ The highly personalized conception of *maiestas* that was hereby instigated paved the way for what Mommsen has called the “*proliferation of judicial murder*” during the Principate and Dominate.⁴⁹

Of key importance to the further development of Western Europe, and for the Roman law of treason in particular, is the Roman empire’s conversion to Christianity. Emperor Constantine the Great stopped the persecution of Christians in his realm, and even granted them the right to open confession in 313 AD. It wasn’t until 380 AD, however, that (Nicene) Christianity became the Roman Empire’s state religion, following the *Cunctos Populos* Edict, or Edict of Thessalonica. It is from this moment onwards that the state considered it their task to root out all the different forms of heresy that existed within the Roman Christian church and that the abidance by Christian ecclesiastical laws and dogma’s became a matter of state authority – which it would remain for centuries. This way, the doctrine of *laesio maiestatis* became applicable to the Christian confession – entwining political rule and the guardianship of the abidance by religious doctrines.

3.3 The *Digest* and its legacy

Its lasting influence, however, is due to the incorporation of parts of these first century B.C. laws of treason into the *Digest* – the codification of fifty books of classical Roman legal jurisprudence, compiled by emperor Justinian I in the 6th century A.D. The influence of the *Digest* on the development of the European legal tradition(s) cannot be stressed enough: it

⁴⁷ Cuttler, *law of treason*, 7 – 9.

⁴⁸ E. Meyer, ‘Vom griechische und römischen Staatsgedanken (1947)’, in: R. Klein (ed.), *Das Staatsdenken der Römer* (Darmstadt 1966) 78 – 82.

⁴⁹ Th. Mommsen, *A history of Rome under the emperors*, translated and edited by B. Demandt, A. Demandt and C. Krojzl (London 1992) 140 - 146; Gundel, ‘Der Begriff *Maiestas*’, 283 – 285; Cuttler, *The law of treason*, 6 – 7; P. Stein, *Roman law in European history* (Cambridge 1999) 14.

has been the most important source of jurisprudence for the whole of Europe, for well over a thousand years.⁵⁰ Consequently, the incorporation of the Roman laws of treason in the 48th book of the Digest meant that the doctrine of *crimen laesae maiestatis* would remain of crucial importance for centuries to come.

In the Digest, the list of acts diminishing *maiestas* even included committing “*any act with malicious intent by means of which the enemies of the Roman people may be assisted in their designs against the res publica*”.⁵¹ The reach of the Roman laws of majesty were extensive. They can best be illustrated by two exceptions that it allowed to the rule: repairing a statue of the emperor which had become damaged by age, and the throwing of a stone which then accidentally hit a statue of an emperor were both *not* to be punished by death.⁵²

Even after the collapse of the Western Roman Empire in the fifth century, Rome retained its influence in Western Europe both as a political ideal, and as the most important source of legal discourse.⁵³ Following the much more thorough study of Roman law, starting at the university of Bologna in the 11th century, European monarchs slowly discovered the powerful tools Roman law had to offer.⁵⁴ From the 12th century onwards, the (lawyers of the) kings of France, Sicily and England started to claim their legal status was in fact equal to that of a Roman emperor, following the maxim ‘*rex in regno suo princeps est*’.⁵⁵ Concordantly, this meant that they were the bearers of *maiestas* and were consequently entitled to all the privileges Roman law accorded to it. These were far greater than the rights they held as feudal lords, because feudalism was based on personal ties of loyalty between a vassal and his lord – Roman law offered the notion of loyalty of a mere subject to his ruler.⁵⁶

This way, the Roman laws of *maiestas* found their way into the legal-political discourse of European courts and their monarchs’ claims to sovereign power.⁵⁷ Henceforth,

⁵⁰ J.W. Wessels, *History of the Roman-Dutch law* (Oxford 1937); R.W. Lee, *An introduction to Roman-Dutch law* (Oxford 1946); Williamson, ‘Crimes against the state’ 333 – 342; P. Stein, *Roman law in European history* (Cambridge 2003) 40 – 45; G.C.J.J. van den Bergh, C.J.H. Jansen, *Geleerd recht: Een geschiedenis van de Europese rechtswetenschap in vogelvlucht* (Deventer 2007) 2 – 37; S.F. Johnson, *The Oxford handbook of late Antiquity* (Oxford 2012) 789 – 815.

⁵¹ D.48.4.1 Ulpian “... *dolo malo, quo hostes populi Romani consilio iuventur adversus rem publicam*”.

⁵² Both in D.48.4.5 Marcianus.

⁵³ P. Stein, *Roman law in European history* (Cambridge 2003) 42 – 48.

⁵⁴ One of the main reasons of course being the wish to legitimize their rule as autonomous to Papal rule: Stein, *Roman law in European history*, 44 – 55.

⁵⁵ W. Ullman, ‘The development of the Medieval idea of sovereignty’, *English Historical Review* (1949) LXIV, 2 – 29; G. Post, *Studies in Medieval legal thought* (Princeton 1964) 465 – 452; E.M. Meijers, ‘L’université d’Orléans au XIIIe siècle’, in: E.M. Meijers, *Études d’histoire du droit III. Edited by R. Feenstra and H.F.W.D. Fischer* (Leyden 1974) 190 – 202; E.M. Meijers, ‘Le droit romain au Moyen Age’, in: E.M. Meijers, *Études d’histoire du droit IV. Edited by R. Feenstra and H.F.W.D. Fischer* (Leyden 1974) 190 – 196; Cuttler, *The law of treason*, 8 – 10.

⁵⁶ Cuttler, *The law of treason*, 8 – 13.

⁵⁷ Kantorowicz, *The king’s two bodies*, 13 – 32, 120 – 122, 168 – 184; Cuttler, *The law of treason*, 9 – 13.

when legal means were employed in political power struggles, prosecutions revolved around the notion of the damaging of that supreme dignity which Roman law accorded to those in power.

3.4 *Laesio Maiestatis Divinae* in Medieval and Renaissance Europe

The Roman laws of majesty also proved perfectly suitable for incorporation into the religious legislation of Christian Europe.⁵⁸ The first time the act of heresy was equated to the Roman law crime of *laesio maiestatis*, was in the papal decree *Vergentis in Senium* enacted by Innocent III in 1199, which equated the act of heresy to the violation of the majesty of God.⁵⁹ Following this decree, and its inclusion in Imperial law by emperor Frederick II in 1220 and 1239, ecclesiastical courts were granted the jurisdiction to schedule trials of blasphemy and heresy. The execution of a possible punishment, however, would be performed by the urban authorities, whose task it was to sustain the church.⁶⁰

This jurisdictional division changed with the penal codes of emperor Charles V, whose legislation against heresy equated it with high treason, “[*treating*] offences against the edicts as though they were crimes against the state”.⁶¹ Consequently, all religious privileges that were established could now be circumvented, because they never offered protection against charges of treason. Furthermore, the punishment befitting such acts was the death penalty and the forfeiture of the convict’s property.⁶² The religious legislation of the Habsburg court thereby installed a regime which deliberately blurred the boundaries between breaches of civil and of ecclesiastical law. The Habsburg lords argued that, because they had promulgated this religious legislation as the highest lord of the Low Countries, defiance of their edicts meant defiance of the “*puyssance plainière et absolute*” they had been given by

⁵⁸ See page 18 – 19.

⁵⁹ Thus often calling it *laesio maiestatis divinae* or *laesio maiestatis ecclesiae*: H. Jedin, J.P. Dolan (eds.), *History of the church: From the High Middle Ages to the eve of the Reformation. Volume IV* (London 1980) 100 – 105, 161 – 165, 516 – 518; A.C. Duke, *Reformation and revolt in the Low Countries* (London 1990) 64 - 81.

⁶⁰ A.C. Duke, *Reformation and revolt*, 72 – 75, 161 - 163; L.W. Levy, *Blasphemy: Verbal offences against the sacred, from Moses to Salman Rushdie* (Chapel Hill / London 1993) 198, 568 – 569, providing the following illustrative quotations: blasphemy being called “*a crime that deposes the majesty of God Himself*”, *crimen laesae maiestatis, the ungodding of God*” in 15th-century England, and a 17th-century Scottish jurist who “*joined blasphemy to witchcraft and heresy as ‘treasons against God’*”.

On the importance of the distinction between *laesio maiestatis divinae* and *laesio maiestatis humanae* in late Medieval Spain, see: S. Pastore, ‘Rome and the expulsion’, in: M. García-Arenal, G. Wiegers, *The expulsion of the Moriscos from Spain: A Mediterranean diaspora* (Leiden 2014) 150 – 156.

⁶¹ Duke, *Reformation and revolt*, 160 – 166; J.H. Langbein, *Prosecuting crime in the Renaissance: England, Germany, France* (Clark, NJ 2005) 23 – 26, 129 – 177, 178 – 208. These appeared in the Edict of Worms (1521), the *Constitutio Criminalis Carolina* (1529 - 1532), and the Edict of 22 September 1540.

⁶² Duke, *Reformation and revolt*, 72 – 74, 84 – 86, 164. Quoting an ordinance of 1549, which “*stated that confiscation for the crimes of lese-majesty ‘divine et humaine’ should be enforced ‘nonobstant coustumes, privileges et usances pretendues au contraire par aulcunes villes ou pays’*”.

God - therefore amounting to *laesio maiestatis divinae*.⁶³ In the course of the sixteenth century, the Habsburg courts of Charles V and Philips II attempted to force (town) magistrates in the Low Countries to abide with these new rules that equated violations of these edicts to *crimen laesae maiestatis divinae*.⁶⁴ These views were in clear breach of established rights and privileges, and this coercion was one of the main reasons the Low Countries revolted in the 1560'ies.

⁶³ Duke, *Reformation and revolt*, 162 – 163; O.P. Grell, B. Scribner (eds.), *Tolerance and intolerance in the European Reformation* (Cambridge 1996) 1 – 13, 48 – 57; A.C. Duke, 'The 'Inquisition' and the repression of religious dissent in the Habsburg Netherlands 1521 - 1566', in: A.C. Duke, J. Pollmann, A. Spicer (eds.), *Dissident identities in the Early Modern Low Countries* (Farnham 2009) 105 – 109, 162 – 165.

⁶⁴ Duke, *Reformation and revolt*, 162 – 164; Grell, Scribner (eds.), *Tolerance and intolerance*, 1 – 13, 48 – 53.

Chapter 4: The constitution of the Dutch Republic

4.1 Treason and constitutional law

The legal ramifications of the Roman laws of treason in the Low Countries around 1550 are therefore clear with respect to their criteria:

- 1) any act that might bring about the diminution of the greatness of the sovereign power constituted an attack on his *maiestas* and was thus punishable as *laesio maiestatis*, and
- 2) defiance of the religious legislation of the Habsburgs was considered *laesio maiestatis divinae*.

Following the Dutch Revolt, however, it was far from clear just *who* wielded this sovereign power and to what powers could legitimately be exercised under this banner. The answer to this question is the answer to the question as to who had the strongest claims to rulership – if not who could muster the most powerful forces. It is therefore no wonder that this question remained at the heart of all political theory throughout the Early Modern period. From the kings of France and their relations to the *Parlements* and the *États-généraux*, the monarchs of England versus Parliament, or the Holy Roman Emperor versus the Prince-Electors and the *Reichstag* – all sought to ensure marks of sovereign power such as control over the army, the right to levy taxes, and the right to determine ecclesiastical doctrine.⁶⁵

When one seeks to understand the application of the Roman laws of treason in the context of the Low Countries, one therefore needs to study the question of the exercise of sovereignty in the Dutch Republic. This, however, is a notoriously complex subject, only few scholars have been willing to engage with.⁶⁶ The first difficulty is that the Dutch Republic has never had a founding constitutional document: neither the Pacification of Ghent (1576) or the Union of Utrecht (1579) served such purposes. The second is the complexity of the constitutional consensus which was reached following the first two decades of the Revolt. Abjuring Philips II as their overlord in 1581, the signatories of the Act of Abjuration (“*Plakkaat-*” or “*Acte van Verlatinghe*”⁶⁷) created a political situation in which the exercise

⁶⁵ G.L. Mosse, *The struggle for sovereignty in England* (Cambridge 1950); Cuttler, *The law of treason*, 34 – 48, 65 – 85; P. Stein, *Roman law in European history* (Cambridge 1999) 82 – 93; J.L. Malcolm, *The struggle for sovereignty: seventeenth-century English political tracts* (Indianapolis 1999) vii – xii, 1 – 12; D. Lee, *Popular Sovereignty in Early Modern constitutional thought* (Oxford 2016) 1 – 20, 121 – 158, 187 – 193, 317 – 321.

⁶⁶ It is revealing that the main work on this topic, to this day, remains: R. Fruin, H.T. Colenbrander, *Geschiedenis der staatsinstellingen in Nederland tot de val der Republiek* (The Hague, 1922).

⁶⁷ In this study, all pieces of legislation that have been passed by either the Provincial States or the States-General will be referred to as *Acts*, rather than *Placards*, *Plakkaten*, or *Statutes*.

of public authority was so highly contested, that it is extremely difficult to distinguish between the political-legal reality of the nascent republic, and party propaganda.⁶⁸



Comparison between William of Orange and the Duke of Alba. William of Orange is flanked by the personifications of Honour, Riches, and Counsel, the Duke of Alba is surrounded by Fallacy and Hatred, at his side is the cuffed virgin of the Netherlands and the beggar at his feet is Plebs. In the background is a depiction of the Spanish Fury of Antwerp. Print attributed to Theodor de Bry, 1576 – 1577, Rijksmuseum, RP-P-OB-79.021.

⁶⁸ A problem to which many Dutch politicians actively contributed, e.g. Vranck's *Corte Vertooninge* and Grotius' *De Antiquitate* and *Annales et Historiae*.

4.2 The birth of the Republican constitution 1566 – 1585

In order to fully understand the laws of treason in the Dutch Republic, one must necessarily also get to grips with its complex constitution. And as is so often the case in these matters, this legal structure cannot be understood without taking into account the events that formed it. This paragraph will therefore provide a brief summary of the most important events of the Dutch Revolt which decisively shaped the legal structures of the Dutch Republic.

The reason there is no foundational document for the sovereign nation referred to as ‘the’ Dutch Republic, is that its establishment was not a goal when the rebellion started. The Revolt that broke out in the Low Countries was principally concerned with three things. The first and foremost was the demand that the existing privileges of the highest nobility were to be respected; especially their role as primary advisors to the King in his Council of State (“*Raad van State*”).⁶⁹ Secondly, there was the demand religious persecutions had to be stopped (in part, also, because Spanish religious courts were considered to be violating the *ius de non evocando* of existing courts).⁷⁰ Finally, the much-hated trade embargo Philip II put into place concerning protestant countries, such as Elizabethan England, had to be lifted because it severely damaged the commercial interests of the merchant towns of Holland, Zeeland and Friesland. To these can be added a rather permanent grudge against various forms of taxation, though these would become more relevant only in later stages of the Revolt, e.g. the Duke of Alba’s ‘10th penny’ (“*Tiende Penning*”).⁷¹

The first fifteen years of armed resistance were conducted under the seemingly bizarre notion that the rebels were fighting the Spanish king, because they were actually loyal to him. The argument was that, unfortunately, they had to fight off his armies because these had fallen under the spell of his corrupted inferior magistrates.⁷² The establishment of an independent republic was only envisaged around 1587 – after the departures of both the Duke of Anjou, and subsequently the Earl of Leicester. Both had accepted the somewhat thorny

⁶⁹ A role then exercised by (the commoner) Granvelle. Cf: J. L. Motley, *De opkomst van de Nederlandsche Republiek. Deel 7 (herziene vertaling)* (Den Haag 1880) 218 - 246; Fruin, Colenbrander, *Geschiedenis der staatsinstellingen*, 4 - 28, 148 - 160; Israel, *The Dutch Republic*, 144 - 166.

⁷⁰ A.C. Duke, *Reformation and revolt* (London 1990) 165.

⁷¹ R.C. Bakhuizen van den Brink, *Studiën en schetsen over vaderlandsche geschiedenis en letteren: Deel I* (Amsterdam 1863) 376 – 389; Fruin, Colenbrander, *Geschiedenis der staatsinstellingen*, 144 – 160; Israel, *The Dutch Republic*, 164 – 169.

⁷² Van Gelderen, *The political thought of the Dutch Revolt*, 268 – 286. This of course being the reason the Dutch, when singing their national anthem, to this day proudly proclaim to have always honoured the Spanish King – a sentence considered confusing to many.

crown of lord of the rebellious provinces.⁷³ By this time the treaties that shaped the bond between the rebel provinces had already been signed: the Pacification of Ghent (1576), the Unions of Brussels (1577) and Utrecht (1579) and the Act of Abjuration of Philip II of Spain (1581). When the provinces signed these documents, none of these had served foundational, or even constitutional purposes. They had been treaties concerning a military alliance of distinct (Low) countries, which happened to share the joint aim of rebelling against their common overlord. They became constitutional texts only in retrospect, when these texts proved to be the only texts that recounted the legal relationship between the essentially independent provinces.⁷⁴

The Pacification of Ghent and the Union of Brussels quickly became redundant, when the Union of Arras and the Union of Utrecht separated the Southern and Northern Netherlands (respectively) in opposing blocks in January 1579. Constitutionally, this resulted in the Union of Utrecht becoming the most important document explaining the legal relationship between those political entities which together became known as the Dutch Republic.

The Union of Utrecht was a treaty that served military purposes: its signatories pledged to form a ‘further alliance’, to cooperate closely in military affairs, and to only wage war or make peace as a whole. In order to safeguard effective control over these military matters, it authorized a general assembly of representatives (the States-General) to rule in these matters, as well as regulating voting procedures and financial contributions. All other matters remained with the provincial authorities; the union explicitly respected “*her special and particular privileges, liberties, exemptions, rights, statutes, (...) customs, usages and all the others of her justices*”.⁷⁵ The article that would become the most famous article of the entire treaty is article 13, concerning religious freedoms within the new confederation.⁷⁶

⁷³ S. Groenveld, *Evidente factiën in den staet: Sociaal-politieke verhoudingen in de 17e-eeuwse Republiek der Verenigde Nederlanden* (Hilversum 1990) 7 – 13; Israel, *The Dutch Republic*, 234 – 289. See also the paragraph on the ‘Treason of Geertruidenberg’ in chapter 5.

⁷⁴ S. Groenveld, H.L.Ph. Leeuwenberg, *De Unie van Utrecht. Wordings en werking van een verbond en een verbondsacte* (The Hague 1979). This so-called ‘constitutional importance’ was celebrated widely in 1979: P. Meijer, *Van opstandige gewesten tot zelfstandige republiek. De Unie van Utrecht en de strijd om de vrijheid* (The Hague 1979); S. Groenveld, H.L.Ph. Leeuwenberg, N. Mout and W.M. Zappey, *De kogel door de kerk? De opstand in de Nederlanden en de rol van de Unie van Utrecht 1559 – 1609* (Zutphen 1979). The only other document of constitutional importance concerned with the relationship of the distinct polities of the Low Countries, was the 1548 *Transaction of Augsburg*, which created a single *Kreis* for the 17 Low Countries over which Charles V ruled.

⁷⁵ A.S. De Blécourt, N. Japikse, ‘XIX. 29 januari 1579. Unie van Utrecht’, *Klein Plakkaatboek van Nederland: Verzameling van ordonnantiën en plakaten betreffende regeeringsvorm, kerk en rechtspraak (14^e eeuw tot 1749)*, (The Hague 1919) 120: “*haerlyuden spetiaele ende particuliere privilegien, vrijheyden, exemptien, rechten, statuten, loffelicke ende welheer-gebrochte costumen, usantien ende allen anderen haerlyuden gerechticheyden*”.

⁷⁶ Boogman, ‘Union of Utrecht’, 388 – 392.

Article 13 nowhere mentions reformed Christianity, but does explicitly grant every province the right to regulate its religious matters as it saw fit, without having to suffer any hindrance from any other province – so long as every citizen was granted freedom of conscience.⁷⁷

The treaty was thus nothing more than a military alliance between distinct and autonomous political entities which were rebelling against a common overlord. This is why it is not dealing with thorny issues of constitutional law, but instead focusses on the much more urgent question of just how their common defence was to be organized – protecting the existing legal autonomy in all other matters.

4.3 The struggle for sovereignty in the Low Countries

By attributing constitutional significance to the treaties signed before the actual birth of an independent country, the nascent republic became burdened with a constitution that was silent on every relevant topic of constitutional law. This ‘accidental constitution’ did not allow for very strong claims about the legitimate exercise of sovereign authority, such as who actually exercised this power, or to what extent it could be exercised in ecclesiastical affairs (such as the appointment of ministers, or the establishment of doctrine).

The resulting pliability of these key matters of state resulted in series of hard-fought struggles between several political factions, all seeking to obtain the vacant ‘holy grail’ of political philosophy: to be considered the legitimate possessor of sovereign authority. Leading the way in some respects, the short-lived Calvinist Republic of Ghent already claimed this authority in the late 1570’ies. It argued that, following their abjuration of the tyrant Philip, sovereignty had returned to the free city.⁷⁸ Although this ‘republic’ was destroyed in 1584 during the successful campaigns of Alexander Farnese, it is not the only political entity that claimed absolute authority in these chaotic times.

⁷⁷ Unie van Utrecht, Art. XIII, in: Blécourt, Japikse, *Klein Plakkaatboek*, 123; M. van Gelderen, ‘The Machiavellian moment and the Dutch Revolt: the rise of neo-Stoicism and Dutch republicanism’ in: G. Bock, Q. Skinner, M. Viroli (eds.), *Machiavelli and republicanism* (Cambridge 1990) 218; E. Bos, *Souvereiniteit en religie: Godsdienstvrijheid onder de eerste oranjevorsten* (Hilversum 2009). This article was the compromise between the position of Holland and Zeeland, which insisted only Reformed Christianity be allowed, and that of (amongst others) Gelre, where Catholicism remained powerful.

⁷⁸ Van Gelderen, *Political thought*, 72 – 80; W.P. Blockmans, ‘The formation of a political union: 1300 – 1588’, in: J.C.H. Blom, E. Lamberts (eds.), *History of the Low Countries* (New York 2015) 135 – 142.

4.4 Holland's gambit

The second attempt at acquiring the official title of legitimate sovereign ruler over the United Provinces, was that by sir Thomas Wilkes. Alarmed by the military victories of the Spanish, in 1585 England was suddenly interested in assisting the Dutch rebellion. This led to an English involvement in both its political and military affairs, as well as its struggles for sovereignty. Elizabeth I ordered the transfer of an army headed by the 1st Earl of Leicester, whom the Estates-General granted 'absolute power' ("*absolute magt*") in 1586.⁷⁹ He quickly set to work to attempt to establish effective authority in order to fight off the Spanish threat, and hence sought to centralize the jumble of cities, provinces and councils, which he now ruled.⁸⁰

Holland, however, refused to yield. Having just appointed Maurice of Nassau and Johan van Oldenbarnevelt as Stadtholder and Grand Pensionary respectively, it battled for a gambit that would decisively shape the Low Countries for two centuries to come. It set out to completely undermine the political cooperation on the level of the Union and to fight off the Spanish not under the banner of a sovereign lord with centralized power, but as seven independent, tiny republics who would partake in nothing other than military affairs.⁸¹ Pitting the tiny Holland against the Habsburg behemoth, Oldenbarnevelt had to be either a fool or a genius to consider such a war a viable solution to the incredibly pressing problems.

Oldenbarnevelt relentlessly sabotaged Leicester's authority in whatever ways he saw possible, until the greatly frustrated English noblemen in the Council of State (*Raad van State*) were forced to cry out against his blatant disobedience.⁸² The shape this outcry took was a remonstrance, offered to the Estates-General by sir Thomas Wilkes in march 1587.⁸³ It called for the States of Holland to put an end to campaign of defiance, arguing that the sovereignty of the United Provinces resided in the people as a whole, who had opted for Leicester as their lord and protector. In this view, Oldenbarnevelt and Maurice were acting in

⁷⁹ Van Gelderen, *Political thought*, 76.

⁸⁰ Van Gelderen, *Op zoek naar de Republiek: politiek denken tijdens de Nederlandse Opstand (1555 – 1590)* (Hilversum 1991) 74 – 78.

⁸¹ Van Gelderen, *Political thought*, 55 – 59.

⁸² In the earlier historiography of the Dutch Revolt and the Dutch Republic it is often claimed that Holland had no choice but to take matters in its own hands, Leicester having departed for England and leaving the country confused, vulnerable and poised to make a humiliating peace with Philip. This reading largely overlooks the extremely conscious policy of subversion undertaken by Oldenbarnevelt. Cf: Fruin, *Geschiedenis der staatsinstellingen*, 171 – 176; J. Den Tex, A. Ton, *Johan van Oldenbarnevelt*, 35 – 42.

⁸³ 'Thomas Wilkes' Remonstrance to the States-General and the States of Holland: March 1587', in: E.H. Kossmann, A.F. Mellink, *Texts concerning the Revolt of the Netherlands* (Cambridge 1974) 265 – 278.

defiance, not only of the once so powerful *Raad van State*, but also of the will of the people and its legitimate ruler.⁸⁴

The third – and by far the most successful – theoretical legitimization of the exercise of supreme authority was the States of Holland’s immediate and explicit denunciation of these claims of popular sovereignty and centralized power of Wilkes. It was the *Corte Vertooninghe* written by Francois Vranck.

Written in the summer of 1587, it would become the official reading with regard to the sources of authority and the legitimacy of the power of the States of Holland for centuries.⁸⁵ It argues that for over 800 years, Holland was governed by its Counts, though they had never taken important decisions without first asking the advice of the knights council (*ridderschap*), the nobles, and the cities - for these constituted the legitimate representatives of the estates of the country.⁸⁶ According to Vranck, the counts of Holland had thus always lacked the most important marks of sovereign power: they could not themselves declare war or make peace, levy taxes, or decide on matters which ‘concerned matters of the State of the Countries’.⁸⁷ Sovereign authority had therefore always resided with the States of Holland, who could be considered both the bearers of public authority, as well as the legitimate representatives of the whole polity. Having a single sovereign ruler would therefore be contrary to this age-old constitutional practice of counts that had only ruled with the consent of the nobles and the cities.

4.5 Sovereignty in the Dutch Republic: the result

Though of course this account was completely false, the theory of Vranck did become the leading notion of the legitimate exercise of public power, which was exercised by the States of Holland.⁸⁸ These immediately passed Vranck’s tract as law, denouncing any who dared

⁸⁴ E.H. Kossmann, A.F. Mellink, *Texts concerning the Revolt of the Netherlands* (Cambridge 1974) 272 – 274.

⁸⁵ F. Vranck, *Corte Vertooninghe*, Koninklijke Bibliotheek, Collectie Knuttel, no. 790; Th. Veen, ‘De legitimatie van de souvereiniteit der Staten bij Huber en Kluit’, *Bijdragen en Mededelingen betreffende de Geschiedenis der Nederlanden*, 97 (1982), 186 – 189.

⁸⁶ F. Vranck, *Corte Vertooninghe*, Knuttel 790: “*representerende den Staten van den selven Landen*”.

⁸⁷ F. Vranck, *Corte Vertooninghe*, Knuttel 790: “*ofte van eenige andere saecken den Staet van den Landen betreffende*”.

⁸⁸ Veen, ‘De legitimatie van de souvereiniteit’, 186 – 189. This is of course largely the result of the (political) history of the English troops in the Dutch Republic and the treason of Stanley and York. Cf. J. Den Tex, *Oldenbarnevelt I*, 83 – 88; Israel, *Dutch Republic*, 176 – 192.

question their supreme authority in the strongest of words – for people who did this clearly tried to undermine the foundations of the state, making them enemies of the country.⁸⁹

The resulting constitutional arrangements can thus be characterised as a momentous victory of the ‘provincial’ States and States-General over the confederal *Raad van State*.⁹⁰ The States of Holland had successfully claimed the title of supreme authority (*Hooghe Overicheyt*) and henceforth exercised the powers which were previously associated with the personal ruler of the fiefdom (in this case the Count of Holland).⁹¹ This did not mean, however, that the rule of the States was in any way absolute. Because the Revolt was largely concerned with protecting local and urban privileges, the States were forced to exercise their authority in accordance with these rights and customs. In some matters, this posed little difficulties. The composition of the States of Holland, for example, were rather clear: 18 towns had the right to vote, following the single vote of the Knights Council (*Ridderschap*) which was always cast first.⁹² Though politically of course the arena of constant power struggles, the procedures themselves through which council-members and delegates were appointed were clear as well.

Though this cleared up the question who exercised the highest legislative powers, it did create a rather paradoxical situation with regard to the powers of the Stadtholder. Officially, he was employed by the States’ as an inferior magistrate and thus had to obey its orders. At the same time, however, he bore the Republic’s highest noble titles, was son and heir of the great hero William of Orange and held the office of commander-in-chief.⁹³ He could also rightfully claim the exercise of several prerogatives that were originally exercised by the counts of Holland (the *Stadhouder* being his lieutenant). The most important of these were

⁸⁹ Thereby also influencing the legal conceptualisation of treason in Holland for years to come – which will be discussed further in chapter 5.

⁹⁰ H. de Schepper, ‘De Raad van State in de landsheerlijke Nederlanden en zijn voortgang op gescheiden wegen, 1531 – 1588 / 1948’, in: W. Scholten (ed.), *Raad van State 450 jaar* (The Hague 1983) 33.

⁹¹ In the other provinces these were the prerogatives of the Duke of Gelre, the lord of Friesland etc. These were the legal structures that formed the basis of the rule of the Habsburg lords Charles V and Philip II of the Low Countries, their dynastic predecessors having acquired the titles of Duke of Brabant (1430), Duke of Guelders (1543), Count of Flanders (1384), Count of Holland (1432), Lord of Friesland (1524) etc. through marriage and warfare.

See also: W. Blockmans, W. Prevenier, *The promised lands: The Low Countries under Burgundian rule: 1369 – 1530* (Philadelphia 1999) 206 - 243; N. Davies, *Vanished kingdoms: the history of half-forgotten Europe* (London 2012) 135 - 149; J.C.H. Blom, E. Lamberts (eds.), *History of the Low Countries* (New York 2015) 82 – 140.

⁹² Every ‘province’ within the confederation of course had its own procedures as to the composition of their respective ‘states’ or councils: in the States of Guelders and Overijssel the knights-councils (*Ridderschappen*) were far more powerful than in the States of Holland, in which it was accorded but a single vote, and in the States of Zeeland the ‘first nobleman’ also had significant power. Fruin, *Geschiedenis der staatsinstellingen*, 216 – 228; Israel, *Dutch Republic*, 273 – 280.

⁹³ William of Orange’s eldest son Filips-Willem, the true ‘Prince of Orange’ following the death of his father, was conveniently brushed aside on this topic.

the presidency over the *Hof van Holland*, appointing town magistrates – and thus greatly influencing the composition of the States –, and even the right to declare a state of emergency, allowing him to remove town councils and replace its members.⁹⁴ Rather bizarrely, a core aspect of the exercise of sovereign power was retained by the Stadtholder of Holland: the authority to grant reprieves and pardons – a power very close to the idea of sovereign rule, because it resulted in having the last word in matters of law.⁹⁵ Another key prerogative, which seemed rather innocent when it was mentioned in the official appointment of Maurice but would later be used against the States of Holland, is ‘the defence of the true reformed religion’.⁹⁶ The division of power became even more peculiar when Maurice was appointed commander of the combined forces of the entire Dutch Republic in 1588 - 1589 by the States-General, whilst all provincial States kept insisting they exercised supreme authority.⁹⁷

The resulting constitutional framework was one in which each of the provincial States exercised control over the legislative and executive powers in their respective provinces and the States-General exercised the control over the matters of confederal importance following the Union of Utrecht. Several other key aspects of sovereign power, however, were held by the Stadtholder. On the onset of the European ‘Age of Absolutism’, the Dutch constitution divided the most important marks of sovereignty over a multitude of political entities.

4.6 Treason trials: jurisdiction

Following this fragmented sovereignty, several political bodies claimed jurisdiction over treason trials. First and foremost were the States councils, that could consequently authorize its executive bodies (the *Gecommitteerde Raden* and *Gedeputeerde Staten*) to adjudicate trials in its name.⁹⁸ This included the council of the States-General, whom the Union of Utrecht had authorized to exercise supreme authority on matters regarding the whole of the

⁹⁴ This power of the Stadtholder, known as *de wet verzetten* – literally to adjust or replace the law – was exercised regularly by William of Orange to remove pro-Spanish town magistrates. Fruin, *Geschiedenis der staatsinstellingen*, 214 – 218.

⁹⁵ M.B. Dowling, *Clemency and cruelty in the Roman world* (Ann Arbor 2006) 216 – 226; A. Novak, *Comparative executive clemency: the constitutional pardon power and the prerogative of mercy in global perspective* (London 2016) 6 – 28.

⁹⁶ Fruin, *Geschiedenis der staatsinstellingen*, 204 – 228.

⁹⁷ A proof of the constant struggles regarding the position of the Stadtholder, is that Maurice was denied the official title of *Kapitein-Generaal* of the Union, the title that carried with it the extensive powers of appointing military officers, even though he was unquestionably commander-in-chief and even *Admiraal-Generaal* from 1588 onwards. Cf: Fruin, *Geschiedenis der staatsinstellingen*, 204 – 218; Van Deursen, *Maurits van Nassau*, 105 – 112, 267 – 280.

⁹⁸ Fruin, *Geschiedenis der staatsinstellingen*, 213 – 222.

alliance – which were mainly of the financial and military sort. Therefore they also exercised the authority to appoint courts-martial (*Krijgsraden*). Most of these powers were usurpations of the authorities of the Council of State, which would at times still invoke some of its privileges – which were of course extensive following its official capacity as the sovereign’s closest advisors and substitutes.⁹⁹ The adherence to established privileges also meant that cities that had been granted this jurisdiction, retained it and could thus also administer justice through municipal courts in treason trials.¹⁰⁰

⁹⁹ Following the decree of 1st of October 1531. Fruin, *Geschiedenis der staatsinstellingen*, 104 – 108; H. de Schepper, 'De centrale regering in de Nederlanden van de Bourgondiërs tot de Oostenrijkers, 1384-1794', *Historische Documentatie*, 5 (1961 - 1962) 339 – 343.

¹⁰⁰ K. Davids, J. Lucassen, *A miracle mirrored: The Dutch Republic in European perspective* (Cambridge 1995) 64 - 66, 91 – 92; M. 't Hart, 'Town and country in the Dutch Republic: 1550 – 1800', in: S.R. Epstein, *Town and country in Europe: 1300 – 1800* (Cambridge 2001) 80 – 98; J. Tracey, *The founding of the Dutch Republic: War, finance, and politics in Holland* (Oxford 2008) 2 – 25, 166 – 185.

Chapter 5: Statutory law of treason

5.1 Vranck's *Deductie* and Holland's Act of the 16th of October 1587

Having considered the constitutional framework of the United Provinces, we can now turn to the specific legislation that was enacted in Holland. The most important pieces of treason legislation, are four acts passed by the States of Holland between 1587 and 1589, the first of which being the aforementioned act which affirmed Vranck's writings. In the following paragraphs, these four acts will be discussed briefly, analysing the way they conceptualized treason as a crime against the authorities.

As mentioned before, the States of Holland immediately decreed Vranck's tract to be the law of the land.¹⁰¹ This decisively shaped the conception of the legitimate exercise of public authority in Holland, as well as the notion of treason. The new law denounced anyone who dared to question the legitimacy of the States of Holland to be "*enemies of the State and Republic of these Countries*", because their only aim could be "*the undermining of its foundations and its consequent collapse and decay*".¹⁰² Therefore, their exercise of sovereignty was vested in the States, and was "*to be allowed to be contradicted by no man in the World*".¹⁰³ In Vranck's writings, and consequently in the act of the States of Holland, the Count of Holland is still denominated as *His Excellency*, and *His Majesty*.¹⁰⁴

The importance of this title, however, is immediately curtailed by the statement that in fact only the States had "*the same powers over the exercise of sovereignty as they have had in times past (...) to manage affairs with His Majesty and to constitute [his] government*" – thereby denying the notion that this title brought with it its associated prerogatives.¹⁰⁵ Vranck does not, however, go as far as to say that it were the States of Holland that possessed *maiestas*, rather than the count of Holland. Rather, he disconnects the majesty of the count from his exercise of authority; arguing that he could only rule with the explicit consent of the States of Holland - even though he bore *maiestas*. This way, he reworks the age-old maxim of

¹⁰¹ Act of the States of Holland, 16th of October 1587: C. Cau, *Groot placaet-boeck, vervattende de placaten, ordonnantien ende edicten van de Doorluchtige, Hoogh Mog. HEEREN STATEN GENERAAL der Vereenighde Nederlanden: ende Vande Ed. Groot-Mog. HEEREN STATEN van Hollant* (Amsterdam 1658).

¹⁰² F. Vranck, *Corte vertooninghe*, 18 – 22, Knuttel 790: "*Vijanden vanden staet ende republijcke deser landen ende dat de zelve daermede niet anders connen voor hebben: dan te ondergraven de fundamenten vanden huysse omme tzelve te doen storten ende vervallen.*".

¹⁰³ Idem, 18 – 22; "*exercitie van de souverainiteyt*", "*ende hij niemanden ter werltd ghecontroverteert mach werden*"; Veen, 'De legitimatie van de souverainiteit', 186 – 189.

¹⁰⁴ Idem, Knuttel 790: "*Syne Exc.*" and "*Majesteyt*".

¹⁰⁵ Idem, Knuttel 790, 20 – 21: "*... de selve macht en hadden op de exercitie van de souverainiteyt die de selve hebben gehad in voorleden tijden, als voren bewesen is, ende oock hadden in t tracteren met hare majesteyt ende constitueren vant gouvernement van syne exc.*".

treason as the diminution of the sovereign power. On the one hand, he disconnects the concept of treason from the conditional *maiestas* and its notions of power, splendour and prerogatives. On the other hand, he does affirm that those who diminish the authority of the States undermine the supreme authority of the country and are therefore ‘enemies of the state of the country’.

5.2 Holland’s Act of the 27th of November 1587

The conceptualisation of Vranck in which the States exercised supreme authority without wielding *maiestas*, was used in subsequent legislation as well. In November 1587, the States passed legislation against “*sedition writings, conspiracies, surreptitious assaults, and the scattering of pasquils*”, which in their opinion questioned their authority.¹⁰⁶ The aim of this Act was to ban pamphlets, booklets and songs which apparently targeted the administration of the States of Holland and the town magistrates. The States would not have any of this, and condemn the works which they argue “*stir up ‘sedition, [the] diminution of the authority of their government, magistrates and courts of the cities*” – subverting the obedience the common people owed their rulers.¹⁰⁷

According to the States, the dissemination of these works amounted to conspiracy and sedition, because it greatly perturbed the peace and prosperity of the country and thus diminished the authority of the lawful government.¹⁰⁸ Once again the weakening of the authority of the States is designated as an act detrimental to the condition of the country, not because of a diminution of *maiestas*, but because the States are the legitimate guardians of the public order.

¹⁰⁶ ‘Placaet, Jegens Seditieuse propoosten, conspiratien, heymelijcke aenslagen ende Stroyen van Pasquillen: 27 november 1587’, in: C. Cau, *Groot placaet-boeck*, 417 – 423.

¹⁰⁷ ‘Placaet van de Staten van Holland van 27 november 1587’, *Groot placaet-boeck*, 417 – 423: “*verweckende mede de simpele Luyden, ende goede Ingesetenen vande Landen tot oproer ende seditie, verminderinge der autoriteyt van haer-luyder Overigcheyt, Magistraten ende Gerechten vande Steden ...*”.

For the translation of *Overicheyt* with *Authority*, or *Supreme Powers*, see also: H.W. Blom: ‘Patriots, contracts and other patterns of trust in a polyarchic society: the Dutch 17th century’, in Robert von Friedeburg (ed.), *‘Patria’ und ‘Patrioten’ vor dem Patriotismus: Pflichten, Rechte, Glauben und die Rekonfiguration Europäischer Gemeinwesen im 17. Jahrhundert* (Wiesbaden 2005) 193-213; M. Jacob, C. Secretan, ‘Introduction’, in: M. Jacob, C. Secretan, *In praise of ordinary people: Early Modern Britain and the Dutch Republic* (New York 2013) 14.

¹⁰⁸ ‘Placaet van de Staten van Holland van 27 november 1587’, *Groot placaet-boeck*, 417 – 423: “*tegens den selven te maecken eenige conspiratien, heymelijcken ofte seditieuse aenslagen, op peyne van gestraft te worden als seditieuse ende Perturbateurs vande ghemeene ruste ende welvaren vanden Lande*” ... “*streckende tot onrust, oneenicheyt vande Lande, naedeel ofte verminderinge der autoriteyt ende der Overicheyt*”.

The Treason of Geertruidenberg

Part of Oldenbarnevelt and Maurice's relentless undermining of the authority of Leicester, was the endless sidestepping or stalling of the payments owed to his troops. A collateral result of this attempted attrition of the means of Leicester, was the emptying of the coffers of the Generality too. This brought the finances of the union close to bankruptcy in the years following 1586. The near constant postponement of their salaries, coupled with acute shortage of housing due to the rise in rent following the massive influx of protestant refugees, caused tremendous friction between the English troops and the local population.¹⁰⁹ Already in January 1587 two of the highest English commanders, William Stanley and Rowland York, had defected to the Spanish. Following the departure of Leicester in the summer of 1587 and the postponement of yet another month's pay, English troops stationed at Geertruidenberg started rioting and pillaging. This fortified town formed the (then) southern-most point of the defences of Holland and was thus of crucial importance in the fight against the advancing Spanish armies. The Riots turned into mutiny on the 10th of March 1588, forcing the States-General to collect 216.000 guilders, mainly provided by town merchants, to pay off the troops and defuse the situation. Notwithstanding this payment, on the 27th of November 1588 new riots broke out.

Following a refusal of the States-General to generate another payment to the English troops, their commander sir John Wingfield decided to defect to the Spanish as well. He delivered them the fortress on the 10th of April, 1589, for a total of 15 months' worth of pay.¹¹⁰ The surrender of one of the most vital parts of Holland's defence caused great exasperation and outrage. The States-General passed an Act condemning everyone involved as "*perjurous traitors*", even putting a price of 50 Guilders on the head of each soldier and 100 on the head of every officer involved. The act even stated that whoever laid their hands on any of them, was permitted to hang them without prior interrogation or conviction.¹¹¹ It has been this abandonment of several of the most important fortresses of the United Provinces by the English troops, that prompted several Acts of both the States-General and the states of Holland to enact legislation against what it labelled as treason.

¹⁰⁹ Israel, *The Dutch Republic*, 228 – 229.

¹¹⁰ J.L. Motley, *De opkomst van de Nederlandsche Republiek. Deel 7 (herziene vertaling)* (Den Haag 1880) 321.

¹¹¹ Act of States-General of 17th of April 1589, 'Banvloek der Staten-Generaal tegen het garnizoen van Geertruidenberg' in: C. Cau, *Groot plaacet-boeck, I*, 418 - 428; C.R. Hermans, *Analytische opgave der gedrukte charters, diploma's handvesten, plakaten, keuren, ordonnantiën, reglementen en andere staatsstukken: betrekkelijk de provincie Noord-Brabant, van het jaar 704 tot en met het jaar 1648* ('s-Hertogenbosch 1844) 236; Motley, *De opkomst*, 318 – 326.



Print celebrating the capture of Geertruidenberg in 1593, which shows the impressive fortifications of the city. Frans Hogenberg, "Inname van Geertruidenberg", 1593 – 1595, Rijksmuseum RP-P-OB-78.785-275.

5.3 The States-General's Act of the 12th of April 1588

The first legislative act of a States Council that literally involves phrases concerning traitors, is the act of 12th of April 1588. In this act the States-General officially dismissed Leicester. It condemns as traitors those who still profess loyalty to the English Governor-General, because they would act in defiance of his dismissal and thus of the authority of the States-General. It mainly targets army regiments which had sworn their oaths of allegiance to the Earl, the States-General now absolved them of their oaths and demanding their loyalty instead. Refusing to abide is equated to a refusal to obey the highest authority in military matters. The

act therefore states that such defiance can only be explained as “*using covered practices and false pretexts (...) [to] stir up sedition, (...) attempting to excite the army in service of the Country towards mutiny and, following that, treason*”.¹¹² Significantly, even in this Act, containing harsh terms and severe threats, it is still the public order which is the protected norm, and not the dignity of the authorities. The honourless knaves and traitors will be punished, it says, because they are “*perturbators of the common peace*”.¹¹³

5.4 The States-General’s Act of the 17th of April 1589

The loss of the great fortified town of Geertruidenberg outraged the States-General. It immediately passed an act condemning every member of the army that was stationed in the city as “*honourless, honour-forgotten knaves, rebels and traitors*” – as well as “*perjurious knaves and traitors to the country*”.¹¹⁴ The act even mentions the penalty suitable for these crimes with a sense of impending doom, when it declares all will “*without any other verdict as this, (...) be punished as traitors*”.¹¹⁵

It is highly significant, however, that even in these circumstances, the States-General do not claim to have been injured in their capacity as a sovereign ruling body bearing *maiestas*. The phrasing of the Act states that the troops have “*despised, more than ever before, the Public Authority of these lands*”.¹¹⁶

The traitors of Geertruidenberg were in direct breach of their oath of allegiance to the States-General, yet it condemns them as traitors *not* in terms of a rebellion damaging the dignity of a king, but in terms of a disobedience resulting in the breach of a most valuable order. Instead of treason being constituted by a diminution of *maiestas*, or the Dutch translation of highness (*hoogheid*). It is constituted by the claim that ignoring orders of the States-General results in the undermining of an established order and thus an attack on the “*Prosperity of the*

¹¹² ‘Placaet der Staten-Generaal 12 april 1588’, in: C. Cau, *Groot placaet-boeck*, 415 – 425: “*met bedeckte practijcken ende valsche pretexten (...) tot oproerigheyt te verwecken (...) getracht hebben ’t Volck van Oorloghe in dienste van den Lande zynde, tot muyterye, ende daer na tot verraderye te verwecken*”.

¹¹³ Idem, 415 – 425: “*sonder figure van Proces sal worden gheprocedeert totte straffen, nae rechte ende costume vanden Lande, tegens de perturbateurs van de gemeene ruste gestelt, ten exempel van anderen*”

¹¹⁴ ‘Placaet der Staten-Generaal 17 april 1589’, in: C. Cau, *Groot placet-boeck*, 419 – 422: “*eerloose, eer-vergeten schelmen, rebellen ende verraders*”.

¹¹⁵ Idem, 420 – 423: “*sonder andere sententie als dese, sullen als Schelmen ende Verraders gestraft worden*”.

¹¹⁶ Idem, 421: “*De publijcque autoriteyt deser Landen meer veracht als oyt tevoren*”, and “*meyneedige, schelmen ende verraders vanden Lande*”.

Country”.¹¹⁷ It shows again the exercise of the highest authority by the States-General in their capacity as the guardian of the public peace, rather than that of a dignified lord.

The fact that the States Councils claimed the exercise of the highest authority, can also be deducted from their usage of such terms as ‘Public Authority’, and ‘High Government’ – they did not, however, use terms as *maiestas* or *maiestas publica*.¹¹⁸

5.5 The 1590 *Articul Brief*

Concerning treason legislation, a short mention has to be made of the *Articul Brief* of 1590. This act, enacted by the States-General on 13th of August 1590, promulgated strict rules concerning the army. It contains strict rules of martial law regarding the conduct of troops, and specifically that of the officers. It grants great powers to court-martials, which have to be able to deal with misconduct and disobedience quickly. It grants them the powers to summarily try and consequently execute the deserters and traitors.¹¹⁹

5.6 The statutory law of treason: overview

The legislation enacted by the States of Holland is clear in regard to what behaviour constitutes acts of treason. Firstly, there is questioning the legitimacy of their rule. According to the States, this would only be done by enemies of the country who attempt to stir sedition. This amounts to trying to diminish their authority by perturbing the peace and prosperity of the country. The April 1588 Act follows this same ideological route, by proclaiming anyone defying their authority a stirrer of sedition and a *perturbateur* of the common peace. Even in the case of the traitors of Geertruidenberg, who had willingly sold a fortified city to the enemy, the way their ‘treason against the country’ was phrased, was against the Public Authority as the guardian of public order.

¹¹⁷ ‘Placaet der Staten-Generaal 17 april 1589’, in: C. Cau, *Groot placaet-boeck*, 427: “Verraders, vyanden van den welstant deser landen, ende perturbateurs vande ghemeene ruste van dien”. Regarding ‘conspiracies’ in Utrecht, see: Act of the States-General of 15th of august 1612, in Cau, *Groot placaet-boeck*, 430 – 432: “den Welstant ende verseeckertheyt vanden Staet van ’t Landt, mitsgaders tot hanthoudinge vande publijcke autoriteyt ende goede Justitie”.

For the translation of *maiestas* as *hoogheid*, see: B.H.D. Hermesdorf, *Wigle Van Aytta Van Zeichem: Hoogleraar en rechtsgeleerd schrijver* (Leiden 1949) 19; E. Curley, *The Collected Works of Spinoza: Volume II* (Oxford / Princeton 2016) Latin-Dutch Index.

¹¹⁸ ‘Placaet der Staten-Generaal 17 april 1589’, *Groot placaet-boeck*, 427 – 420; The same can be seen in the city of Leyden’s 1591 ordinance for the establishment of scholarship for the study of theology: F. van Mieris, *Handvesten, privilegien, octroyen, rechten, en vrijheden der stad Leyden* (Leiden 1759) 604: “Den Heeren Staaten, [jegenwoordiglyk in handen hebbende De Hoge Overicheyt des Lands van Holland]”.

¹¹⁹ ‘Placaet der Staten-Generaal 13 augustus 1590’, printed as: *Articul Brief ofte Ordonnantie op de discipline Militaire, Ghedaen ende ghearresteert den xiii Augusti vijfthienhondert en neghentich* (Delft 1590); M.A. van Alphen, *Het oorlogsschip als varend bedrijf. Schrijvers, administratie en logistiek aan boord van Nederlandse marineschepen in de 17de en 18de eeuw* (Diss. Leiden 2014) 47 – 53.

Interestingly, the legislation enacted by the States did apply the criterion of the Roman laws of treason insofar that diminishing the authority of those in power amounted to treason. It did so, however, not by proclaiming that their dignity was damaged, but by stating that the public peace and prosperity of the country is disturbed when their authority is being undermined. This way, the problem of the precondition of the possession of *maiestas* was circumvented, whereas the norm applied remained the diminution of the supreme authority.

5.7 ‘The state’ in the statutory law of treason

Because this thesis is concerned with the application of the laws of treason and the way it conceptualises the legitimacy of the power of the state, due attention has to be given to the way the legal framework itself conceptualizes the exercise of public authority. Firstly, the phrasing of legislation has a decisive effect on subsequent legal argumentation. For example, it has to be clear what preconditions have to be met in order for the laws of treason can be applied. Moreover, an account of the legal framework of the laws of treason allow for a more thorough investigation into the legal attitudes towards the notion of legitimate authority. Before anyone can claim to have discerned shifts in such notions, one has to comprehend just what they entailed to begin with. This is why, in this paragraph we will analyse the notion of ‘the state’ in the aforementioned statutory laws of treason.¹²⁰

As mentioned in chapter 2, the modern-day theory of the state treats this political body as the highest authority in matters of civil government, which is a political body independent of both the rulers that are in charge of it and of the *universitas* of the people as a whole. Furthermore, the use of the word ‘state’ ought not to denote a condition, standing, or ‘state of the kingdom’.

When we return to the aforementioned pieces of legislation with these criteria in mind, the following can be said. Only the *Corte Vertooninge* of Vranck and the first three Acts of the States of Holland use the word “*staet*”. In the Act of October 1587 declaring the *Short Exposition* as law, most of the time, the word *staet* designates a condition or a ‘state of affairs’ rather than an political body independent of ruler and ruled. This is derived not only from the often used “*state of the country*” (*Staet vanden Lande*), but also from the more elaborate “*current state of the country*” (“*jegenwoordigen Staet deser Landen*”) and the interchangeable use of “*Stant*” of the country - which is closely related to the English words ‘stand’ and ‘stance’, also indicating a position or a condition.

¹²⁰ See page 12 – 14.

On two accounts, the Act also mentions the word *Staet* in a more ambiguous way. The first of these instances, still concerned with denying the political powers of the count, argues the consent of his nobles and cities was required in order to decide on “*matters concerning the State of the Countries*”.¹²¹ The second, in a very similar vein, claims the States Council had to consent to such decisions “*regarding the State and Prosperity if these Countries in the slightest*”.¹²² Both can be read as referring to the condition of the country, its ‘state of affairs’, as well as the more abstract notion of a ‘state’ as a certain constitution, or legal regime. It is, however, clearly not the abstract political entity which operates independently from those in power. This same ambiguity between a condition and an appeal to an administration, can also be seen in the aforementioned Act of November 27th, 1587. It too refers to matters “*concerning the State of the specified Country*”.¹²³

The same ambiguity is apparent in the Act of April 1588. In this Act, the word *Staet* is used twice, with both instances referring to a ‘state’ that can also be read as referring to the condition of the country, as well as alluding to its power structures. The first instance forbids not only “*any change*”, but also any “*novelty or sedition in the State of the Country*” – thus clearly concerned with ‘the state’ as a régime and not just the situation of the polity.¹²⁴ Similarly, the second mention in this 1588 Act also references the authority of the States, at the expense of the administration of the Earl of Leicester. Supporting the dislodged Governor-General, “*through words or works*”, is here condemned as “*attempting anything, aimed at a change in the State of the Country*”.¹²⁵

This ambiguity can be explained by reminding ourselves that the States were concerned with both the condition of the country, as well as with the safeguarding of their claims to being its legitimate administrators. The acts are therefore alluding to both the situation of their polity, whilst also continuously underlining the necessity of obedience to the ‘established’ magistrates. The ‘*state of the country*’ commanded deference to the (newly established) ‘*status quo*’. As in both English and German cases, the Dutch cases too showcase a blurring of these concepts in the political realm.

¹²¹ F. Vranck, *Corte vertooninghe*, Knuttel 790: “*saecken den Staet van den Landen betreffende*”.

¹²² Vranck, *Corte vertooninghe*, Knuttel 790: “*den Staet ende welvaren vanden Landen eenichsins betreffende*”

¹²³ ‘Placaet van de Staten van Holland van 27 november 1587’, *Groot placaet-boeck*, 418 – 422: “*concernerende den staet vanden voorschreven lande*”.

¹²⁴ ‘Placaet der Staten-Generaal van 12 april 1588’, *Groot placaet-boeck*, 415 – 425: “*met woorden, heymelijcke practijcken, geschriften ofte wercken te onderwinden, eenige veranderinge, nieuwigheyt, ofte oproerigheyt in den Staet van den Lande*”.

¹²⁵ Idem, 415 – 425: “*met woorden ofte wercken ... yet sal attenteren, tot veranderinge van den Staet van den Lande streckende*”.

In legislation enacted roughly thirty years later, nearing the pinnacle of the *Truce Conflicts*, this ambiguity is no longer visible. With signs of serious civil unrest already showing, the number of church parishes splitting up due to the theological controversies – their enmity growing day by day – , the Arminian majority in the States of Holland passed the famous *Scherpe Resolutie* (‘Sharp Resolution’) in August 1617. This Act is notorious for several reasons. Firstly, it claimed the rights, not only to demand the absolute loyalty of the armed forces it was financing (thus in defiance of the oath of allegiance to the Generality), but also the right to raise ‘peace-keeping’ troops on its own accord. Furthermore, the States repeated their claim that a National Synod could never be convoked without their consent, because majority voting would mean a breach of the authority the States rightfully exercised over ecclesiastical affairs in their domain. In phrasing this objection, they resort to the phrasing that the majority of the States of Holland believes that, “*understood by way of state*”, such a convocation would entail “*great damage and disadvantage to the Highness, Liberties, Justices*” of the States of Holland.¹²⁶

Here, *Staet* clearly refers not to a condition of the country, but to matters of constitutional law. By arguing that, according to matters of state, the States of Holland exercised power over ecclesiastical affairs, the word ‘state’ certainly refers to the legal structures of administration. There is no mention, however, of the notion of ‘the state’ as an entity independent of rulers and ruled.

The phrasing of later Acts seems to match this earlier act in referring to legal structures, even after the momentous upheavals of 1618 – 1619. It is not until 1630, in legislation referring to officers “*in service of this State*”, that the allusion is not merely to constitutional structures, but also to ‘the state’ as an entity capable of bearing (a measure of) legal subjectivity – being able to employ armed forces.¹²⁷ Later Acts copy this reference to the political and legal structures, for instance when demanding that members of the Council

¹²⁶ De Blécourt, Japikse, ‘XXXIV. 4 Augustus 1617. Scherpe Resolutie van Holland’, in: *Klein Plakkaatboek van Nederland*, 240: “*soo is eyndelick by de heeren edelen ende die ghedeputeerden van de meest steden van Hollant ende West-Vrieslant staetsghewyse verstaen, dat, sonder seer schadelycke prejudicie ende naedeel van de hoocheyden, vry- ende gherechtigheyden der voorschreven landen ende steden, in de opinie van eenighe steden, verstaende, dat men alsnu soude behooren inne te willighen niet alleen het convoceren van een provinciale, maer oock van een nationale synode, niet en can bewillicht werden, so omme ’t gheene den heeren Staten van Hollandt ende West-Vrieslandt nae de rechten der landen alleen toecomt, met andere niet en gemeen te maecken, als om veele andere ghewichtighe ende pregnante redenen*”.

¹²⁷ ‘Placaet der Staten-Generael van 10 september 1630’, in: Cau, *Nederlandsche Placcaet-boeck*, 233: “*in dienst van desen Staet*”.

of State have to be “*qualified, able, and well-versed in matters of State*”.¹²⁸ It isn’t until the second half of the seventeenth century, that we see legislative acts according ‘the state’ a truly independent status, both politically (“*any army of the State*”), and territorially (“*the frontiers of the State*”).¹²⁹

The resulting legal framework of this amalgamation of Roman law, Dutch constitutional history and treason legislation, will be the subject of chapter 6.

¹²⁸ ‘XXXVIII. 18 juli 1651. Instructie voor den Raad van State’, in: Blécourt, Japikse, *Klein Plakkaatboek van Nederland*, 266: “*gequalificeerde, bequame ende in materie van Staet geverseerde mannen*”.

¹²⁹ Idem, 266 – 269; ‘XLIII. 31 mei 1670. Acte van Harmonie’, in: Blécourt, Japikse, *Klein Plakkaatboek*, 295.

Chapter 6: Summary of the reconstructed legal framework

Until now, we have analysed the different legal doctrines which together constitute the laws of treason of early seventeenth-century Holland. The legal framework of these laws consists of both the Roman law of *laesio maiestatis*, as well as several Acts of the States of Holland.

Following the *Lex Iulia Maiestatis*, the crime of treason was legally constructed through the diminution of *maiestas*. Because bearing *maiestas* embodied the highest dignity of the polity, it was only held by those exercising the highest power. The authorities that possessed it, therefore changed throughout the centuries. The inclusion in the *Digest* of these Roman laws of treason, combined with the political philosophical maxim of “*rex in regno suo princeps est*”, resulted in the application of the jurisprudence of *laesio maiestatis* in Europe for over a thousand years after Justinian’s codification. Throughout the entire Mediaeval and Early-Modern period, kings and emperors applied these maxims to back their claims to sovereign power, arguing that they were the bearers of *maiestas* and could thus legitimately exercise its prerogatives.

In the Dutch context, the question who exercised sovereign power had no easy answer and, consequently, the Roman laws of treason could not be applied easily. The only documents pertaining to the constitutional framework of the Republic as a whole were treaties signed almost a decade before, under completely different circumstances, and who could be assigned a constitutional role only retrospectively. The constitutional framework of the autonomous provinces themselves had no clear answers to these questions either – the most important marks of sovereign rule being scattered over several political institutions. Paradoxically, though the aim of the Revolt had always been to safeguard existing privileges, the States acquired far greater powers than ever before as the conflict progressed. In the resulting constitution sovereignty was claimed by the States, who exercised the highest legislative and executive powers, but was in fact fragmented: key marks of sovereign power were exercised by the Stadtholder and the States-General as well.

The treason legislation of the States of Holland followed the ideological route of Vranck, consciously disconnecting the dignified *maiestas* from the actual exercise of political power. Consequently, the treason acts passed by the States of Holland did not claim that the States of Holland possessed *maiestas*, nor equated the diminution of their authority with *laesio maiestatis*. Instead, the legislation stipulated that questioning the legitimacy of their rule

amounted to sedition and treason and diminished the authority of the States. Because this would be a dangerous disturbance of the peace, it ought to be punished. Even in the case of the English ‘Betrayal of Geertruidenberg’ this legal route is taken. The Acts argued that the perpetrators had committed treason, not because their behaviour was violating the *maiestas* of the States or the precept of D.48.4.3 (surrendering camps or castles to the enemy) – but because they had defied the Public Authority and had hereby damaged the *peace and prosperity* of the lands.

This way, the norm as to what amounted to treason remained similar to that of Roman law, the diminution of the supreme authority, but without applying the concept of *maiestas*. This diminution, however, is no longer thought punishable because it damages supreme dignity, but because undermining the authority of the States amounted to damaging the precarious public peace and the prosperity of the country. Formulated this way, the laws of treason circumvented the required precondition of the possession of *maiestas*, whilst at the same time applying the expansive criterion of the diminution of the supreme authority.

With regard to the use of the word state (“*Staet*”) in treason legislation, there is a clear difference between the Acts of 1587 and 1588, and later acts. In the former, *staet* either indicates the condition or ‘state of affairs’ of the country, but also the legal structures within it. In later acts, such as the 1617 *Scherpe Resolutie*, it no longer refers to the condition of the polity, but solely to matters of constitutional law. ‘The state’ here purely signifies the fundamental principles through which public authority is to be exercised. It does not, however, have legal personality and is not used in any way that signifies the actual exercise of authority, though it signifies a legal structure which is detached from the will of government officials alone. Fifteen years later, *staet* is once again used in an ambiguous, if not transitional, way. Army officials are said to be “*in service of this state*”, thereby implying several crucial aspects in its treason legislation for the first time: the state (rather than the political body of the States-General or the Stadtholder) administers the armed forces, seemingly independently of government officials, and is thus attributed with a measure of legal subjectivity and abstraction.

In the next chapter we will see how these conceptualisations of the laws of treason were used in actual treason cases, and how the legal theories which legitimized public authority changed in the first decades of the 17th century.

Part III

Five cases of treason

Part III – Five cases of treason

Introduction

Having reconstructed the legal framework of the law of treason in late sixteenth-century Holland, we can now investigate the ways in which the deployment of these treason laws has changed between 1581 and 1621. Tracking both changes and continuities in the ways these laws were applied in this period, we will see how the concepts that warrant legitimate authority changed in this period. This chapter will do so by analysing the legal argument of five treason trials and will focus on the ways the judges applied the legal framework described before.

Though the number of cases might seem limited, they contain an abundant amount of legal and political theory. Consequently, this results in an analysis which is rather elaborate at times, especially when the judges are adjudicating court cases of profound constitutional importance, such as in the crisis of 1618 – 1619. The actual analysis of the arguments of each of the cases is preceded by background information, such as notes on the time and place of the trial, short biographies of the defendants, or the historical context in which the treason trial is located. Following these notes is the analysis of the application of the laws of treason and legal argument in the specific cases, as well as in what ways these arguments legitimized public authority.

Chapter 7: Cornelis de Hooghe (1583)

7.1 “*Oproer ende seditie ende van verraderije ende rebellie*”

Our first case study is the sentence pronounced over Cornelis de Hooghe. The defendant in this trial was not just anybody: he was a bastard son of emperor Charles V – making him half-brother to king Philips II of Spain.¹³⁰ Born in 1541 in The Hague, he was educated at the court of another illegitimate child of his father, Margaret of Parma, to be an engraver and cartographer. When the Revolt broke out, he fled to England, where he continued his map-making, as well as controlling a large smuggling network which provided him with great riches. In 1576 he settled in Rotterdam, where he married and had several children.¹³¹ In 1581, the Revolt having turned into a war between northern and southern unions, he was contacted by Philip II’s official envoy Da Silva with a proposition.

He was asked to influence public opinion towards accepting a peace with the Spaniards bringing them back under the king’s rule. Should he succeed, he would be proclaimed Duke of Gelre. Having accepted the proposition, he set about writing treatises and publicly delivering speeches with just this aim. His most famous tract urged urban guards and militias to defy the authority of the States of Holland and support the Spanish king instead. His printer, however, didn’t like the prospect of being implicated in such affairs and alarmed the magistracy. After an investigation, which lasted roughly six weeks, the judges found Cornelis de Hooghe guilty of treason on March 29th 1583. The following day he was beheaded, his body quartered, and the four parts fixed above the main gates of The Hague.

7.2 1583 in the constitutional history of the Dutch Republic

In order to understand the implications this treason trial had for the conceptualisation of public authority, it is important to position this trial in the exact phase the Dutch Revolt was in at the time. The case was adjudicated in March 1583: this was only two short months after the French Fury, the violent apotheosis of the Duke of Anjou’s rule of the Netherlands.¹³² Constitutionally, the ‘County’ of Holland now fell between (more than) two stools: the *de iure* Count of Holland had been abjured years before, the French duke had never been

¹³⁰ J. Smit, ‘De aanslag van Cornelis de Hooghe op de veiligheid van den staat (1583)’, in: *Bijdragen voor Vaderlandsche Geschiedenis en Oudheidkunde* (1936), 73 – 78; A.M. Hind, *Engraving in England in the sixteenth and seventeenth centuries: a descriptive catalogue with introductions* (Cambridge 1952) 96.

¹³¹ Smit, ‘De aanslag van Cornelis de Hooghe’, *Bijdragen*, 73 – 78.

¹³² He had been elevated to duke of Brabant and count of Flanders the years before, though Holland and Zeeland had consistently opposed such elevations and had not proclaimed him their lord.

officially proclaimed, and for more than ten years the rebel chieftain, William of Orange, held his place as his Stadtholder.¹³³



Map of Norfolk, made by Cornelis de Hooghe in 1574. Source: Ch. Saxton, *Atlas of the Counties of England and Wales* (London 1579), available at Glasgow University Library, Special Collections department [<http://special.lib.gla.ac.uk/exhibns/month/june2002.html>]

¹³³ Following the ‘first free assembly of the States of Holland’, 19th – 23rd of July 1572, appointing William of Orange as Stadtholder of the king. See also: J.J. Woltjer, *Opstand en onafhankelijkheid: eerste vrije statenvergadering in Dordrecht 1572* (Dordrecht 1972) 8 – 11; E. Beukers, Th. de Nijs, *Het bijzondere van Holland: een geschiedenis van Holland in 25 verhalen* (Hilversum 2005) 29 – 34.

7.3 Applying the laws of treason and its conceptualization of authority

De Hooghe was tried before the Hof van Holland, and the judges explicitly say they administered justice in the name of the “*High Authority and County of Holland, Zeeland and Frysia*”.¹³⁴ The verdict is thus delivered, not in the name of the States Council, nor in the name of the Stadtholder who officially presided the court. It is delivered in the name of the County of Holland as a whole, although the previous Count (Philip) had been abjured and was at this stage public enemy number one.

The legal qualifications given to the behaviour of De Hooghe largely revolved around the act of sedition.¹³⁵ The verdict, however, is very clear about the laws that had been broken. Instead of mentioning the familiar diminution of authority, it designates the actions of De Hooghe, in one fell swoop, as *famosi libelli*, instigation of the masses, sedition, treason and rebellion – none of which could go unpunished.¹³⁶ Crucially, in its final phrases the verdict argues that it has been the promoting of disobedience to the lawful governors and magistrates in all these ways, that constituted the criminal act.¹³⁷

When determining the manner in which the laws of treason have been deployed in this verdict, it is important to note several things. First of all, the judges chose not to mention the Roman law concept of *maiestas*. Neither does it show traces of an earlier version of the conceptual route Vranck was to take in 1587: the verdict does not mention the States of Holland as the lawful guardians of a fragile public order, and does not argue that disturbing this order amounts to questioning their authority.

Instead, the relationship between the criminal acts and the authorities is the following: the printing and distributing of these texts (that argue the country should sue for peace) is not

¹³⁴ *Belydenisse ende Sententie Capitael over Cornelis de Hooghe*, Dutch Royal Library, The Early Modern Pamphlets Online collection [TEMPO] 01489: “*Hooghe Overicheyt ende Graeffelijckeyt van Hollant, Zeelant en Vrieslant*” – this is a reference to the title Floris V, Count of Holland, assumed for himself in 1291: “*Count of Holland and Zeeland and Lord of Frysia*”, which remained the official title until the Revolt.

¹³⁵ *Belydenisse ende Sententie Capitael over Cornelis de Hooghe*: “*ghemaect ende by gheschrift ghestelt zeker fameus / oproerich / ende seditieus Libel ofte eenich gheschrijfte gheintituleert hooch noodich avertissement, mitsgaders (...)*

tenderende beyde om de Gemeene oproerich te maken ende op de been te brenghen / ende de teghenwoordighe Regierders Overheden ende Magistraten vande Landen ende Steden te verdrijven (...) ende alzoo t Land weder te brengen onder t ghewelt vanden Coninck van Spangien”

¹³⁶ The Roman law of *famosus libellus* is not to be confused with the doctrine of what is nowadays still called *libel* in common law – it related more to matters of extortion and could lead to capital punishment. Cf: C.9.36; D. Shuger, *Censorship and cultural sensibility: the regulation of language in Tudor-Stuart England* (Philadelphia 2006); *Belydenisse ende Sententie Capitael van Cornelis de Hooghe*, TEMPO 01489: “*streckende tot oproer ende seditie ende van verraderije ende rebellie niet excusabel zijnde / die in een Lant van Justitie niet en behooren ghetollereert maer swaerlijck ghestraft te werden ten exemple van andere*”.

¹³⁷ *Belydenisse ende Sententie Capitael*, TEMPO 01489.

denoted as a diminution of *maiestas* or a disturbance of the peace, but instead as an act in defiance of the “*current rulers [of] government and magistrates of the lands and cities*”.¹³⁸ Without invoking the idea that this disturbs the peace, the judges here do explicitly refer to the notion that such a heinous defiance of the laws of Holland amounts to a serious undermining of their authority and is thus punishable by death. By explicitly connecting the committing of a criminal act to the defiance of their authority as a whole, the judges’ arguments show clear similarities to some of the arguments that would be included in the 1587 and 1588 Treason Acts of Holland. Rather than emphasizing general prevention or retributive justice on behalf of society, punishment is due because of a defiance of those in power. The way in which these legal concepts have been deployed, reveals a highly personalized idea of what constitutes legitimate authority: the criminal act is considered to be undermining of the authority of those currently in power. The verdict confirms the authority of the current magistrates, rather than that of the whole of the people, the regime, or the commonwealth.

In the remaining four cases, we will see remarkable changes to this conception of legitimate authority and this circumvention of the political concept of *maiestas*.

¹³⁸ *Belydenisse ende Sententie Capitael over Cornelis de Hooghe, TEMPO 01489: “teghenwoordighe Regierders Overheden ende Magistraten vande Landen ende Steden”*.

Chapter 8: Jacob Spensis (1601)

8.1 Biographical information

Our second case is that of Jacob Spensis, found guilty of treason in 1601 by the court-martial of Geertruidenberg. Not much is known about the case, as none of the great historical works on the Eighty Years War mention it, mainly because only four months before a more interesting treason plot was discovered in the same town, involving the notorious Jesuits.¹³⁹ All background information therefore comes from the statements of the suspect and the verdict itself. From these, we know Spensis served in the States' army garrisoned at Geertruidenberg, the key fortress that was delivered to the Spanish but which was recaptured by Maurits in 1593.

In the summer of 1601, Spensis became dissatisfied with life in the States army. One night, he snuck out of town and travelled to Antwerp to meet up with the Spanish commanders, offering his services to them instead.¹⁴⁰ The Spanish spotted an opportunity and provided Spensis with funds to raise a small militia within the walls of Geertruidenberg. He was to capture the city gates and this way deliver the city to advancing Spanish troops.

When he returned to Geertruidenberg, he immediately set about purchasing horses and attempting to recruit other dissatisfied soldiers. The fact that a low-ranking soldier that was rumoured to have visited Antwerp was suddenly in the possession of considerable funds, however, was enough to draw the attention of his officers and of the city magistrates. When several sergeants reported to their superiors that Spensis had attempted to recruit them for his own militia, he was arrested. He immediately confessed his plotted rebellion and on the 18th of July the court-martial pronounced the death sentence. Jacob Spensis was executed the following day.

¹³⁹ Sadly, the verdicts of this case have not survived. Cf. I. van Nuyssenburgh, *Korte beschrijving van Geertruidenberg in deszelfs opkomst; bloeistand; in- en uitwendige aangelegenheid, en voorname lotgevallen, zo in het burgerlijke als het kerkelijke* (Dordrecht 1774) 130 – 134.

¹⁴⁰ O. von Corvin-Wierbitsky, *De Tachtigjarige Oorlog der Nederlanders tegen de Spaansche overheersching: Vol. 5* (Amsterdam 1855) 160 – 174.

8.2 Applying the laws of treason and conceptualizing authority

Originally, court-martials were authorized by the *Raad van State*. Following the aforementioned usurpation of most of its ‘supra-provincial’ powers by the States-General, however, it was now these that exercised the highest authority in military matters.¹⁴¹

Consequently, the commander-in-chief of the armies of the United Provinces was not its sovereign, as was the case in nearly every other European country, where court-martials adjudicated in the name of their sovereign.¹⁴² In the United Provinces, this created the following legally complex situation: courts-martial ought to have been recognized by the Council of State, whose powers had however been usurped by the States-General, who then appointed a commander-in-chief - which was therefore not a sovereign even though he exercised important prerogatives elsewhere in Europe attributed to sovereign power.

It is therefore little wonder that in this case, this court-martial decided not to mention explicitly in whose name they were administering justice. There is no mention of the authority of the States-General or of Maurice of Nassau. With regard to the crimes the suspect had committed, however, the judges are more explicit. On two accounts, they designate his behaviour as treason. First, they call the suspect’s planned surrender of Geertruidenberg “*a treacherous fact*”. Secondly, when describing the duties of his accomplices, they confirm the aforementioned by stating the defendants had had evil plans “*to accomplish this treason*”.¹⁴³

Sadly, the verdict does not provide any legal argumentation as to what acts constituted this treason and what laws the defendant broke – no mention is made of Roman law, the *Articul-Brief* of 1590, or of a diminution of the authority of the States-General. It only mentions that the actions of the defendant and his accomplices would have brought about “*evil consequences, which do not have to be endured in Lands of Justice, nor be left unpunished*” – and orders for the suspects to be hanged.¹⁴⁴ In this case, the suspects were clearly working for the enemy and had attempted to surrender an important border fortification. The court-martial clearly felt no need to invoke either Roman or Dutch laws of treason when the violation was

¹⁴¹ ‘Instructie Raad van State, 12 april 1588’, in: C. Cau, *Groot placet-boeck*; S.J. Fockema Andreae, *De Nederlandse staat onder de Republiek* (Amsterdam 1961) 22 - 26.

¹⁴² F. Tallett, *War and society in Early Modern Europe: 1495 – 1715* (London 2010) 98 – 125.

¹⁴³ *Confessie dat is Bekentnisse gedaen by Jacob Spensis*, 18th of juli 1601, TEMPO 01163: “*t verradigh feyt twelc hy met sijne complicen voorghenomen hadde, op ende tegens de stadt Geertruydenberghe*”, and “*om al t selve verraet te volbrengen*”.

¹⁴⁴ Idem, “*Alle ’t voorn. saken syn van quade consequentie Die men in Landen van Justitie niet en behoeve te verdraghen noch ongestraft te laten*”.

so obvious. The traitors were dealt with summarily and the main protagonists were executed the following day.

Considering no political entities are named in the verdict, it remains unclear which lands exactly constitute these "*Lands of Justice*". It is clear, however, that this verdict legitimizes the exercise of political power with a reference to a legal order, rather than demanding obedience based on currently exercised, personal authority (as was the case in the verdict against De Hooghe). This line of reasoning legitimizes public power in a way that is rather close to the arguments Vranck had employed, because here too the authorities were owed obedience because of their guardianship of the public order.

Chapter 9: Johan van Oldenbarnevelt, Hugo Grotius, and Rombout Hogerbeets (1619)

9.1 Introduction

Our third case study, is perhaps the most famous legal trial of the history of the Low Countries. The trial formed the apotheosis of what is now known as the Truce Conflicts (*Bestandstwisten*). For those who are not familiar with this episode in the history of the Dutch Republic, paragraph 9.2 provides a brief summary of key events leading up to the arrest and trial of the political elite of Holland in 1618. The actual analysis of the verdicts and the ways in which they conceptualize the exercise of public power, is the subject of paragraphs 9.4 and 9.5. It is divided into several paragraphs, following the basic structure of the sentences: the introductory remarks in the verdicts are detached from its final, condemning phrases.

9.2 Background information: the Arminian controversy

The condemnation of Oldenbarnevelt, Grotius, and Hogerbeets formed the apotheosis of the Truce Conflicts. The conflict started, in the early years of the 17th century, as a theological dispute between Leyden professors Franciscus Gomarus and Jacobus Arminius. The former defended ‘absolute predestination’, which stated that God’s omnipotence demanded He had long before predisposed whether or not the individual was to receive salvation or damnation. Arminius opposed this view of the predestination because, firstly, this would make God the author of human transgressions, and secondly, ruled out the notion of free will.¹⁴⁵ Their conceptions of church-state relationships also differed greatly. Arminius was willing to grant secular authorities far more influence in appointing ministers and determining doctrine, whereas Gomarus opposed any such influence, arguing only regional and national synods could rightly decide doctrinal matters.¹⁴⁶

The quarrel quickly spilled over into the public sphere, especially since Leyden’s theological studies were the cornerstone of the education of nearly all of the Republic’s ministers. Seeking to temper these public debates, the States of Holland sought to pass legislation revising the confession and catechism of the Public Church. In the eyes of the Gomarists, this added insult to injury and consequently generated even more criticism on the influence of the authorities on the church. Year after year, the animosity between the (largely Arminian)

¹⁴⁵ Den Tex, *Oldenbarnevelt III*, 123 – 190; Van Deursen, *Bavianen en slijkgeuzen*, 4 – 19; Israel, *The Dutch Republic*, 386 – 395.

¹⁴⁶ Den Tex, *Oldenbarnevelt III*, 126 – 150; Israel, *The Dutch Republic*, 420 – 432.

authorities and the Gomarist ministers and their followers grew more intense. Regional synods attempted to dispose of the Arminian preachers in their midst, who were consequently reappointed by town magistrates. Parishes split in protest, and started rival congregations in nearly every town of Holland.

Even when every province except Holland demanded a National Synod to be convened in order to solve these matters, the regents controlling the States of Holland refused to yield. The delegates of the eight Arminian towns even decided to align their voting behaviour to one another before every States' meeting, this way permanently securing the majority vote. Trying to fight off the still rising tide of public disorder, on the 4th of August 1617 they adopted the *Sharp Resolution*, allowing the States of Holland to raise its own troops to maintain public order.¹⁴⁷ This was a direct affront to Maurice in his capacity as commander of the armed forces, and only added fuel to the fires of public unrest – causing even more popular uprisings. The following year Maurice toured the Republic with his personal guard, purging urban magistrates in Arminian towns. In August 1618, Oldenbarnevelt, Grotius, and Hogerbeets finally threw in the towel - disbanding the 'Waardgelder'-militias and acquiescing in the convention of a National Synod.¹⁴⁸

Their submission, however, proved too little too late. Following a secret resolution of the States-General, the men were arrested on the 29th of August 1618.¹⁴⁹ Subsequently they were held in custody for almost a year, being summoned to interrogations on a daily basis, without being allowed to take as much as a note of the charges levelled against them.

Their case was to be decided by a specially established court, consisting of 24 judges: 10 of whom were from Holland, 4 from Zeeland, and 2 from the 5 other provinces.¹⁵⁰ During their imprisonment, the National Synod at Dordrecht condemned Arminianism as a false teaching and vindicated the unalterable character of the *Confessio Belgica*, the *Heidelberg Catechism*, and added to these the now famous *Canons of Dort*.¹⁵¹

All turns quiet when the interrogations suddenly stop on the 14th of April 1619. Three days later, the States-General order a national day of prayer, which is to be spend in religious contemplation. All three suspects, Johan of Oldenbarnevelt, Hugo Grotius and Rombout Hogerbeets, choose to meditate over Psalm 7 with their appointed minister – the verse in

¹⁴⁷ Den Tex, *Oldenbarnevelt III*, 488 – 514.

¹⁴⁸ Den Tex, *Oldenbarnevelt III*, 488 – 514; Israel, *The Dutch Republic*, 446 – 449.

¹⁴⁹ Den Tex, *Oldenbarnevelt III*, 622 – 664.

¹⁵⁰ Den Tex, *Oldenbarnevelt III*, 676 – 684; Den Tex, Ton, *Johan van Oldenbarnevelt*, 246 – 252, 255 – 258.

¹⁵¹ Van Deursen, *Maurits van Nassau*, 256 – 278; Israel, *The Dutch Republic*, 440 – 459.

which David asks the Lord for assistance while he is unjustly persecuted.¹⁵² On the 12th of May, the suspects are led before the judges who read out their verdict: Grotius and Hogerbeets are to be imprisoned for life, Oldenbarnevelt is to receive capital punishment. The following day, Johan van Oldenbarnevelt was executed on the Binnenhof.

9.3 From politics to legal argument

The utterance of his last words: “*Be quick, be quick*”. Following a single blow of the executioners longsword on the 13th of May 1619, the head, the blood, and even two fingers of the greatest statesman in the history of the Low Countries lay on the wooden scaffold. After having spent nearly a full year in prison, Johan van Oldenbarnevelt was beheaded, the bloody end to his 41-year long career in the highest political offices of Holland and, therefore, the United Provinces.

His beheading is not so much a consequence of a coup d'état of Maurice of Orange, as it is a result of the legal argument that was applied to the political problem. After all, it was not the prince of Orange, but the twenty-four judges that pronounced his death sentence. In this chapter, we shall take a very close look at the legal argumentation of this sentence. What exactly are the arguments for the convictions? What crimes are being imputed – and what can they tell us about the judges' conceptualisation of legitimate state authority?

In order to answer these questions, we will thoroughly examine the text of the verdicts against Johan van Oldenbarnevelt, Hugo Grotius and Rombout Hogerbeets. We will specifically analyse their ideas about the legitimacy of public authority, the status of the Reformed Church in the constitution of the United Provinces, and the power of the state.¹⁵³ In stark contrast to our sources thus far, this verdict sealed a matter of the utmost political and constitutional importance. The highest officials of Holland, by far the most powerful, ‘sovereign’, province, were arrested on their own territory and tried before an ad hoc tribunal. This meant the verdict could not remain quiet on issues of constitutional law. The result is an awkward, though not unfamiliar, deployment of the laws of treason of the United Provinces and a conscious rewriting of the constitutional consensus the provinces had reached in the initial stages of the Revolt.

This chapter will clarify the influence both the Roman laws of majesty and Dutch constitutional law have had on the legal argument of the verdict and what they can teach us

¹⁵² Den Tex, *Oldenbarnevelt III*, 719 – 725; Den Tex, Ton, *Johan van Oldenbarnevelt*, 256.

¹⁵³ The fourth main protagonist, Gilles van Leedenbergh, was a member of the States of Utrecht. Because the differences between the laws of treason of Holland and Utrecht are not our primary concern, this fourth case will not be analysed here.

about changes in political thought. Along the way, the important question of whether or not the three politicians were convicted for treason will be addressed. It is argued here that the verdicts *do* label their behaviour as treasonous and consequently do sentence them for treason. The exact legal arguments, however, are constructed in two very different ways and, consequently, both use very different arguments which legitimize the exercise of public authority.



Iustitie aen Johan van Oldenbarnevelt geschied, engraving by Claes Jansz. Visscher (Delft 1619) Atlas van Stolk 1416, Rijksmuseum RP-P-OB-77.320.

9.4 The Verdicts

9.4.1 Structure of the verdicts and their similarities

The sentences of Oldenbarnevelt, Grotius, and Hogerbeets, though different in their penalties, have all been given the same basic structure. First, there is the opening statement, which recounts how the judges have acquired their evidence, and what their judgement is as to the crimes that had been committed. Secondly, the verdicts provide a long list of the behaviour of each of the prisoners – encompassing roughly 15 pages. Finally, the concluding phrases of the verdict summarily labels all that is mentioned before as most heinous criminal act(s), and delivers the verdict as to the appropriate penalties for the different defendants.

It is only these opening and concluding statements that actually show some extent of legal reasoning. Even though the three officials had held different offices and received different penalties, in all three of the sentences these two paragraphs are exactly the same.¹⁵⁴ Strangely enough, however, the legal reasoning employed in the introductory and closing paragraph, is markedly different from one another. They differ both in terms of the qualifications of the committed crimes, and in terms of their understanding of legitimate state authority. This chapter will therefore provide the analyses of the opening statement of the verdicts (2), the concluding phrases (3) and, because the reasoning of these sentences is far more complicated than that presented in the other four case studies, a summarizing paragraph (4).

9.4.2 The opening statement of the verdict

The verdict commences with the following, powerful condemnation:

*“ (...) it is permitted to nobody, to violate or sever the bond and fundamental laws upon which the government of the United Netherlands is founded, and these countries through God’s gracious blessing having until now been protected against all violence and machinations of her enemies and malignants: he the prisoner, has endeavoured to perturb the Stance of the religion, and to greatly encumber and grieve the church of God, and to that end has sustained and employed maxims exorbitant and pernicious to the state of the lands(...)”*¹⁵⁵

¹⁵⁴ In the following, I will therefore refer to the argumentation of ‘the verdict’, and take the conviction of Oldenbarnevelt as my primary point of reference.

¹⁵⁵ *Sententie Uyt-gesproocken ende ghepronuncieert over Iohan van Oldenbarnevelt* (The Hague 1619), TEMPO 02885 – 02890:

The argumentation of this first paragraph is thus the following: because Oldenbarnevelt had greatly perturbed the state of the church, and had to this end sustained *pernicious maxims*, he had severed the unity among the United Provinces and had violated the fundamental laws on which they had been founded. Several aspects are of key importance here. The first and foremost is that the main point of this conviction is the perturbation of the *Standt der religie*. This had burdened, constituting a violation of the fundamental laws of the union. In this argumentation, the deployment of damaging maxims is thus subsidiary to this disturbance of ecclesiastical affairs.

The way the verdict conceptualizes the ‘perturbation’, however, is remarkable, considering the fact that neither the laws of treason of Holland, nor that of the States-General, had touched upon religious matters.¹⁵⁶ This way, the scope of existing treason laws, stating that disturbances of the public order could constitute treason, is expanded significantly when also including the unsettling of the religious order. This shows the decisive impact the Synod of Dordrecht had made on constitutional matters. The court could have convicted Oldenbarnevelt for perturbing the peace of the country, through his active support of (what had now been labelled) a false doctrine. Instead, it consciously declared that disturbing the peace of the church was an act which violated the basic principles of the United Provinces. Compared with the doctrines of treason of the 1580’ies and beyond, this incorporation of religious affairs means greatly expanding the scope of the crime – bringing it more in line with the late Roman and Mediaeval conceptions of treason. It also clearly echoes the statutory laws of Holland which denounced as traitors those who disturbed the peace and prosperity of the country, though adding to it a significant element.

Interestingly, this argumentation does not employ the laws of *laesio maiestatis*. Neither the States-General, nor the Public Church are attributed this Roman law concept of authority.

“(…) niemant gheoorloft en is , den bandt ende fundamentele wetten daer op de regeringhe der Vereenighde Nederlanden ghefundeert, ende de selve landen door Godes ghenadigen zegen jegens alle gheweldt, meneen ende machinatien haerder vijanden ende quaetwilighen tot noch toe beschermt zijn, te violeren , ofte te verbreecken: hij gevangen hem onderstaen heeft den Standt van de religie te perturberen, ende de kercke Gods grootlijcx te beswaren ende bedroeven, tot dien eynde sustinerende ende int werck stellende exorbitante ende voor den staet der landen permitteuse maximen (...)”.

It is these exact same words that make up the opening statements of the verdicts pronounced over Hugo de Groot and Rombout Hogerbeets: *Sententie, uyt-ghesproocken ende ghepronuncieert over Hugo de Groot, ghewesen pensionaris der stad Rotterdam, den achthienden May, anno seshien-hondert neghenthien, stilo novo* (The Hague, 1619); *Sententie uyt-ghesproocken ende ghepronuncieert over Rombout Hogerbeetz, gewesen pensionaris der stad Leyden den achthienden May, anno seshien-hondert neghenthien, stilo novo* (The Hague, 1619), TEMPO: 02910, 02911, 02917, 02918A, 02923.

¹⁵⁶ With regard to the States-General, there was the obvious incompetence on this topic considering the aforementioned article XIII of the Union of Utrecht: see paragraph 4.2 and chapter 5.

Instead, their argument is constructed through disturbances of the ecclesiastical order. In this aspect, the conceptualization of this religious order is different than that of the Habsburg Netherlands, which had considered defiance of their religious edicts *laesio maiestatis divinae*. On a more substantial level, however, the argument of this introductory part of the verdict is exactly the same as the legal construct of Habsburg legislation. Because the Union did not bear *maiestas*, the crime of treason was legally constructed through the notion of perturbing the established order.

By suddenly incorporating the religious peace of the Union into this exact order it includes the religious order into the entity, the damaging of which constitutes treason. This way, though circumventing the notion of *maiestas* by focussing on public order, it becomes possible to identify breaches of the ecclesiastical order as acts of treason – exactly as earlier Mediaeval (and the much-hated Habsburg) legislation had done before.

“*State of the Lands*” & “*The State*” in the opening statement of the verdict

A second phrase which is reminiscent of the Holland Treason Acts, is the conviction of the Grand Pensionary’s use of ‘*maxims exorbitant and pernicious to the state of the lands*’. The exact phrase is novel, but it clearly echoes the laws of the 1580’ies which threatened with severe punishment anyone acting detrimental to the condition of the country. This legislation had also explicitly referred to the *State of the Lands* and the detrimental effects of treason thereto. The opening paragraphs of the verdict therefore apply the legal argumentation that Holland’s political elite had developed during its own struggles for sovereignty – turning their own reasoning against them.¹⁵⁷

With regard to the notion of ‘the state’ the judged invoked an earlier notion of ‘the state’, opting for ‘the state of the lands’, rather than the (already current) notion of ‘way of state’ or ‘matter of state’. Concordantly, this means that the notion of the legitimacy of ‘state power’ of this verdict does tie in with the gradual development of the abstract theory of the state. It chooses to invoke earlier legal phrases, which do not correspond to the ‘modern’, abstract legal person of the state.

Legitimate Authority in the opening statement of the verdict

Perhaps not surprisingly, considering the composition of the court, the verdict designates as its highest political authority the *United Netherlands*. Arguing that the idea that one province could freely and independently decide on religious affairs was the political attitude that had

¹⁵⁷ See chapter 5.

proved ruinous to the entire union, it openly restricted provincial sovereignty. By propagating this view, it is clear that the verdict no longer thinks the treaties signed in the 1570'ies and - 80'ies are the sole foundation of the union. By declaring a perturbation of the peace of the church a violation of the fundamental laws of the United Netherlands, it not only elevates the peace of the church of the union to its highest constitutional levels, it also explicitly limits the provincial sovereignty on which the alliance was founded in 1579. This attitude is confirmed by later phrases in the verdict, which are highly indicative of the views the judges held on provincial sovereignty. When considering Oldenbarnevelt's handling of foreign affairs without dutifully notifying the States-General, the verdict condemns this as: "*reveal[ing] the Secrets of the State of the Lands, and committing acts of Sovereignty*".¹⁵⁸

9.4.3 The concluding phrases of the verdict

The finishing lines of the sentence, however, contain an entirely different line of argumentation. The final phrases of the verdict read:

*"From this, and from all his other machinations and conspiracies, it has followed that he has erected states within states, governments within governments, and new coalitions, constructed within and against the Union; there has become a general perturbation in the state of the lands, both in the ecclesiastical as in the political, which has exhausted the treasury and has brought about costs of several millions; has instigated general diffidence, and dissension among the allies, and the inhabitants of the lands; Has broken the union: rendered the lands incapable of their own defence, risking their degeneration into scandalous acts, or their complete downfall. Which ought not to be condoned in a well-ordered government, but ought to be punished as an example to others."*¹⁵⁹

Here, the conviction thus rests on the following six points:

1. Conspiring against the United Provinces with his own coalition;

¹⁵⁸ "*de Secreten van den Staet der Landen ghereveleert heeft ende pleghende acten van Souvereyniteyt*", *Sententie Uyt-gesproocken over Iohan van Oldenbarnevelt*, TEMPO 02885.

¹⁵⁹ *Sententie Uyt-gesproocken over Iohan van Oldenbarnevelt*, TEMPO 02885 – 02890: "*Daerdoor, ende door alle zijne vordere machinatien, ende conspiratien ghevolcht is, datter staten in staten, regeringhe in regeringhe, ende nieuwe verbonden, in, ende tegen de unie op gerecht, een generale perturbatie inden staet der landen, soo int kerckelijck, als t' politycque ghecomen, die finantien uytgeput, ende de op ettelijcke milioenen aen costen ghebracht, generale diffidentien, ende dissension onder de bondtgenoten, ende de ingesetenen vande landen inne ghevoert: De unie verbroocken: De landen tot haer eygen defensie onbequaem ghemaect, ende in pericule ghebracht sijn van te moeten vervallen tot eenige schandelijcke handelinghe ofte tot heuren gheheelen onderganck. Die daeromme in een wel-gestelde regeringe niet en behooren gheleden: Maer anderen ten exempell ghestraft to werden.*" Once again, these phrases are the exact same in the verdicts over Oldenbarnevelt, Grotius, and Hogerbeets.

2. Perturbing the state of the lands, both ecclesiastical and political;
3. Exhausting its treasury;
4. Having placed the allies at odds with one another;
5. Having thereby broken the Union
6. Having thereby endangered the alliance.

These prompt the court to pronounce their judgement that the 72-year old civil servant was “*to be executed by Sword, that death ensues*”.¹⁶⁰ One can see a clear difference between these six arguments and the argument of the introduction: the perturbing of the peace of the church here constitutes only (half of) one of the six condemnations, and the crucial part here is the political undermining of the union.

The combination of these six points is a remarkable *mélange* of laws of both the States-General and the province of Holland: two out of the six elements are clear references to legislative Acts of the States-General, but the overall legal framework that has been applied is that of the laws of Holland.

The references to the Acts of the States-General are points 2 and 3. The second point connects the crimes of Oldenbarnevelt to the aforementioned Act of the States-General of the 12th of April 1588, which had legislated against “*perturbator of the common peace*”.¹⁶¹ The third point, recounting how the culprit had exhausted the treasury, is a clear invocation of the Act of the States-General of the 17th of April 1589, in which attacks on “*the prosperity of the country*” were equated with the undermining of their authority - and thus with treason.¹⁶² The overall notion of treason, however, remains the same to that of the acts of Holland: treason consists in committing acts that are detrimental to the common peace and the public order. The judges thus applied two explicit criteria of the Treason Acts of the States-General of 1588 and 1589, whilst embedding them within the broader legal framework of treason they took from the laws of Holland. Because the judges constructed their own legal synthesis which they consequently applied without any explicit inhibitions or qualifications, they brought about two considerable changes in the legal landscape of treason in the United Provinces.

¹⁶⁰ *Sententie Uyt-gesproocken*, TEMPO 02885 – 02890: “*geexecuteert te werden metten sweerde, datter de doot nae volcht*.”

¹⁶¹ See chapter 5, paragraph 3.

¹⁶² See chapter 5, paragraph 4.

Both concern changes to the substance of the ‘order’ that is being protected. By applying Holland’s theory of treason to the Union as a whole, the verdict suddenly declares the perturbation of the public order *of the union* to be treasonous. This means that the entity that is protected by the laws of treason is no longer the public order within a sovereign province, but the public order of the United Provinces as a whole.

The second change is closely related to the first and also concerns the novel way in which the verdict conceptualizes the public order that is to be protected. Interestingly, the verdict conceptualizes the disturbing of this order as perturbing ‘the state’ of affairs, *both politically and religiously*. Though, as we have seen, the introduction of the verdict argued in a similar vein, the notion that disturbing the religious order could also constitute treason was not part of the treason legislation of either Holland or of the United Provinces as a whole. The verdict here clearly changes the existing understanding of the laws of treason.

Legitimate authority and ‘the state’ in the concluding phrases of the verdict

When considering this legal argumentation in the light of its conceptualization of the crime of treason and its relation to legitimate authority, the first thing to notice is its unequivocal support for the Union as the damaged political entity. It is the authority of the whole of the alliance that the judges declare to be violated. The coalition of the eight Arminian cities of Holland is considered a rival faction, a seditious plot, aimed at undermining the alliance of the United Netherlands. The sentence denies Oldenbarnevelt every claim to having legitimately exercised his powers: the threat he had posed to the survival of the republic derogates all his official capacities. Instead, the verdict constructs the generality of the Union, the United Netherlands, as the sole political entity legitimately exercising the highest political powers.

Considering the phraseology of the word ‘state’, we can discern two distinct ways in which it is used. Firstly, it is employed in the exact same way as the Treason Acts of the States of Holland, to which it is clearly referring. Here, the ‘*state of the lands*’ refer to the condition in which the United Provinces found themselves – a perturbed one, for that.

The second phrase in which ‘the state’ is used, is the verdict’s reference to “*states within states*”. Clearly, this does not denote a mere condition, but is referring to political entities. When taking a look at the Latin translation of the verdict, we can see this phrase has been rendered as “*ut inter Ordines alios Ordines*”, the same word used for the States of Holland and thus referring to that political concept of the estate. This means the argument

here is that the regents had organized ‘estates within estates’, undermined the authority of the States-General. Significantly, the verdict also mentions that Oldenbarnevelt “*revealed the Secrets of the State of the Lands*”.¹⁶³

The latter two conceptions of the state have moved beyond denoting it as a mere condition. Instead, they attribute the highest authority in matters of civil government to the state, as well as increasingly moving towards impersonal and territorial understandings of public authority. On the other hand, neither signifies that political construct which operates entirely independent of those currently exercising power over it, for instance dynastic successors or appointed magistrates. Rather, it still very much emphasizes the authority of those regents exercising the powers of the States-General, as those constituting this exclusive, composite estate.

Summarizing, the constitutional outlook of the concluding phrases of the verdict show that the judges applied several criteria of the States-General’s Acts of Treason of 1588 and 1589, whilst embedding them in the broader theory of treason they took from the Treason Acts of Holland. This legal hybrid was consequently applied as if it was the positive law of the whole of the United Provinces. In the process, the verdict considerably changed the substance of what exactly was the ‘public order’ the perturbation of which amounted to treason. Firstly, it elevated the public order of the whole of the alliance to the same position as that enjoyed by the ‘public peace’ in the treason legislation of Holland - the perturbation of which constituted treason. Secondly, the perturbation of the religious order was included in the concept of the public order.

To this was added the argument of necessity, with the verdict stating that the behaviour of the culprits had been a threat to the survival of the United Provinces. This combination allowed for the reading that perturbing this new conception of the public order amounts to the violation of the authority of the alliance and thus constituted the crime of treason. This way, the concluding phrases of the verdict vindicate a vision of legitimate authority that allows provincial sovereignty to be overruled in the name of the United Netherlands – elevating the latter to the highest political body.

¹⁶³ *Sententie Uyt-gesproocken over Iohan van Oldenbarnevelt*, TEMPO 02885.

9.5 Conclusion: the laws of treason and legitimate authority in 1619

The application of the legal framework of treason in the conviction of Oldenbarnevelt thus allows us to say the following about the way it conceptualizes legitimate authority. First of all, the verdicts adjudicate in the name of the *United Netherlands* – thereby elevating the union to the highest political authority. It vindicates the idea that, in this case, provincial sovereignty had to be curtailed in order to safeguard the survival of the alliance as a whole, thereby placing the (legal and ecclesiastical) order of the union above that of the single, ‘sovereign’ province. This is radically different to earlier cases and is a first indication of constitutional change in the United Provinces in 1618 / 1619.

The argumentations underlying the judgement, however, are distinctly different in the introduction and the finale of the verdict. The opening statement argues that the violation of the ‘peace of the church’ constituted a violation of the fundamental laws of the United Netherlands. Consequently, it argues that the sovereignty that Holland had claimed in ecclesiastical matters had proved ruinous to the union and had to be limited. The concluding phrases of the sentence, however, argue that Oldenbarnevelt and his associates had undermined the Union through their seditious politics. Here it were their conspiracies that had greatly disturbed the public order and which thus constituted treason.

This also results in two completely different conceptualisations of legitimate public authority. The first restricts the provincial sovereignty of Holland in the name of ecclesiastical concord, elevating the newly established order of the Public Church to the level of a fundamental law of the Dutch Republic. The second constructs legitimate authority through the argument of necessity, or *raison d'état*: with the survival of the political union at stake, it can only be the union that can exercise those powers necessary to ensure its survival.

A remarkable similarity between these arguments is that the legal framework of the laws of Holland are being applied in both arguments, albeit in different variations. The opening statement substantially echoes the late Roman and Mediaeval (and Habsburg) conception of *crimen laesae maiestatis divinae*, whereas the concluding phrases invoke the perturbation of the ‘state of the lands’. In the closing statements of the verdict, however, they form the broader picture of the legal argument which is subsequently dotted with references to the Treason Acts of the States-General of 1588 and 1589. The verdict contains a legal argument which can at best be called a hybrid which showcases the influence Holland’s treason legislation has had on the final shape of the verdict. Attempting to link the contemporary

legal doctrines of treason with a vindication of the Union as the highest political power in the Republic, the convictions are grounded on two pillars: the punishment for perturbing the public order (which now included both political and ecclesiastical, *and* the order of the union as a whole), and the argument of necessity pitting the survival of the alliance against the privileges of Holland.

Following this obvious application of the treason laws of both the States-General and Holland, the only possible conclusion is that Oldenbarnevelt, Grotius, and Hogerbeets have all been convicted for treason, even if the verdicts do not mention the crime of *laesio maiestatis*.¹⁶⁴

The way the judges applied the concept of ‘the state’, indicates they did consider it to be the bearer of supreme authority in the Netherlands - as shown most specifically by its references to ‘Secrets of the State of the Lands’. The conviction for creating ‘States within states’ shows they considered the States-General to be the most exclusive ‘estate’, whose authority was undermined by the creation of new estate-like political entities. These, however, do not indicate a state which is detached from its current governors, and though it does show an evolution compared to the references of the Acts of Holland from the 1580’ies, it cannot be attributed the abstract, impersonal idea of the state.

Defining the States-General and the entire union as the republic’s highest offices shows a clear break with the established constitutional arrangement of cooperating sovereign states. Whether or not this will prove to be an exception to the rule of constitutional continuity, as Prak and Van Deursen have argued, or the dawn of a new constitutional convention, as Jonathan Israel states, the remaining two cases will tell.

¹⁶⁴ Contra Sierhuis, *Religion, politics and the stage in the Dutch Republic. The literature of the Arminian controversy*, 156, and refining Gerlach, Israel, Nellen, and Janssen’s observations which seem to have been deceived by the verdicts’ lack of clear qualifications.

Chapter 10: Jacob Mom, Adriaen van Eynthouts, and Elbert van Botbergen (1621)

10.1 Lord Mom: biographical information

The following story of conspiracy and treason is a tale of rebellion, perseverance and, ultimately, failure. Our main character is lord Jacob Mom, a high nobleman from the duchy of Gelre entitled to partake in the political deliberations of the States of Gelre.¹⁶⁵ By his side stood Elbert van Botbergen. A Gelders nobleman too, he had found shelter in Mom's estate as a fugitive, on the run from the authorities following accusations of manslaughter.¹⁶⁶

As early as 1606, Mom had attempted to conspire against the Republic and had contacted Spanish commanders in Brussels and German lands.¹⁶⁷ The plan was to deliver them the fortified town of Tiel. To achieve this, Mom and his accomplices had come up with a plan. On a Sunday, when all men would be attending church services, they would lock the doors of the churches, trapping everybody inside. This would allow Mom and his accomplices to overrun the city gates. These would then be opened for the approaching Spanish troops, who could then take control of the town. The plan was discovered, however, when letters, exchanged between the Spanish commanders Bucquoy and Spinola recounting the conspiracy had been intercepted. The States-General quickly marched extra troops into Tiel, averting the conspiracy.¹⁶⁸

Lord Mom, however, was not the man to throw in the towel so quickly. A few years later, he had come up with a second plan to deliver Tiel to the Spanish. He would invite all high-ranking army officials to a great feast at his house, where they would be overpowered and then be either killed or driven into the basement to be confined there. Spanish troops would attack the city shortly afterwards; without its officers it would not stand a chance in its defence. This

¹⁶⁵ The Duchy of Gelre possessed *Landt-Dagen*, which they themselves started to refer to as “*Staten van Gelre / Gelderland en Zutphen*” from the late 16th-century onwards, though its Medieval roots has connotations quite close to that of a Diet, or the Polish-Lithuanian (lower) Sejmik. The actual legislative powers were vested in the distinct ‘quarters’ of Gelre. Cf. W. de Vries, ‘Het karakter van de rechtspraak van de Hertog van Gelre en zijn raden’, *Tijdschrift voor Rechtsgeschiedenis*, 29, 80 (1961); M.J. van Gent, ‘Landdagen en andere landelijke bijeenkomsten van Staten en steden in Gelre en Zutphen 1423-1584’, Huijgens Instituut KNAW open access, at <http://resources.huylgens.knaw.nl/statenstedengelderland> [28th of November 2016, 9:30]; Israel, *The Dutch Republic*, 282 – 285; C.A.M. Gietman e.a. (eds.), *Biografisch Woordenboek Gelderland: bekende en onbekende mannen en vrouwen uit de Gelderse geschiedenis. Vol. II* (Hilversum 1998 - 2006) 46 – 55.

¹⁶⁶ P.C. Molhuysen, P.J. Blok (reds.), *Nieuw Nederlandsch biografisch woordenboek [NNBW]*, 877 – 878, geraadpleegd op:

http://resources.huylgens.knaw.nl/retroboeken/nbw/#source=3&page=446&accessor=accessor_index [24th of november 2016, 17:15]

¹⁶⁷ *NNBW*, 876 – 878.

¹⁶⁸ *NNBW*, 876 – 878.

scheme too, however, failed miserably. The Count of Bucquoy advanced his troops to Tiel far too early, only to be confronted there with a fully functioning Dutch army forcing him to retreat.

Still, lord Mom persevered. Even his second failure was not enough to stop him from conspiring against the United Provinces. In 1620 – 1621 he set up plans for his *third* attempt at delivering the city of Tiel to the Spanish. This time, the plan was to assemble a sizable army of his own with which he would storm the ramparts of Voorne. Lord Botbergen was sent to Den Bosch to meet up with the Spanish commanders and arrange for their military support. When he received the support of Arch-Duke Albert, the plan was ready to be set in motion.

This conspiracy too, however, was discovered and this time, the authorities were bent on settling the matter for once and for all. In January 1621, Maurice of Orange and a select company of members of the States-General passed a resolution which authorized for the arrest of Mom and his accomplices. Consequently, the criminal justice magistrates of the Generality rode into Gelre, arrested the conspirators and brought them back with them to The Hague. Several months later, and despite the vehement protests lodged by the States of Gelre, the commissioned judges reached the obvious conclusion: the three main protagonists of the *Treason of Tiel* were traitors. They were beheaded the following day, on the 17th of April 1621, and their property was forfeited to the States-General.¹⁶⁹

¹⁶⁹ A. van Huyssteen, S. van Esveldt, *Algemeene Nederlandsche geschiedenissen: zedert het Twaalfjarig Bestandt van het jaar 1621 tot de Utrechtse Vreede in 't jaar 1713 gesloten* (Amsterdam 1742) 7 – 8.



Portrait of lord Jacob Mom, engraving by Crispijn van de Passe, 1600 – 1610, Rijksmuseum RP-P-1905-1658.

10.2 Treason and the state: jurisdiction and ‘security of state’

Several things must have immediately caught the eye of every 17th-century jurist. Firstly, there is the strongly contradictory message conveyed in the title of the printed verdict:

“Sentence over Jacob Mom (...) and Elberg van Botbergen / both having appeared as nobles

in the States Councils of Gelre (...) pronounced and executed in The Hague on 17th of April anno 1621".¹⁷⁰

To 17th century ears the notion of a politically privileged Gelders nobleman being tried, and even executed, not before the *Hof van Gelre*, but in Holland must have sounded absurd. Not only was Gelre a duchy, and thus historically of higher rank than any of the other provinces, but it was a sovereign one too. By claiming the jurisdiction to try high-ranking, and politically influential nobles from the constituent provinces, Maurice of Orange and the States-General were once again violating the rights to provincial sovereignty enshrined in the Union of Utrecht.

Maurice had, after short deliberations with several members of the States-General, given the order to venture into Gelre to arrest and bring back lord Mom and his accomplices. Once taken into custody in The Hague, the States-General appointed examining magistrates, who started conducting the preliminary inquiries straight away.¹⁷¹ The States of Gelre, however, protested incessantly against this course of action, pointing out the grave breaches of established rights and privileges of Gelders noblemen.¹⁷² The Generality proceeded in a manner which could by now be labelled rather typical: it commissioned the appointment of several extra judges, in a diplomatic attempt to create a 'national' (if not 'federal') court to adjudicate the matter – in its new configuration slightly favouring magistrates from Gelre.¹⁷³ Unimpressed, the States of Gelre refused to send over their 'allotted' judges, and persisted in their demand that the (in their view) abducted noblemen be returned to Gelre to be tried before their court.¹⁷⁴

The final attempt the States-General made to win over the States of Gelre, reveals much of their attitude towards their own authority. They claimed it

¹⁷⁰ *Sententien over Jacob Mom gewesen amptman in Maes en Wael ende Elbert van Botbergen / beyde als Edelen gecompareert hebbende opte Landt-dagen van Gelderlant: mitsgaders Adriaen van Eynthouts / Schout des over-ampts vanden Lande van Kuyck: Ghepronuncieert ende gheexecuteert in 's-Graven-Haghe, den 17 aprilis, Anno 1621* (The Hague 1621) – TEMPO 03224. Once again, the verdicts against the three protagonists are the same with regards to us here: the ways in which legal argumentations conceptualize, construct, and legitimize political authority.

¹⁷¹ J. Wagenaar, *Vaderlandsche Historie: Deel X* (Amsterdam 1752 – 1759) 420 – 422; H. Vollenhoven, *Broeders gevangnisse: Dagboek van Willem de Groot betreffende het verblijf van zijnen broer Hugo op Loevestein* (The Hague 1842) 140 – 150.

¹⁷² Wagenaar, *Vaderlandsche Historie: Deel X*, 420 – 422; Van der Aa, Rink, 'Jacob Mom', in: *NNBW*.

¹⁷³ Wagenaar, *Vaderlandsche Historie: Deel X*, 421 – 422.

¹⁷⁴ Wagenaar, *Vaderlandsche Historie: deel X*, 421; J. Wagenaar, H. van Wyn, *Byvoegsels en anmerkingen, bestaande in noodige naleezingen voor de Vaderlandsche Historie van Jan Wagenaar* (Amsterdam 1802) 110.

“had been done for the security of State of the Land, against a plotted treason in the Province of Gelderland, to their own ruin”¹⁷⁵

Here we see a remarkable merging of the two conceptions of the state mentioned earlier, which shows two things. On the one hand we have the older ‘the state of the lands’, and on the other the new ‘security of State’. Firstly, the word “*land*” is written in singular form here. This shows a change in focus on the part of the judges appointed by the States-General, because even the convictions of Oldenbarnevelt e.a., had been considered pernicious to the state of the plural *lands*. This implies that the appointed judges considered the States-General to be a political body governing a single land, rather than an assembly of delegates of distinctly different lands. Secondly, by referring to the ‘security of State’, it shows that Maurice and the States-General once again appropriated the authority to decide on matters of emergency and necessity – as they had done in 1618 – 1619 when persecuting the Arminian political elite.

10.3 Towards new theories of treason and authority

The verdict itself does not address the thorny issue of the contested jurisdiction. The judges seemed quite content with their appointment by the States-General, and for them that was the end of it. From start, “(...) *the Lords Judges commissioned by the High and Mighty Lords to take notice and adjudicate his case*”, to finish “*Administering justice in the name, and on behalf of the High and Mighty Lords [the] States-General of the United Netherlands*” – it is the Generality that is attributed supreme authority.¹⁷⁶ Every single time the verdict mentions damaging established authorities, it refers to the States-General and it assigns to them “*the Government of these Lands*”, even equating their rule with that over one single(!), “*well ordered Republic*”.¹⁷⁷ This is another indication for the constitutional changes that 1619 had brought about.

A further argument employed in the verdict that must have astounded contemporary jurists, is the way in which it characterizes the treason that was committed. One would expect

¹⁷⁵ ‘Resoluties der Staten-Generaal 25 januari 1621 – 26 maart 1621’, cited in: Wagenaar, Van Wyn, *Byvoegsels en Aanmerkingen*, 111: “*geschied voor de seeckerheyt van Staet van ‘t Landt, tegens eene gecomplotteerde verraderie in de Provintie van Gelderlant, tot ruïne van deselve*”.

¹⁷⁶ *Sententien over Jacob Mom*, TEMPO 03224: (...) *de Heeren Rechteren by de Wel-gemelte hare Hog.Mog. tot vordere kennisse ende judicature van syne sake gecommiteert.*”, “*doende Recht in den name en van weghen de Hoogh-gemelten Heeren Staten-Generael der Vereenighde Nederlanden*”.

¹⁷⁷ *Sententien over Jacob Mom*, TEMPO 03224: “*Wel gestelde Republijcque*”. If one considers this use of *Republijcque* to mean that the whole of the United Provinces ought to be considered as a single *Res Publica*, this would make the conceptual shift even greater: further research into the intricacies of the usage of *civitas*, *res publica*, and *state / staet* is called for on this topic.

arguments similar to those of Vranck, to the treason legislation of Holland, or to the verdicts of 1619 – all of which choose a conceptualisation of treason as a diminution of sovereign authority, through disturbing the public peace, the public church, or the union respectively. The judges, however, chose a different approach.

The judges were faced with a political act in clear breach of the privileges of the autonomous province of Gelre, but had been given the task of adjudicating an obvious traitor. Any attempt to deliver justice within the legal confines of the established conventions, e.g. the Union of Utrecht, was doomed to fail. Therefore, the court opted for another body of legal-political thought. The criminal activities of the conspirators were conceptualized in a way, not seen in Dutch courtrooms for over fifty years. The court revived a legal doctrine that was over two thousand years old but had been lying dormant for decades now: *crimen laesae maiestatis*.¹⁷⁸

Considering the structure and reasoning of the conviction, the only possible candidate to which this diminished *maiestas* could be attributed is the States-General of the United Provinces. As discussed before, the States-General had of course never been the bearers of majesty, having been cloaked with explicitly limited powers. By applying the doctrine of *laesio maiestatis*, the argument that underpinned the authority of the States-General became equal to that of Roman emperors and of contemporary, ‘absolutist’ European monarchs. By attributing *maiestas* to the States-General, the judges attributed it the supreme political powers of the Dutch Republic. Though applying this notion of legal theory to this political body clearly broke with the treaties on which the alliance had been founded, it does exhibit the exact same spirit that had underpinned the convictions of Oldenbarnevelt, Grotius and Hogerbeets.¹⁷⁹ This time, however, by employing the vocabulary of the Roman laws of majesty, the supremacy of the Generality is consciously and explicitly cloaked in the political terminology befitting a sovereign overlord.

¹⁷⁸ *Sententien over Jacob Mom*, TEMPO 03224: “Verklaren den selve ghevanghen begaan te hebben *Crimen Laese Maiestatis*”. The verdict literally states *laese maiestatis* and not *laesio maiestatis* or *crimen laesae maiestatis*, using the vocative declination of *laesus*. Of course, this does not alter the legal argument.

¹⁷⁹ Indicating Israel was right in emphasizing the constitutional changes that had taken place in 1619, contra Van Deursen and Prak (see chapter 2).

Chapter 11: Reynhart van Tijtford, Rempts ten Ham, and Jorjen Stuyver (1621)

11.1 Biographical information

Our final case study is a verdict pronounced by the court-martial of the United Provinces in September 1621, sentencing three army officers: captain Reynhart van Tijtford, lieutenant Rempts ten Ham, and ensign Jorjen Stuyver.¹⁸⁰ The only biographical knowledge we have of these officers, is that Tijtford was forty years old and was born in Livonia (in the Baltics), that Ten Ham was born in Groenigerland (near the current North-Eastern border of the Netherlands with Germany), and that Stuyver was born in the county of Nassau.

The year 1621 saw the end of the Twelve Years' Truce and thus the resumption of the war. The Spanish armies that were already committed to the German lands due to the Thirty Years War, were now directed against the United Provinces by general Spinola. One of his first targets was the city of Jülich, which had been the theatre of a proxy war between the Spanish and the Dutch during the truce.

When the duke of Jülich-Cleves-Berg had died in 1609 without a male heir, a war of succession had broken out pitting the Catholic candidate, the duke of Palatinate-Neuberg (supported by the Catholic League and Spain) against the Protestant Elector of Brandenburg (supported by France, England and the United Provinces). The following year, a coalition of Dutch, Brandenburg and Palatine troops had captured the city of Jülich. Several years later, Spinola advanced his army through the duchy as well, capturing several towns and fortresses. This proxy war ended in a stalemate in which Dutch and Spanish troops held fortresses within miles of one another. With the *Trêves* coming to an end after its twelve years, the city of Jülich was an excellent stop on the way to the Dutch Republic.

While Spinola advanced his main armies in the direction of the fortified town, he ordered count Hendrik van den Berg, nephew of William of Orange and cousin to Maurice, to secure one of the main access routes to the city, which was guarded by the fortified manor 'Huis te Reid'. Commanding over 7.000 infantry and 700 cavalry, count Van Den Berg advanced to the manor.

He then managed to capture it without any bloodshed. There are different accounts as to how exactly this came about, but both involve written orders to surrender the manor. Some

¹⁸⁰ Also spelled Reinard van Ditford: A. J. van der Aa e.a., *Biografisch woordenboek der Nederlanden* (Haarlem 1859) 199 – 200.

sources say Van Den Berg deployed a cunning plan in which he presented castellan Van Tijtford with faked orders to this extent. Others say the count had managed to capture the manor-lord, Lord Boetzelaar, and had forced him to write such orders, which were then presented to Van Tijtford.¹⁸¹ Either way, captain Reynhart van Tijtford was faced with what he took for official orders to deliver the manor, which were backed by a military force far greater than his own. He therefore obliged with the orders and negotiated a free passage for his 150 men on the 30th of August 1621.¹⁸²

Any hopes he must have entertained as to his good behaviour were crushed when he reported at the Dutch armies in south-western Hainaut. He was immediately imprisoned on charges of treason – having surrendered a fortified manor without offering any resistance. Already on the 13th of September, the Court-martial delivered the verdict that he was in fact a traitor and, to set an example, was to be put to death the following day. The hopelessness and despair of the 40-year old captain are recounted by Van Meteren, when on the 14th of September 1621 “... first his weapons [were] broken into pieces before his feet (which he regarded in great agony) after which his head was cut off.”¹⁸³ His lieutenant Rempts ten Ham and ensign Jorjen Stuyver were spared: though the verdict explicitly states that they too deserved the death penalty, they were not to be executed “considering their inexperience in warfare”.¹⁸⁴ They were dishonourably discharged instead.¹⁸⁵

11.2 The law of treason and conceptualizing legitimate authority

Because Tijtford, Ten Ham, and Stuyver were enlisted in the armies of the States-General, this verdict too is delivered by a court-martial of the United Provinces’ army, adjudicating military offences. This particular court-martial consisted of seven colonels, 5 officers of the guard of Maurice, and the Advocate-Fiscal of the States-General.¹⁸⁶

¹⁸¹ The rather imposing full name of this manor lord being Floris Hathard van Boetzelaar, Burggraaf van Odenkirchen, Vrijheer van Asperen, Heer van Langerak (1560-1636).

¹⁸² Huyssteen, Esveldt, *Algemeene Nederlandsche geschiedenissen*, 8 – 10.

¹⁸³ E. van Meteren, *Der Niderländischen Historien, dritter Theil: Darinn außführlich beschrieben was sich denckwürdig vom Jahr 1620. biß auff 1630. sonderlich in Niderlandt zugetragen* (translator unknown, Amsterdam 1630) 122 – 125: “... erstlich seine Waffen vor seine Füßen in stücken verbrochen (welches er mit grossem Herzenlehd angesehen) darnach das Haupt abgeschlagen worden.” .

¹⁸⁴ *Sententien over Capiteyn Reynhart van Tijtford, gheboren van Revel in Lijfflandt ende Lieutenant Rempt ten Ham gheboren van Loppersom in Groenigerlandt: Mitsgaders de Vendrich Jorjen Stuyver, geboren van Ziegen int Graefschap Nassau. Gepronuncieert den 13. Septemb. ende geexecuteert int Leger by Doornick den 14. Anno 1621 Reynhart Tijtford, ende ghedegradeert Rempt met Jorjen Stuyver.* (The Hague 1621) TEMPO 03245.

¹⁸⁵ *Sententien over Capiteyn Reynhart*, TEMPO 03245; C.M. Van Der Kemp, *Maurits van Nassau, prins van Oranje: in zyn leven, waardigheden en verdiensten: Vol. 4* (Rotterdam 1843) 356 – 358.

¹⁸⁶ *Sententien over Capiteyn Reynhart*, TEMPO 03245.

In contrast to most other verdicts, but in line with the earlier court-martial sentence of 1601, it does not explicitly state in whose name justice is done. There is no explicit mention of adjudicating either in the name of the States-General or of Maurice of Orange. In a rather middle of the road approach, the verdict mentions the States-General as Tijtford's official superiors, but leaves the possible forfeiture of his property (to the States-General) to the discretion of the Prince of Orange.

The treason of captain Reynart

The argument of the court as to why Reynhart van Tijtford was a traitor, is that he had, by surrendering his keep without bloodshed, “*acted against all reasons of War*”.¹⁸⁷ He could have, and ought to have, defended it as fierce as possible. Having capitulated without a fight was unforgivable. This led the judges to their verdict: “*All of which are matters of very malicious consequences, tasting of lesae Maiestatis*”.¹⁸⁸

The question here is, how to approach a verdict that states that a crime “tastes of” *laesio maiestatis*. Does this mean that it *is*, or *is not* *laesio maiestatis*? The first would mean another attributing of *maiestas* to the States-General – the second an attempted side-step of the legal impossibilities thereof. Considering the consequent beheading and (possible) forfeiture of property, I would argue that it is the most probable that the court-martial did in fact pronounce the verdict of *lèse majesty*. Though, even considering the scenario that this phrase shows an attempted hedging of these legal difficulties, the result would be the same: an application of the crime, and even the matching punishments, as formulated in the Roman laws of treason. Strikingly, no explicit mention is made of other arguments from the Roman laws of majesty apart from its very name. This is all the more surprising when we consider that the Digest provides an exceptionally suitable phrase for this case, D.48.4.3:

“*Lex autem Iulia maiestatis praecipit eum, qui maiestatem publicam laeserit, teneri, qualis est ille, qui in bellis cesserit aut arcem tenuerit aut castra concesserit.*”¹⁸⁹

Instead of applying this explicit example of *maiestas publica*, which Roman law so neatly handed to the justices, they applied to their case an unqualified and unspecified version of

¹⁸⁷ *Sententien over Capiteyn Reynhart*, TEMPO 03245: “*voorschreven plaatse aen den vyandt over te leveren (...) over-ghegheven heeft (...) Teghen alle redenen van Oorloghe de vijandt als vooren heeft ingheruymt.*”

¹⁸⁸ *Sententien over Capiteyn Reynhart*, TEMPO 03245: “*Alle 't welcke saecken syn vna seer quaden Consequentien; smaeckende naer Crime Lesae Maiestatis*”. Again, the verdict does not write *laesio*, or *laesae maiestatis*.

¹⁸⁹ D.48.4.3 Marcian, “*Moreover, the Lex Iulia Maiestatis provides that he who injures the maiestas publica shall be liable, just as one who yielded to the enemy in times of war, or occupied a fortress, or surrendered a camp.*” [WD]

laesio maiestatis. This was their way of applying the notion that the States-General held the highest authority in military affairs to the adjudication of a specific treason trial. By doing so, however, the court-martial granted it the title of *maiestas*, thereby once again characterizing their authority as that of a supreme sovereign. We can see here that the application of the Roman laws of treason have had a decisive impact on how legitimate authority was warranted in legal argument.

The treason of lieutenant Rempts ten Ham and ensign Jorjen Stuyver

The court-martial pronounced a different verdict over the remaining two, with regard to both the qualifications of the crimes they had committed as well as the punishments that were to be inflicted. Unlike their captain, the lieutenant and the ensign were not considered to have committed *laesio maiestatis*. Instead, they were found guilty of having “*condoned that that place was surrendered, to great disadvantage and disservice to the High and Mighty Lords States-General of the United Netherlands*”.¹⁹⁰

As could be expected in this court-martial case, the public authority that was found to have been damaged by their crimes, was the States-General. This phrase is also clearly reminiscent of both the November 1587 Treason Act, which condemned as treason “*disadvantage or diminution of Authority*”, and the ‘Sharp Resolution’ of the States of Holland.¹⁹¹ This means that in the case of the other two officers, the Roman laws of treason were avoided when characterizing their crimes. Instead, it applied almost literally the criteria of the 1587 and 1588 Treason Acts of Holland (though, of course, administering justice in the name of the Generality). The conceptualization of treason of the Treason Acts of Holland is here distinguished from the resurfaced legal concept of *laesio maiestatis*. Only their highest commanding officer was found guilty of *laesio maiestatis* and he was put to death. Those found guilty of causing the “*disadvantage to the authority*” of the Generality, were not.

The result of the distinction made between these two types of treason, is that the violation of *maiestas* is given considerably more weight. The resulting image of the legitimization of political power, then, is one in which the bearer of this Roman title is accorded the primary position. This means that in this legal argument the offense of treason against the States-

¹⁹⁰ *Sententien over Capiteyn Reynhart*, TEMPO 03245: “*Ghedooght dat deselfde plaatse overghegheven worde tot grooten naerdeele ende ondiensste der Hog.Mog. Heeren Staten Generaal der Vereenichde Nederlanden*”.

¹⁹¹ ‘Placaet jegens seditieuse propoosten, 27 november 1587’, in: Cau, *Groot placaet-boeck*, 417 – 423: “*naedeel ofte verminderinge der autoriteyt*”, of ‘Scherpe Resolutie, 1617’: “*great damage and disadvantage to the Highness, Liberties, Justices*” (“*seer schadelycke prejudicie ende naedeel van de hoocheyden, vry- ende gherechticheyden*”) – see chapter 5.

General is considered much more grave in comparison to that crime which constituted treason according to the legislation of the States of Holland. This has serious consequences for the conceptualization of political power: the authority of the States-General is equated to that of a sovereign lord. The diminution of the maiestas of the Generality was punishable by death - damaging the authority of the States of Holland was of lesser importance. Again, this legal argument constructs the authority of the States-General as that of the sovereign ruler, which attempted to legitimize the Generality, rather than the constituent provinces, as the highest public power within the United Provinces.

Chapter 12: Summary of the case studies

12.1 Summary of the five case studies 1583 - 1621

This study has analysed the influences of legal arguments from both the Roman laws of majesty and Dutch constitutional law on the ways in which state authority was legitimized in the United Provinces between 1583 and 1621. This way, it hopes to provide some preliminary answers to current debates regarding the history of the law of treason, the constitutional continuity of the Dutch Republic, and the interaction between legal argument and political thought.

Recalling the case of Cornelis de Hooghe, held in 1583 and thus during the reign of the duc d'Anjou, the legal doctrine of treason was that breaking certain crucial laws amounted to undermining the authority of the States of Holland. This verdict explicitly connected criminal behaviour to defying political authority and this legal argument found its way into the 1587 and 1588 Treason Acts of Holland. Because it was unclear who exercised supreme authority at this stage, the Roman laws of majesty could not be applied here. Therefore, treason is at this time constructed as the undermining of the authority exercised not by a sovereign, but by those magistrates currently in power.

The notion of *laesio maiestatis* is missing from the 1601 conviction of Jacob Spensis too, which refuses to disclose whether the court adjudicated the case in the name of the States-General or of commander-in-chief Maurice. The only notions of legitimate authority mentioned are a defence of the “*Lands of Justice*”, and due punishment for acts leading to “*evil consequences*”. No political entities are acknowledged in the verdict, though the conviction is substantiated by referring to a legal order, rather than the earlier appeal for obedience based on the personal authority of current magistrates. This bid to maintain the “*Lands of Justice*” is already more in line with the ways in which Vranck had warranted the political power of the States of Holland, arguing their rule was legitimate - based on notions of representation and their guardianship of public order.

All this changed in the summer of 1619. The verdicts against Oldenbarnevelt, Grotius, and Hogerbeets contain two markedly different legal substantiations of the conviction. The first of these emphasizes newly-invented ‘fundamental laws’ of the United Provinces, whereas the second is based on the argument of necessity.

Having to circumvent the established legal rights of Holland, this first argument

asserts the defendants had perturbed the *Standt der Religie*. This way, it elevates the ecclesiastical concord of the Union to the level of a ‘fundamental law’. This argument echoes the Treason Acts of Holland, in the way it equates treason with disturbances of the public order whilst it significantly expands the reach of the concept of treason. It does so by suddenly including the unsettling of the religious order of the United Provinces. This conception of treason (with its concomitant dependency on religious bodies) brought it remarkably close to the Habsburg laws of *crimen laesae maiestatis divinae*. The second argument centres on the defendants’ conspiracies against the political union of the seven provinces. Through the argument of necessity, or *raison d’état*, the union is attributed with supreme authority, because otherwise the defiance of a constituent part would destroy the whole.

Though these conceptual routes are different, they are both clearly based on a single constitutional outlook: the authority that has been damaged here is that of the *United Netherlands*. It is in their name that provincial sovereignty is limited. Both arguments employ the notion that Oldenbarnevelt, Grotius, and Hogerbeets had usurped marks of sovereignty, or had held on to them in a manner pernicious to the common good of the whole alliance. Both arguments apply both the legal arguments that underlie the Treason Acts of Holland, as well as several criteria found in the Treason Acts of the States-General of 1588 and 1589. The creation of this legal hybrid, as well as its recourse to changing conceptions of public order and its employment of the argument of necessity explain the absence of *laesio maiestatis* in the verdicts. It also shows that they were in fact convicted for treason – albeit without clear qualifications and, substantively, through the application of Holland’s 1580’ies Treason Acts.

Only two years later, in the trial against lord Mom and his accomplices, political expedience again dictates the circumvention of established constitutional law. Another specially erected court was faced with the adjudication of a case in which fundamental laws of the union were broken, but with the aim of bringing a blatant traitor to justice. This time, it explicitly applied the Roman laws of majesty – thereby emphasizing the States-General as the highest political body, and, for the first time since the Revolt, attributing to it *maiestas*.

By adopting this political theory, the conceptual underpinning of the authority of the States-General became equated with that of Roman emperors and European monarchs. It had become that of a sovereign overlord. Again, a court rejects the original constitution of the republic in favour of the political-legal arguments that had already provided the foundations for the convictions of 1619. Here, the conceptual route initiated by Vranck and followed for

over thirty years is abandoned, in favour of a States-General who possess *maiestas*. They are once again granted the authority to infringe provincial sovereignty on accounts of reason of state.

The decisive influence the cases against Oldenbarnevelt c.s. and Mom c.s. have had on the way public authority was legitimated in legal argument, can be deduced from the adjudication of our last case; that against captain Tijtford. Even when political expedience or *raison d'état* are no longer necessary, this court-martial finds Reynard van Tijtford guilty of *laesio maiestatis*. The supreme authority of the States-General in military affairs is once again confirmed. Surprisingly, however, this is done not by invoking the Union of Utrecht, but through the recently resurfaced Roman laws of majesty. Here we can clearly see the impact of the new legal arguments that were employed against Oldenbarnevelt (1619) and lord Mom (1621) have had. In these cases, the need to legitimise political expedience had shaped the way in which the judges conceptualized public authority in the Dutch Republic. Now, the Roman laws of majesty are applied even in cases where a reference to the Union of Utrecht would have sufficed. Instead, the argument vindicates new theoretical underpinning of the authority of the States-General.

Surprisingly, the judges applied different laws of treason to the cases of captain Tijtford's fellow defendants. They were not convicted for *laesio maiestatis*, but for diminishing and damaging the authority of the States-General: a phrase highly reminiscent of Holland's Treason Acts. The way the legitimate rule of the authorities is conceptualized here, is thus different to that of Tijtford's case. Tijtford's treason was committed against the States-General as bearers of *maiestas* and he was put to death, whereas Ten Ham and Stuyver were found guilty of the classic 'disadvantaging of authority' - and lived. This means that, in the judges' conceptualization of state authority, inflicting damage on the bearer of *maiestas* was considered the most severe crime, and acts that were treasonous under Holland's legislation have been relegated to a secondary position. Here we see example of the way in which the doctrine of *laesio maiestatis* was applied to the authority of the States-General, legitimizing their authority in a way that would have been unthinkable only decades before.

12.2 Constitutional discontinuity in the Dutch Republic

Both the granting of *maiestas* to the States-General, and the connected subordination of Holland's conception of treason reveal that these court-martial judges held notions of political theory in which the States-General was superior to the provincial states (who had previously claimed sovereignty). We can therefore safely say that it wasn't only in times of political expedience that this new understanding of the constitution surfaced. Even the 'regular' treason trials against captain Tijtford displayed this new approach to sovereignty in the Dutch Republic, granting surprising amounts of power to the Generality at the cost of the constituent provinces. From the point of view of the judiciary at least, the crisis of 1618 – 1619 decisively changed the constitutional structures of the United Provinces in favour of the States-General.

12.3 'The state' in legal argument 1583 - 1621

Additional changes in the attitudes towards legitimate public authority, can be derived from the development of the notion of "the state". Because we have focussed on early transformations of the concept, rather than on mid-seventeenth century political theorists, it is only relatively small changes that can be incurred. At the very beginning of our period, the 1583 conviction of Cornelis de Hooghe, very personal notions of the exercise of public authority were employed. Moving ever so slightly towards concepts of political power increasingly detached from personal authority, is the 1601 sentence administering the case invoking the legal order – the "*Lands of Justice*".

The 1619 sentence used three different conceptions of the state. The first is a verbatim reference to the "*State of the Lands*" of Holland's Treason Acts, all the while stating this state was "*greatly perturbed*" and "*brought in great peril*". This notion of the state is the same as that of the 1580'ies and signifies nothing other than the condition of the commonwealth. The second mention is "*Secrets of the state of lands*", used in a fashion referring not to the condition of the polity, but to confidential (what we would now call) 'matters of state'. The third is the conviction for creating "*States within states*", which considers the States-General to be the most exclusive 'estate' of the commonwealth.

The latter two conceptions of the state have moved beyond denoting it as a mere condition. Instead, both attributed the highest authority in matters of civil government to the state, as well as increasingly moving towards impersonal and territorial understandings of public authority. On the other hand, however, neither signifies a political construct which operates entirely independent of those currently exercising power over it, such as dynastic successors

or appointed magistrates. Rather, it still very much emphasizes the authority of those magistrates exercising the powers of the States-General, following their position in this exclusive, composite estate. This increased emphasis on the territoriality of the concept of the state is also apparent in the way it is used in the conviction of lord Mom in 1621. By referring to its "*Security of State of the Land*", using the singular rather than the plural, the judges stress the new-found centrality of the States-General, rather than the earlier notion that they were merely an assembly of delegates from legally distinct nations.



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Personification of the States-General as "Herald of the Seven United Provinces". On the bottom right is a depiction of an orange tree, struck by an axe carrying the coat of arms of the Union of Utrecht. The loose branch reads William of Orange's motto "Saevis tranquillus in undis" ("Undisturbed among violent waves"), and in the bottom right corner a putto smashes the same Union of Utrecht coat of arms. Remarkably, this compromising depiction was used as the title page of the Statute Book of the States-General from 1583 to 1644. Print by Daniël van den Bremden, *Nederlandsche placcaet-boeck: vervattende in twee deelen, alle de placcaten* (...), (Amsterdam 1644), Printed by Johannes Janssonius, Rijksmuseum RP-P-1886-A-10029.

Chapter 13: Conclusion

This study has examined the conceptual changes that have occurred in legitimating state authority in the United Provinces between 1581 and 1621. By looking at how political thought was conceptualized in actual contemporary legal argument, it has sought to steer clear of the somewhat nebulous theories of absolutism, republicanism, and constitutionalism, and approach the matter of conceptual change in legal and political discourse from an angle that does justice to those actors and structures that actually made up the political and constitutional structures concerned.

The five case studies considered here indicate that the ways in which legitimate state authority was conceptualized, have been profoundly influenced by the legal doctrine of the Roman laws of majesty, as well as by the legal argument of (new interpretations of) ‘fundamental laws’ of the United Provinces. Especially the treason convictions of Oldenbarnevelt, Grotius, and Hogerbeets of 1619 show a great shift in constitutional thought within the United Provinces. Faced with serious legal obstacles, the judges had to provide a different answer to the question of what constituted a legitimate exercise of public powers. Their answer changed political legitimacy in three ways: it legitimized political actions which breached provincial sovereignty, it elevated the ecclesiastical order of the union to the level of a ‘fundamental law’, and it granted the States-General and their commander-in-chief extensive emergency powers in the name of *raison d'état*. This resulted in a significantly expanded reach of the concept of treason, which consequently came to attribute supreme authority to the States-General, at the cost of its constituent provinces.

From now on, the authority of the States-General was to be legitimized in this new way. The new theory underlying its political power was employed again two years later, in the case against lord Mom. Once more, it employed its novel conceptual framework to legitimize political expedience and it is in this case that the States-General is attributed *maiestas* for the first time. The way its authority was legitimized in legal argument again grant it the authority to infringe provincial sovereignty on accounts of reason of state. This shows the decisive influence the events of 1618 – 1619 have had on the way public power was conceptualized in the United Provinces, applying the notion of *maiestas* and thus of sovereignty to the States-General - even when the last bearer of *maiestas* had been the king of Spain some fifty years earlier. This new conceptual route was now being applied even in cases where there was no need at all for circumventing established constitutional law, such as the case against Van

Tijtford in 1621. This shows that the Roman law concept of *maiestas* had by now become a household legal doctrine in the adjudication of treason trials in the United Provinces. This is all the more remarkable when we consider that the constitutional framework of the Dutch Republic in no way accommodated the use of this concept, and the last time it was used was over fifty before, in the Spanish Council of Troubles – colloquially known as the *council of blood*.

The experience of the United Provinces between 1581 and 1621 shows us the effect different legal arguments have had on the way state power has been legitimized. Specifically, it shows how political expediency caused the invention of new ‘fundamental laws’ of the United Provinces. Furthermore, it shows how judges, appointed by the newly empowered States-General, continued to uphold the States-General’s claims to its (usurped) powers – even explicitly attributing to it the title of *maiestas* from 1621 onwards. Time and again, the circumvention of existing legal boundaries lead to novel ways of legitimizing the authority Maurits and the States-General now exercised. None of these changes to the way public authority was legitimized would have been visible in the writings of ‘political theorists’ of that time - they only show up by tracking the changing application of the politically sensitive legal doctrine of treason.

This study shows that inquiries into the history of conceptual change do not have to align themselves solely with the at times distorting grids of the *idées fixes* of absolutism, republicanism, and constitutionalism. It has attempted to show that, if one seeks to reach a better understanding of the ways in which normative concepts change over time, the place where they engaged with one another on a daily basis, the legal arena, can be an excellent place to start looking. It hopes to inspire historians of political thought to turn their attention away from the limited selection of canonical writers and turn to the fascinating world of legal discourse instead.

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