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An Introduction

VB verfassungsblog.de/decolonization-and-human-rights-the-dutch-case/



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Wiebe Hommes

This article belongs to the debate » [Decolonization and Human Rights: The Dutch Case](#)
24 Januar 2022

Decolonization and Human Rights: The Dutch Case

Human rights and decolonization have a complicated relationship. From their inception in the mid-20th century as normative features of the nation-state, human rights co-existed with imperial colonial systems. As aspirational values molded on the Western philosophical tradition, human rights also served as empowering tools in the moment of decolonization while simultaneously hampering claims to national independence. This is why, in the engagement with the ongoing legacies of colonialism, we have embarked on this symposium to examine human rights both as a language of critique and as a constitutive part of the imperial legacy.

As such, the relationship offers plenty of room for questions. What was the role of human rights in the historical moment of decolonization? Which actors used them, and to what end? Were citizenship and political enfranchisement articulated through human rights claims? And how do we account for racialized choices made in the field of migration as human rights were on the rise? In this symposium, based on an international workshop we convened recently with the Asser Institute for International and European Law and the Amsterdam Centre for European Law and Governance, we aim to engage with these questions by bridging the gap between law, history and political science to reflect on this contingent relation.

The Netherlands forms the locus of these investigations, and serves as an interesting case study. For to sketch the Dutch story of human rights and decolonization is also to deal with a persistent struggle for the self-image of the Netherlands. On the one hand, the Netherlands is presented as a small, occasionally moralistic state, which prides itself on hosting the 'legal capital of the world' in The Hague. Human rights, in this narrative, are part and parcel of that national tradition. On the other hand, that idea of national innocence has been so pervasive, as Gloria Wekker has powerfully argued, that it has also stood in the way of a proper engagement with the Netherlands' long and deep colonial past.

These two narratives have not yet been fully squared off in the public sphere—much less in the epistemic community of international and human rights lawyers. One tradition, that of legal internationalism, became a celebrated idea, whereas the other, the Dutch imperial past, has been subject to an 'institutionalized silence', as Alfred Birney put it. Only recently, under pressure from scholars, activists and institutional stakeholders, the debate about the connection between the two histories has been placed under the spotlight. That silence is even more pervasive in legal scholarship. Although historians, political scientists and other academics have in recent years shed light on the Dutch colonial past, the link to legal policy and its implications is only beginning to be broadly understood, as is reflected in the fact that only now a major study into the decolonization process of Indonesia is being carried out.

New questions

We think that the colonial past of the Netherlands offers an opportunity to understand the promises and limitations of human rights, allowing us to hold them up close and examine their trajectory, the variety actors invoking them, and the purposes for which they have been deployed, which have implications to this very day. We are well aware that much has been said and written about decolonization in the Netherlands. And yet, the main debates addressing the decolonization process in that country have centered on the legacies of violence, self-determination, constitutional arrangements and the successes and failures of the social and political integration of persons moving between the metropolitan territory and former colonial spaces.

This symposium brings experts on all these topics together to reflect on the role that, not only human rights, but also their promoters and detractors, have played in the decolonization process. Our authors therefore hail from a multitude of disciplines and fields of expertise: Law, history, political science, philosophy and media studies. What has been their contribution to the constructed image of the Netherlands as a staunch promoter of human rights, at least from a foreign policy perspective? How has that self-image been confronted with the violent colonial past, if at all? These are all questions that we believe are worth visiting from a multidisciplinary and inclusive perspective, outside the silos and constraints of the academic echo chambers we inhabit.

Some Dutch peculiarities: human rights as export products?

In order to understand the peculiar position of this debate in the Netherlands, one key tenet in Dutch engagement with human rights needs to be understood: the firm conviction that human rights are the 'rights of others'. Human rights, in short, are for those states who are not so perfectly fixed as the Netherlands are. It is a peculiar situation. Legally speaking, human rights law takes up a highly important position in the Dutch system, as judges turn directly to applicable international human rights provisions to ensure the legal protection of Dutch citizens due to their inability to review legislation against the constitution. However, in society and politics, human rights rarely function as arguments or talking points.

Moreover, classical Dutch historical scholarship has echoed this narrative and has been primarily focused on the place of human rights in foreign policy, a vision adopted in the 1970s by Dutch Foreign Minister Max van der Stoep. In doing so, the mainstream historical narrative of Dutch engagement with human rights is one in which these entitlements did not truly *matter* until the late seventies, when under the influence of broader geopolitical changes and the personal guidance of some idealistic individuals such as Van der Stoep, human rights were taken up as foreign policy objectives by the political establishment.

This is a narrative which fits very well in the broader international revisionist history of putting the 'breakthrough' of human rights late in the seventies, as a political language which could transcend cold war boundaries. Yet, whereas the international literature has now – with good reason – turned to problematize the presumed irrelevance of human rights *before* the seventies, the Dutch case has remained somewhat understudied so far. Interestingly, what emerges from examining human rights engagement before the 1970s in the Kingdom of the Netherlands are official anxieties about their emancipatory potential and their salience in metropolitan and extra-European circles at crucial junctures.

To recount but one episode illustrating this trend, we can recall the suggestion by Dutch international lawyer Jean Koster to exclude “indigenous members of the colonies” from the scope of the 1929 New York Declaration on International Human Rights adopted by the Institute of International Law. The Declaration became an emblematic instrument incorporating the main features of human rights law as we understand that field today. Unfortunately, Koster's suggestion that “it would be dangerous to admit [indigenous inhabitants] of the colonies to all public functions” would remain symptomatic for quite some time. His proposal, backed by his Belgian, French and Russian colleagues, helped cement the widespread view among European international lawyers that inhabitants of the colonies could not possibly be the addressees of the entire spectrum of human rights and their safeguards.

Decolonization and human rights: why it matters

We believe that it is precisely because human rights law has been harnessed to both emancipate and repress that this period deserves further scrutiny. For even despite the tireless work of many historians, Dutch experience with decolonization has still only scraped the surface, and, only recently, public debate has more generally come to experience a proper debate on the topic in relation to human rights. Colonial mass violence in Indonesia has for decades been consistently labeled as merely ‘excesses’ until the work of historians showed the systemic nature of that violence. Engagement with the past in Surinam, the Antilles or Aruba has often been treated as histories ‘elsewhere’, instead of forming part of a common historical narrative.

In particular, when it comes to human rights, the existing status quo holds some troubling connotations. It is too easy to set the period of decolonization aside as a time during which human rights simply ‘did not matter’. What such a narrative achieves, is to establish

an artificial separation between decolonization and human rights. Yet such an outcome deserves critical scrutiny. It threatens to maintain and cement the blind spots in our understanding of human rights, precisely where they deserve to be cleared up.

For one, these blind spots fail to capture the variety of voices claiming human rights in that period, *precisely* in the context of struggles for independence. In Indonesia, Surinam, and the Antilles, for instance, local actors engaged with human rights talk to further their claims. To shed light on those voices, and show how human rights meant different things to people outside the metropolitan Netherlands further opens up the discussion on the position human rights took in the various stages of decolonization.

Secondly, if one accepts the notion that human rights may not have figured prominently in courtrooms, a more fruitful approach is to wonder why that may be the case. Usually, that is because human rights provisions were actively designed not to matter. If one focuses on migration for instance, the Dutch Government went to great lengths to keep human rights provisions, which would allow free movement from the overseas territories into the European Netherlands, from being binding onto the Kingdom, or, when they were, to discredit human rights claims from the territories. Paradoxically, the stock finding that human rights did not function so much in this period can very well be the result of the fact they mattered too much.

Finally, to bring decolonization into the picture isn't simply historical antiquarianism. Its absence in the discussion and narrative has very real consequences. As the Dutch preference to look at human rights norms as applying merely to the outside world persists, it remains connected to a refusal to look into the mirror. That denial may blind us to present-day injustices. In particular, when it comes to law, historical choices—contingent at the time—tend to become enshrined in what is later perceived as a neutral legal status quo. A recent [report](#) stressing the need to act upon the unequal protection of human rights in the Kingdom, in which Dutch citizens in overseas territories are granted a lower standard in human rights protection, can serve as a reminder of this situation.

On the importance of history

History, or a historical conscience, is therefore directly relevant for those engaging with the law. The study of history can, in particular when it comes to human rights, provide us with an [enlarged sense of possibility](#): what we have now is not self-evident. By engaging with the past, reflecting on how a legal system came to be and which roads were not taken along the way, one is simultaneously forced to reflect on how it could also have been different.

Decolonization offers a special context in that regard, and scholars have been [engaging](#) with its implications in the field of international law and its imperial origins. The links of this past to the human rights framework and its postcolonial avatars, however, has been more neglected in legal scholarship. As we begin to move beyond that silence, a much more diverse field emerges.

In the symposium, we have asked experts in their field to reflect on the position of human rights as they existed in the shadow of empire, their relation to decolonization and citizenship and their role in matters of migration and movement. By no means was this meant as a definitive account: rather, it serves as another step in trying to move the discussion forward in how the ghosts of the past still haunt our present.

Taken together, we believe they have provided a step in moving the discussion forward. By reintroducing forgotten voices and showing the blind spots of the prevailing approach, new visions enter the picture which not only provide historical nuance, but also force us to reflect on the continuity of historical choices.

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