Nação legal consciousness and its contribution to the seventeenth-century Dutch Republic debate on slavery and the slave trade

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The Seventeenth-Century Dutch Republic Legal & Theological Ideas On Slavery and the Slave Trade

"Natural law performed in the older days the function of a bridge between international and private law; it was the cover under which international law drew from the rich source of private, notably Roman law. In the days of the predominance of positivist tendencies it is *general jurisprudence* which is fulfilling this function"

(Lauterpacht 34-35).

The VOC and WIC Slave Trade —The Synod of Dordrecht—Cocceius and Voetius on Slavery and Slave Trade—The Law of Nations and Nature in the Dutch Republic—Dutch Trading Companies Punish Barbarians——Natural Law and Law of Nations Amid Slave Trade

5.1 Introduction

The previous chapters introduced the Iberian early modern legal, theological, and ideological debates concerning slavery and the slave trade. In Chapter 3 we discussed the so-called "Curse of *Ḥam*" theory and how Sephardic thought contributed to the theology of Johannes Cocceius and his followers. This chapter continues with the legal, political, theological, and ideological debate concerning slavery and slave trade within the seventeenth-century Dutch Republic. Each with their own interests, Sephardim and Moderate Calvinists constructed arguments in such a manner that they were accepted by the authorities in the port cities of Holland, Friesland, and Zeeland (Ribeiro da Silva "Crossing Empires"; Postma 9; Schorsch, "Revisting Blackness"). Dutch merchants and stakeholders of the WIC became involved in international trade and realized that they could make huge profits through slave labor and slave trading. The heart of the matter is how merchants and companies operating from Amsterdam and the Republic justified these institutions legally in order to continue to amass wealth.

The aim of this chapter will be to reconstruct the debate on slavery and slave trade, in order to understand how the *Nação* intervenes within the dimensions of theology and law (Chapters 6 and 7). When pro-slavery jurists synthesize their arguments with Cocceian theology, the result is that the political and economic elite have a moral and legal support to work with.

This chapter sets the moral and political stage of the *Nação,* as the "other within" the Dutch Republic slavery and slave trade debate. In general, Portuguese Jews in Amsterdam kept to themselves, being barred from theological and political discussions with the host Protestant communities, with the exception of a few rabbis from *Eẓ Ḥaim*.

A number of scholars have discussed the material and doctrinal contributions of the Dutch in the practice of overseas slavery and slave trade. Ernst van den Boogaart and Pieter Emmer argue "from the notarial archives in Amsterdam it can be shown that Dutch skippers participated in the slave trade to Europe and America on behalf of merchants in Lisbon and Portuguese Jews in the Netherlands" (Boogaart and Emmer 354). Cátia Antunes and Felipa Ribeiro da Silva have confirmed this in their analysis of the Amsterdam municipal archives ("Amsterdam Merchants in the Slave Trade and African Commerce" 3). Marcus Vink asserts that the "Dutch were active participants in the Atlantic and Indian Ocean slave trades" and "for nearly two centuries they were the 'nexus of an enormous slave trade, the most expansive of its kind in the history of Southeast Asia'" ("Freedom and Slavery" 20).

East Indies slavery led to theological debates within the Dutch Republic over the morality of slave trade, requiring the Synod of Dordrecht in 1618. After the establishment of the Dutch West India Company [WIC] in 1621 and the systematic enslavement and trafficking of Africans, the Dutch Republic was torn over the morality of the Atlantic Ocean and Indian Ocean slave trades. Marcus Vink puts forward that "slavery was part of a larger conflict between orthodox and moderate Calvinists or Voetians and Cocceians" ("A Work of Compassion" 3).

Despite the plethora of historical research on the involvement of the Dutch brokers, merchants, and sailors in slave trade, there is a lacuna when it comes to the legal history of

slavery and slave trade in the seventeenth century. Jean Allain puts forward that Cornelius Bynkershoek was the first jurist to acknowledge that the Dutch practiced slavery and participated in slave trading (“Slavery in International Law 49). Since Bynkershoek was active toward the end of the seventeenth century and the beginning of the eighteenth, this implies that Dutch jurists before him either did not address overseas slave trade or that the matter has not been seriously investigated. Seymour and Paul Finkelman maintain that even though slavery had long ceased to exist in northern Europe before the overseas colonial ventures of the seventeenth century, “northern European political, legal, and religious authorities offered no sustained opposition to overseas slaving or slave holding” and that Holland provided charters for trade and colonizing companies to draft legal codes to meet their circumstances overseas (“African and American Slavery” 896-97).

Before the Synod of Dordrecht (1618) there was no legal nor theological stance on the practice of slavery and slave trade within the United Dutch Provinces. Time after time, merchants came into the different port cities of the Dutch Republic with slaves, which caused much upheaval. The consensus understood that slavery was not practiced in the Netherlands due to the "free soil" tradition. However, the activities of the VOC and WIC thereafter, challenge this consensus. By the 1630s, the WIC grants charters allowing slave trade in New Amsterdam.

One of the most influential Dutch jurists in international law and relations in the seventeenth century was Hugo de Groot (1583 – 1645). Even though he was against the idea of early modern-humanist re-workings of Aristotle’s theory of natural slavery, his legal theories could have been used by later jurists to construct pro-slavery arguments. Cultural historian David B. Davis (1927–2019) posited that Grotius’ intimate knowledge of classical authorities “could

also be turned to a secular defense of slavery at a time when the prosperity of Holland was closely linked to the African trade" ("The Problem of Slavery" 114). Davis argues that Grotius accepted *servitus* to be in harmony with *ius naturale*. In agreement with Davis, John Cairns holds "what Grotius had provided in his *De Iure Belli Ac Pacis* was an ideological support for the institution of slavery that was becoming important to the economies of the maritime colonial powers" (201). This provision was his conception of *servitus in ius naturale* [perpetual servitude]. This is discussed in detail in Section 5.4.

Even though Grotius did not produce a pro-slavery nor an anti-slavery treatise on behalf of the VOC nor the WIC, other Dutch jurists certainly constructed pro-slavery arguments by mobilizing his conceptions. Pieter Emmer maintains "Grotius did highlight a problem: Africa and the Netherlands were not at war with each other, so the Dutch slave trade appeared to lack any legal justification" (Emmer13-14). Since the legal discourse of enslavement was based on the parameters of *jus bellum* [just war], the lack thereof leads to the logical conclusion that there were other factors at play.

While there exists some discussion on how the legal conceptions of Hugo Grotius relate to mercantilist endeavors of the VOC, there is little to no discourse on how the institution of slavery in the Indian Ocean and the Atlantic slave trade shaped seventeenth-century Dutch legal thought. This chapter aims to lay the foundations for this study. Building on Marcus Vink's narrative on the Cocceian-Voetian slavery and slave trade debate, I add the legal dimension, bringing Vink's work into conversation with the legal discussions at the time. Accordingly, I will argue that the legal conception of the law of nations and nature, as espoused by Alberico Gentili (1552–1608) represented the convention at the time among Protestant humanist scholars, yet

underwent a transformation, whereby private entities were permitted to exercise public authority on behalf of the Dutch Republic. This permitted those with interests in the VOC and WIC to acquire slaves and trade them under the pretense of *just war*. Building on Gentili, Grotius [pre-1621] mobilized notions of *just war*, natural law, and property to grant the VOC [a private company] to exercise public authority [in the name of the Dutch Republic]. Thereafter, other jurists constructed legal arguments for overseas slavery and slave trade on the same grounds.

Section 5.2 constructs a narrative which details the participation of Dutch and Sephardic merchants in slave trade, as introduced in Chapter 1. Section 5.3 introduces the political-religious debate, bringing to the forefront the debate between Johannes Cocceius (1603 – 1669) and Gisbertus Voetius (1589 – 1676), the role of the "Curse of *Ḥam*" myth, and their respective schools of thought on the slave trading activities of the Dutch East India Company [VOC] and Dutch West India Company [WIC]. Therein, an analysis of a few sermons and letters build the context concerning the theological justifications for and against slavery. Afterwards, I discuss how these justifications informed the legal discourse at the time.

Section 5.4 details how *dominium*, *potestas* and *libertas* were understood by Dutch jurists. This is vital to reconstruct the intellectual context within which *Nação* legal consciousness developed. Overall, as introduced in Chapter 1, I argue that Dutch Christian merchants, together with *Nação* merchants, created business partnerships to promote trade between the United Provinces, Africa, and the Indies. In doing so, they shared theological and legal ideas regarding slavery and the slave trade. In order to substantiate this claim, I will piece together the seventeenth-century Dutch Republic theological and legal debates on slavery and slave trade. By applying the Cambridge School method of intellectual history as set out in

sections 1.4, this chapter includes an examination of the linguistic conventions and argumentations used by seventeenth-century Dutch traders, theologians, and jurists. The goal is to understand how *dominium*, *servitus*, and *libertas* were used in order to circumvent and change the established conventions.

Section 5.5 examines the legal debate of *ius naturae et gentium* and *servitus* in a *just war*, through the lens of Hugo de Groot, Willem de Groot (1597 – 1662), Ulrich Huber (1636 – 1694), and Cornelius van Bynkershoek (1673 – 1743). I limited myself to study the writings of these four because they highlight the change and mobilization of legal conceptions and conventions throughout the seventeenth century. How was the VOC to deal with prisoners of war in the East Indies? How did the WIC become involved in the Atlantic trade, without a *just war* against West Africans? How could there be an acceptance of selling and buying humans created in the "image of God" as *res* [anything which is the object of a legal act, i.e. property]? In order to contextualize this question, I reconstruct a limited political-religious debate surrounding the establishment of the VOC and the WIC. In general, this chapter discusses the ideological, theological, and legal context for the slave trading activities of the Dutch and the *Nação* in the seventeenth-century.

5.2 Slavery and Slave Trade Through the VOC and the WIC

During the seventeenth-century Dutch Republic, merchants from north Netherlands discovered goods from Asia, Africa, and the Americas, and brought them back home to consume, trade, and export. In the mid-1590's, Philipp II of Spain [Castille and Aragon] lifted the embargo on the Dutch in the East Indies. Shortly thereafter, Portuguese *conversos*, specializing in

importing East Indies commodities from Lisbon, began arriving in Rotterdam, Middelburg, and Amsterdam.

After the publication of *Itinerario* (1596), many Dutch merchants gained knowledge of commodities, routes, and conditions in the East Indies. *Itinerario* is a report of the journey of Dutch merchant, trader, and historian, Jan Huyghen van Linschoten (1563 – 1611), which he undertook from Lisbon to Goa and back. It encompasses information on many countries in the region, especially on Goa itself, its milieu, the state of affairs in Portuguese India, and valuable details on regions unknown to most Europeans.

Already in 1599 there were no fewer than eight companies specializing in East Indies traffic to Holland and Zeeland (Israel, "European Jewry in the Ages of Mercantilism" 320). The States General and Estates of Zeeland made agreements with the merchants in the form of a charter in 1602 (322). The *Verenigde Oostindische Compagnie* [VOC] was born amid the frantic trade activity between the Spice Islands, Java, and Holland. Portuguese Jews were vital in helping Dutch brokers and traders in the East Indies since they had knowledge and access to networks in those regions (Bloom 33). Herbert Bloom (1922 – 1989) asserts "These patrician traders [Dutch East India Company], with Eastern goods at their door, first utilized Jews as their mentors in international business. Having learnt their methods and established connections, they then forced them into relatively subordinate positions, employing vast monetary resources to gain control of the trade" (Bloom 33). Undoubtedly, Sephardim and Dutch Christians shared resources in international trade.

The Dutch did not wage a defensive war against the Portuguese to secure either their homeland or existing trade patterns. They waged an offensive war, with the goal of opening up

trade routes and to accumulate wealth (Tuck, "Rights of War and Peace" 79-82). Charles Henry Alexandrowicz generated quite some scholarship in the recent years after publishing his *Introduction to the History of Law of Nations in the East Indies* (1967). Therein, he asserts that historians have often overlooked one aspect of the problem of the establishment of Corporate Sovereignty in the East Indies. While respective armies were battling in the Indian Ocean, jurists were back home developing legal theories in order to protect their overseas political-economic interests.

Alexandrowicz maintains that Grotius formulated the doctrine of *mare liberum* [open seas] on this account ("Treaty and Diplomatic Relations" 44). Grotius produced *Mare Liberum* at the probable request of the VOC, as a chapter with *De Iure Praedae* (Ittersum "Mare Liberum" 60). Essentially, Grotius agreeing with de Vitoria, argued that every nation had the right of free access to other nations and trade with them, based on the primary law of nations [secondary natural law]. Contrary to Grotius' theory, Portuguese jurist, Franciscus Seraphin de Freitas, argued that primary and secondary natural law or law of nations were artificial divisions (Alexandrowicz, "Freitas versus Grotius" 165). This difference is crucial since many jurists at the time separated *ius gentium* from *ius naturale*. As such, Seraphin de Freitas argued that the claim to free access to lands and seas was not based on natural law principles, but agreements in accordance with the law of nations.

Of utmost importance to the VOC was the Roman-Dutch notion of *pacta sunt servanda,* meaning that all agreements in the form of a contract were written in stone (Alexandrowicz, "Treaty and Diplomatic Relations" 203-21).[6] The issue at stake for Iberian scholastics and

[6] Peter Borschberg argues similarly in "Hugo Grotius, the Portuguese and 'Free Trade' in the East Indies."

Grotius was what constituted grounds for *just war*? As such, if a violation of the natural law of nations resulted in a *just war*, then the Dutch could defend their right to navigate freely in the Indian Ocean. Ultimately, in establishing the basis of a violation of natural law [The natural *right* to free trade and free sea] for a *just war* against the Portuguese, the VOC justified its *right* not only to secure trading routes, but also to all prize belonging to them, i.e. slaves and slave markets.

The Dutch privateering of Portuguese ships in the East Indies, and the battle over territories thereof, through the activities of the VOC, often yielded prisoners of war, and thereby, enslaved peoples (Boogaart and Emmer 355-56). Marcus Vink holds that already by the end of the sixteenth century, Dutch explorers "took over and interacted with preexisting systems of slavery dependency" in the Indian Ocean ("The World's Oldest Trade" 149). Thus, the arrival of the VOC in the East Indies early in the seventeenth century ushered greater slave trade therein between Dutch and Asian merchants.

Slaves in the Indian Ocean slave trade were *true* slaves, either recently captured and sold in *open systems*, or in *closed systems* of slavery (Reid 1463; Watson, "Asian and African Systems of Slavery" 9-13). Leland Donald explains:

> Open systems of slavery (which are common in Africa but found elsewhere as well) are characterized by the gradual absorption of slaves into the kinship and family system of their masters…Closed systems of slavery (which are common in Asia but found elsewhere as well) are characterized by the failure of slaves to be absorbed or adopted

> into the family or kinship unit of the master…The only way out of slavery is by formal emancipation (100).

The VOC transported Asian and African slaves workers as domestic servants, artisans, and laborers from their base in Batavia, Malacca, at the plantations in eastern Indonesia, at their stations in coastal Sri Lanka, and its settlement at the Cape of Good Hope (Allen 9). Sephardic Jews generally practiced open systems of slavery everywhere they went, until the establishment of plantation slave economies in the colonies (see infra sections 6.3 and 6.4).

Richard Allen explains the VOC's hegemony in the Indian Ocean and how Asians were absorbed into systems of slavery:

> Political strife and warfare produced many of the slaves shipped from India's Coromandel Coast by the Dutch during several of the export "booms" that occurred during the seventeenth century, while warfare and endemic raiding generated a steady supply of slaves from stateless societies in the Indonesian archipelago following the VOC's destruction of the powerful sultanate of Makassar in the late 1660s. Famine, whether the product of natural forces such as drought or flooding or the by-product of political strife and warfare, forced many desperate Indian men and women to sell their children, if not themselves, into slavery in order to stay alive. Debt was the single most important factor behind enslavement in Southeast Asia (Allen 12).

One could agree that the main source of enslavement in the Indian Ocean basin was due to warfare between local parties and Europeans against the locals.

The Protestant Reformation opened the door to a different way of serving God and interpreting the Bible than Catholicism (Witte, "Law and Protestantism" 35; Witte, "From Gospel to Law"). As Protestant theologians took it upon themselves to translate the Bible into the vernacular of the respective European languages, new groups sprang up—Lutherans, Calvinists, Anabaptists, Mennonites, Baptists, Moravians, and more (DePrater 117). Each scholar or theologian claimed to have found the *present truth*, i.e., a belief in truth as appropriate to any given time. After the Protestant Reformation, more opportunities were granted for Protestant Christian movements to develop themselves into political-religious entities across the European continent (McGrath 1).

Throughout the Dutch Republic, tensions between Gomarists and Arminians were felt (1608 – 1618). Already by the seventeenth century, there were several Dutch versions of Scripture. In order to arrive at a common ground, a group of theologians decided to gather at the Synod of Dordrecht (1618). One of the themes was the lack of an authorized "States" Bible. Thus, they agreed to provide a new, authoritative translation of the Bible from the Hebrew, Aramaic, and Greek into Dutch. This task was handed over to six chief translators (Israel, "The Dutch Republic" 461). After 180 sessions, in June 1619, the thirty-one Dutch and twenty-eight foreign theologians assembled at Dordrecht, finalized their deliberations and received the approval of the Dutch States General, and provincial councils, for their resolutions (462). One of the main issues was how to translate the Hebrew word for servant/slave into Dutch in specific passages by which East Indies slavery could be legitimized on biblical grounds.

In the context of this thesis, one of the main questions raised at the Synod of Dordrecht was "Did the baptism of a slave lead to his or her manumission?" The answer to this question did not only affect Dutch Christians, but also affected the policy for manumissions within the *Nação* community in Amsterdam and abroad [section 6.4]. One of the biggest fears of Dutch colonists was that they would have to manumit their slaves upon baptizing them to the Christian faith (Klein 146). According to VOC policy, slaves born in the household had to be baptized within eight days (Brana-Shute and Randy Sparks 104). On the one hand, the Reformed Church taught that colonialism and slavery was a pathway for the heathens to be saved and experience the grace of God. Furthermore, the Reformed Church held that baptism was the sign by which God seals his covenant with children of believers (Tjondrowardojo 135). On the other hand, some theologians taught that heathens could only approach grace in this lifetime, and only be saved in the next. Consequently, slaveholders had mixed feelings between sharing the gospel of Christ, while maintaining their coreligionists enslaved to them (Brana-Shute and Randy Sparks 104)).

At the Synod of Dordrecht, theologians debated on whether slaves should be baptized, integrated into the master's family, and then freed (Elbourne 113). There were at least eighteen opinions put forward by Reformed Church authorities, concerning the decision to baptize the enslaved offspring of heathen parents. The Reformed Church authorities left this responsibility to the household head (*ibid*). Others declared that baptized slaves must be freed, and if the slave owner failed to do so, he could not sell the slave outside of the household to which he or she had been born (Mason 184).

One of the foreign theologians participating in the Synod was Giovanni Diodate (1603), who had authored an Italian translation of the Bible argued:

> There is no objection to baptizing those [slaves] who are well-educated and have free choice and are capable of professing the Christian faith. However, two thing must be observed—they must answer not only from some booklet, but according to their own opinion, therefore one ought to give them sufficient time for education than to expose the sacred sacrament to desecration; here is the same requirement, which the apostle states in regard to attending the Lord's supper; these baptized must enjoy the same political freedom as the other Christians, and one ought to take care as much as possible to keep them from the danger of straying away, by prohibiting them from being sold and estranged. They must not be regarded as slaves but as workers by their lords as well as other Christians (Jaajan 355).

According to the Africana studies historian, Graham R. Hodges (1952–2003), Diodate's declaration influenced "Dutch opinion and judicial action and effectively disallowed slavery in Holland" ("Slavery and Freedom" 36). If truth be told, it was already prohibited before Diodate's declaration, only that he reinforced what was already understood in previous centuries, i.e. that there is no slavery in the Netherlands. Essentially, this meant that slaves brought to the United Provinces were automatically emancipated [the "free soil" tradition]. Furthermore, the delegates to the Synod from South Holland did condemn baptism for enslaved children on the basis that they did not wish to emulate the Roman Catholic Church (Krauth 32).

Attesting to the baptism of enslaved West African children by Catholic priests, Dominican friar, Tomás de Mercado (1525 – 1575) denounced the way in which the Portuguese

conducted the trade and the brutality meted out to the enslaved. He thereby found it difficult to accept reports of mass slave baptisms at embarkation on the West African coast with the humiliation to which these new-born Christians were put through on their arrival in Spain (Russel-Wood 35). Evidently, the Portuguese had the custom of converting enslaved Africans *en masse* at the West African ports. In conclusion to this issue, the Protestant theologians declared at the twenty-first meeting of the Synod [Dec. 5], that those children who had reached a certain age and who had been confiscated from their heathen parents during war, without consent, adopted by Dutch Christians, and either used or bought, could return to their pagan customs at any time (Donner and van der Hoorn 44).

In consequence, there was no formal position established on whether slaves born in Reformed Christian households outside Europe should be baptized or not; the discretion was left to the head of household (Blackburn 64). This implied a loophole wherein Dutch Christians overseas could enslave Asian peoples and decide whether they wanted to introduce their slaves into the Christian fold or not. Despite the nonexistence of an official resolution on the matter between baptism and slavery, "Protestant theologians [Cocceians] agreed that slaves should be encouraged to convert to Protestant Christianity and be educated" (Gerbner 23).

Had it been decreed that the enslaved were to be freed upon baptism, then it would have discouraged slaveholders to baptize them (*ibid*). In contrast to Giovanni Diodate's discretion on the political freedom of Asian slaves, the majority of the Synod delegates agreed that the power of decision was left in the hands of the slave owner to buy, sell, convert, or manumit the enslaved. The Synod of Dordrecht resolution set the moral and legal context for the slaving activities of the WIC thereafter.

Between 1609 and 1621, Dutch traders "handled about half of the sugar exports from Portuguese Brazil" (Emmer 731). Crucial to the Dutch-Brazilian trade were the *tangomãos* or *lançados* [Eurafrican traders. Many of them were the offspring of Portuguese Jewish merchants and African mothers, who were integrated into the Jewish people] that were brought by Sephardic merchants from Africa to the Netherlands to be trained as interpreters (Boogaart and Emmer 354). Their knowledge of Dutch and African languages facilitated the trade relations with the WIC.

Because the production of sugar requires so much labor, the importation of slaves was crucial to the business. After the expiration of the Twelve Year Truce (1621), States General granted a group of shareholders of the VOC the charter for the *Westindische Compagnie* [WIC] (Blanken 2). The board consisted of nineteen members known as the *Heeren* XIX, with established chambers in Amsterdam, Hoorn, Rotterdam, Groningen, and Middelburg. The chambers in Amsterdam and Middelburg contributed more financially than the others (Blanken 23-24).

When discussing the involvement of the Dutch Republic in the Atlantic slave trade, some raise the argument, "well those were the times, people didn't know any better" (Korgen 40-44). Contrary to that opinion, the establishment of the WIC charter did not go without an outcry. When a considerable number of merchants initially expressed a desire to transport African slaves to Brazil, the WIC's board of directors set up a committee to consider the moral overtones of the slave trade and report back to the board (Emmer, "The History of the Dutch Slave Trade" 732). According to Peter Emmer, the committee which had been appointed by the WIC board in 1623, to look into the matter of the slave trade from Angola, advised negatively, meaning that slave

trade should not be practiced in West Africa (*ibid*). The board of directors raised the issue, "It appears that this trade ought not to be practiced by Christians" (*ibid*). Unfortunately, the minutes detailing the discussions of the committee on the matter have not been found.

Willem Usselincx (1567 – 1647) from Antwerp who had lived in Middelburg since 1591, was the man who tried to promote the establishment of the WIC. Part of his vision was to establish colonies in the Americas where slavery would not be allowed. The colonists were to till the ground and in return receive manufactured articles from Holland in exchange for their agricultural products (Bloom 124). Despite the initial outcry, WIC ships transported over 15,000 sub-Saharan slaves to Pernambuco between 1620 and 1623.

In order to increase profits, the WIC felt compelled to secure its own slave port on the African coast, taking it from Portuguese possession. The first slave-related voyage to the Congo region took place that same year when the Dutch sent the vessel *Nassau* to Angola, including 200 pair of handcuffs (ARA OWIC 23 fol. 763v Minutes of Zeeland Chamber 12 November 1637). After several attempts, in 1637, under the guidance of Captain Johan Maurits, the WIC was successful in capturing the West African slave port, São Jorge d'Elmina. Four years later, they also captured São Paulo de Luanda on the Angolan Coast.

After the capturing of these two ports, over 23,000 sub-Saharan African slaves were brought over on Dutch slavers (1637–1645) (Emmer, "The History of the Dutch Slave Trade" 732). In 1641, Frans van Capelle discussed the morality of the slave trade in a few lines in a report on the Congo. According to him, it could be only beneficial to the heathen to be brought to a country where they could become acquainted with the Word of the Lord (Boogaart and Emmer 356). After many dialogues with the king of Congo, Van Capelle was not successful in

converting him to Christianity (Heywood and Thorton 207). In fact, Christianity did not take hold until 1667, when the missionary Bernardo Ungaro managed to convert the king and thousands of his subjects (*ibid*).

Although the minutes of the initial WIC committee have been lost, and its recommendations remain unknown, the outcome speaks for itself—economic pursuits overruled all moral considerations of the odious trade (Emmer, "The Dutch Slave Trade" 13-14; Selderhuis 355). Also, the numbers speak for themselves. Captain Maurits' 1637 budget for the expedition between West Africa and Brazil demonstrates as follows (Emmer, "The History of the Dutch Slave Trade 732):

15,000 blacks to be purchased at f50 each	f 750,000
Victuals for 6 months at f15 per month	f 405,000
30 ships for transportation at f10,000	f 300,000
Possible losses: 1,000 blacks at f300 each	f 300,000
1,500 men, soldiers, ammunition, etc	f 1,755,000
	f 582,000
Sold at f300 a piece	—f 2,337,000
	f 4,500,000
Net profit for the Company	f 2,163,000

This calculation reveals that slave trading was a lucrative business at the beginning of the Dutch involvement. Another strategy of the Dutch was to build a large slave prison on the Angolan Coast, in order to avoid loss of time and slaves after their purchase (Emmer, "The History of the Dutch Slave Trade" 732). After the WIC captured the two Portuguese slave ports in West Africa, the Dutch were able to secure the slave trade monopoly between West Africa, the Americas, and Europe. The WIC charter ultimately divided Dutch theologians even more.

5.3 The Voetian-Cocceian Slavery and Slave Trade Debate

One of the notions at the heart of Dutch ethos was freedom from biblical slavery. In the 1610s the first preachers traveled with the VOC to the Moluccan Islands, under the leadership of Company governors: Pieter Both, Gerard Rynst, Laurens Reael, and Jan Pieterszoon Coen (Parker 204). The synthesis of public authority and private force was conducive to the development of the slave trade (Davis, "The Problem of Slavery" 110; Wilson 222; Koskenniemi, "International Law and Empire" 12). Even though all Reformed churches overseas accepted the provisions of the Synod of Dordt, they were modified by local church orders or the leaders of the respective Companies (204).

The focal point of this section will be the slavery and slave trade debate between the schools of Johannes Cocceius and Gisbertus Voetius. Prior to that debate, Festus Hommius (1576 – 1642) a Leiden educated theologian siding with Franciscus Gomarus, expanded the Eighth Commandment from the Decalogue [regarding theft] in his *Het Schat-boeck der Verclaringhen Over de Catechismus* (1617) ("Thou shalt not steal" *Common English Bible*, Exo.

20:15). He argued that the practice of slavery is a form of stealing, punishable by the government, based on the verse, "He who kidnaps a man and sells him, or if he is found in his hand, shall surely be put to death" (*Common English Bible*, Exo. 21:16).

Furthermore, Hommius condemned those who abducted free persons and sold them into slavery, based on the passage:

> But we know that the law *is* good if one uses it lawfully, knowing this: that the law is not made for a righteous person, but for *the* lawless and insubordinate, for *the* ungodly and for sinners, for *the* unholy and profane, for murderers of fathers and murderers of mothers, for manslayers, for fornicators, for sodomites, for kidnappers, for liars, for perjurers, and if there is any other thing that is contrary to sound doctrine, according to the glorious gospel of the blessed God which was committed to my trust (Common English Bible, Tim. 18-11).

The argument here is that the enslavement and trade of humans deprives them of their most precious possession, i.e. natural freedom, and that it is not proper Christian attitude. So, humans cannot be equated with *res* [property] because they have been created in the *Imago Dei*, possessing free-will. Thus, according to Hommius, the gospel of Christ cannot be reconciled with slavery and slave trade.

This section reconstructs the theological context in the seventeenth-century Dutch Republic surrounding slavery and the slave trade. Here, I argue that the theological premises of Johannes Cocceius gained prominence among the political-economic Dutch Republic elite,

thereby providing a psychological cushion for Dutch traders and investors to enslave and to traffic human beings. To that effect, this section analyzes the sermons and writings of the respective theologians and their followers which have been translated from old Dutch to English by Marcus Vink ("A Work of Compassion"; "The World's Oldest Trade"). The focus is on the theological notions: theft in the Decalogue, the Curse of *Ḥam* and Canaan, *Regnum Dei,* and paying for the sins of one's parents. In this analysis, I discuss the notions of racial difference construction through the "Curse of *Ḥam*" myth, as justifications used by pro-slavery theologians, and the arguments of anti-slavery theologians.

The participation of the *Nação* in the odious trade was crucial, being that they had established trade networks throughout the world about a century before the Dutch got involved and already taken a moral stance on the issue. When Cocceius and other Dutch Hebraists encountered Sephardic thought and classic rabbinic literature, they were then able to construct theological arguments in favor of slavery and the slave trade with the help of Sephardic notions of *halakhic* slavery (to be discussed in Chapter 6). While much of the wealth produced by Dutch colonists was acquired through slave labor in the sugar cane production in Brazil, not everyone in the United Provinces agreed with the institution of slavery and the slave trade.

In the mid-seventeenth century a religious debate erupted over the slave trading activities of the VOC and the WIC. It involved the followers of Gisbertus Voetius (Orthodox Calvinists) and Johannes Cocceius (Moderate Calvinists). Disagreements between the respective parties lead to the so-called Cocceian-Voetian controversy. While the students of the Cocceius saw slavery in the East and West Indies as a work of compassion, the students of the Voetius viewed slavery as a

grave sin, deserving divine condemnation. The debate pivoted around the eighth commandment of the Decalogue ("Thou shalt not steal" *Common English Bible*, Exo. 20:15).

Voetius and his followers were influenced by English and Scottish Puritans. They believed that the Reformed Church doctrines were the key to the interpretation of the Scriptures (Vink, "A Work of Compassion" 3). They rejected a rationalized Calvinism, embracing the *praxis pietatis* lifestyle. The practical piety lifestyle was based on medieval penance and the puritan regiment which instilled systematic discipline into every aspect of society. It was characterized by the Church serving individuals, and not the other way around (Sanneh and McClymond 527). The Counter-Remonstrants [Gomarians] and the Voetians preached the independence of the Church free from state interference and its role in politics. To a large extent, Voetians represented a continuation of the Gomarians, opposing Erasmian philosophy and the toleration for non-Dutch Reformed Protestants. Therefore, they opposed the subordination of the Reformed Church in the Dutch Republic and the overseas world to secular authorities (Vink, "A Work of Compassion" 52). The Voetian preachers: Jacobus Hondius (1629 – 1691), Cornelius van Poudroyen (d.1662), and Georgius de Raad (1625 – 1677) argued that the trade in slaves was a grave sin, and a violation of the commandment of theft in the Decalogue, deserving the punishment and execution of death (Vink, "A Work of Compassion 3). They argued that enslavement implied the stripping of the divine image in humans, i.e. robbing them of their natural-born *freedom*.

Cocceius and his followers, on the other hand, were influenced by Cartesian philosophy, thereby rejecting a rigid and legalist interpretation of the Bible and confessional dogmatism of the Voetians. The Remonstrants and the Cocceians were politically tied to the merchant-regent

elite from the province of Holland (Wall, "Orthodoxy and Scepticism" 124). Cocceius' followers came from Remonstrants, holding dear the teachings of Erasmus and the acceptance of non-Dutch Reformed Protestants. Among seventeenth-century Dutch reformed preachers that defended the peculiar institution were: Johannes Cocceius, Godefridus Udemans (ca. 1581 – 1649), Johan Picardt (1600–1670), and Herman Witsius (1636 – 1708). These Cocceian preachers argued that the "Curse of *Ḥam* and Canaan" was in full effect, and that one's children and their descendants pay for the sins of their ancestors. In addition, a *just war* or a sale by one's parents legitimized slavery (Levecq "Jacobus Capitein"; Groenhuis 224; Schutte, "Bij het schemerlicth van hun tijd"; Vink, "A Work of Compassion").

The pivotal point of the Dutch theological debate on slavery and slave trading in the seventeenth-century depends on the position in interpreting the Bible. Sally Hadden asserts that the Bible provided justifications used by enslavers in the early modern period ("The Fragmented Laws of Slavery" 253-287). European political treatises, such as the *Commentary on the Book of Kings,* by Rabanus Maurus Magnentius (c. 780 – 856) and *De Republica Hebraeorum*, by Peter Cunaeus, utilized the Bible to establish the "law of the land," from the seventh to the seventeenth century (Somos 389).[7] This meant that the Bible, together with Greco-Roman law, was used as a basis for the *law of the land* throughout Europe (Lesaffer, "European Legal History" 265). Indeed, during the *Hebrew Republic* movement, Christians accepted the Hebrew Bible as a political constitution, which God designed on behalf of the children of Israel (Nelson 3).

As discussed in Chapter 3, the *Hebrew Republic* movement was able to flourish in the Netherlands, due to the intensive interaction between some Sephardic rabbis and theologians,

[7] For more details see Firey "The Scholastic turn" and Meens. "The uses of the Old Testament in Early Medieval Canon Law."

and Christian access to printed materials (*ibid*). At the time, a mark of good learning and common practice within the humanist discourse in the seventeenth century was to refer to classical Greek and Roman sources, as well as modern ones like Machiavelli and Bodin, the use of the Hebrew Bible or of Hellenized Jewish sources, more or less contemporary with the birth of Christianity, like Philo and Josephus (Haivry 117). Christian Hebraists in the province of Holland were students of Cocceius, thereby studying his works and whatever rabbinic literature they had access to. Under the influence of Sephardic thought, Cocceians interpreted the Bible in such a way that legitimized the practice of slavery.

Cocceius justified slavery on the basis that the biblical prohibition against thievery did not include slavery (Amponsah 435). Cocceius divided world history into two separate convenants—Old and New Testaments (Elphick and Davenport 18). He utilized the concept of *abrogatio* [abrogation] to reject every Old Testament practice which was not reaffirmed in the New Testament (Asselt 105). According to this understanding, since the New Testament sanctioned the Old Testament institution of slavery [1 Corithian 7:21; 1 Timothy 6:1-2; 1 Peter 2:18; Philemon 16; Ephesians 6:5-9; Colossians 3:22-24; Colossians 4:1; Titus 2:9-10] the death of Christ did not do away with it (Parker 201).

On the opposite side of the spectrum was Gisbertus Voetius, a proponent of orthodox Calvinism and pietism. After the death of Stadholder Willem II in 1650, orthodox Calvinists could no longer count on political support (W. Bunge 96). This led Voetius to initiate a movement called "Further Reformation," which argued in favor of *sacra scriptura* and *liber natura* [the literal interpretation and legalist precept of the Scriptures] (Stronks 5, 130). Voetius'

overall Christian philosophy was to reform oneself from sinning and having a personal relationship with God (Kaplan, "Reformation and the Practice of Toleration" 107).
This individual responsibility of transformation would usher in the Kingdom of God (*ibid*).

In general, Voetius emphasized spirituality above materialism (Rittgers and Evener 390). As such, he emphasized the natural equality of humans and repudiated the kidnapping of humans and their enslavement (Stamatov 88). He based his arguments on biblical texts: Exodus 20:2-17; Deuteronomy 5:6-21; Colossians 4:1; Ephesians 6:9; Philemon 1:8-22; Matthew 7:12 (Vink, "Freedom and Slavery" 32).

Cocceius' opinions gained prominence in the seventeenth century Dutch Republic among the political-economic circles of the port cities of Holland. Leiden professor and Hebraist, Constantijn L'Empereur [Refer to section 3.4] was Johan Maurits' counselor (Groesen 52). L'Empereur's knowledge of rabbinic texts and interpretations were used in constructing justifications in favor of slavery and the slave trade. Moreover, L'Empereur had direct contact with Amsterdam rabbi and diplomat, Menasseh b. Israel (Rooden, "Constantijn L'Empereur's Contacts with the Amsterdam Jews" 51). In their correspondences, they discuss Menasseh's Latin works, especially the *Conciliator,* which includes notions of *just war* and enslavement. (Discussed in section 7.4). Menasseh met with other moderate Calvinists in the home of millenarian, Peter Serraius (Lloyd 47). During their meetings, they discussed the Messianic Age (*ibid*). Without a doubt, Leiden professors, Johannes Cocceius and Contantijn L'Empereur played vital roles in the theological aims of the WIC.

One of Cocceius' followers, Godefridus Udemans argued that the primary motive of overseas trade should be the expansion of the *Regnum Deo* [Kingdom of God] (Udemans "'t

Geestelyck Roer vant't Coopmans Schip"; Hodges, "Encyclopedia of African American History" 433). He maintained that the wealth in the Indies should only be a means for the proclamation of the gospel. He also claimed that trade was "sanctified" when merchants gave to the poor (Noorlander, "For the Maintenance of True Religion" 85). In addition, he claimed that enslavement was a life-saving act of Christian charity and human compassion (Vink, "A Work of Compassion 470).

Cocceius held that the Dutch were God's selected people, and like John Calvin, that spiritual freedom is superior to physical freedom (Calvin, "Institutes of the Christian Religion" Book IV, chap. 20,1). Cocceius asserts, "God set limits to this servitude and carefully ordered how beneficial these servants should be treated" (Heydelbergensis Catechesis 190). This moderate Dutch Calvinist pro-slavery reasoning was known as *christelijcke mededogentheyt* [Christian compassion]. This Christian humanist idea pervaded the Statutes of Batavia (1642). Therein, the States General ordered Christian slaveholders to treat their slaves with "civility, benevolence, and reasonableness, care for them like one's own children, and instruct them in the Christian religion in order that they might come to receive holy baptism" (Chijs I, 96-9).[8] Indeed, the Dutch slaveholders perceived themselves as saviors to unbelievers. In this sense, the seventeenth-century Dutch colonists were not any different than their Iberian counterparts.

The Christian humanitarian theme involved saving people from oppressive regimes and droughts, famines, and epidemics, in the wake of war. Governor Laurens Pit (1652 – 1663) and Council of Coromandel disclosed to the VOC directors in 1660 "It is indisputable that the purchase of these poor people is a work of compassion since they would otherwise perish, as

[8] For Statutes of Batavia of 1642 and 1766 and their amendments, see *Idem*, I, 572-6; IX, 572-92.

happens to those who are turned down" (VOC 1232, OBP 1661, fl. 383).[9] A few months later, Governor General Joan Maetsuycker and the Council of the Indies commented:

> Our intention is that the purchase [of slaves] will occur indiscriminately of both the elderly and the young, especially when they are members of a single family as is often the case. If we only accepted the young and turned down the old, the latter would perish, which we understand has already occurred often. This would not conform with Christian compassion, for to accept the children and leaving the parents to die in their presence, or to accept the men and turn down the women, would be harsh and, we fear, unacceptable to the Lord God (Missive Governor General Maetsuycker and Council of the Indies to Commissioner van Goens at Colombo, 4 Nov. 1660).

Whereas some Dutch theologians condemned the slave traders in the Indies, the merchant class generally justified slavery and slave trade by arguing that it was a Christian act of human kindness and that it promoted the establishment of God's kingdom. So, Dutch Christian slave traders justified slavery and slave trade as a means of establishing God's kingdom (Noorlander, "Heaven's Wrath" 169).

Voetian preacher Georgius de Raad, pressed his case against the merchant elite of Holland, Zeeland, and the directors of the East and West India Companies, stating, "Our country is sinking, and this sin, or rather innumerable injustices, which are occurring daily in the slave trade, may well be the heaviest ballast which will cause the ship to go down" ("*Bedenckingen*

[9] For more primary sources see Missive Governor Pit and Council of Coromandel to Gentlemen Seventeen, 9 Aug. 1660: VOC 884, BUB 1660, fl. 703.

over den Guineschen Slaef-handel" 2-3; 127; 133; 157-158; 182). De Raad alleged that sometimes the "poor pagans were lured to the ships and kidnapped against their will" (Vink, "A Work of Compassion" 469). Moreover, he criticized the cruelties that the enslaved suffer aboard the ships. His main argument was that enslaved peoples were fellow humans, created in the image of God. Thus, Georgius de Raad's thinking was motivated by the notion of *Imago Dei* (*ibid*).

To a similar degree, de Raad raised the same arguments as Fernando de Oliveira and Luis de Molina in the Iberian context [See section 4.4]. Fernando de Oliveira criticized Portugal's claims to territories, commercial exploitation, and the civilizing mission of the peoples therein. Luis de Molina opposed the selling of children on the basis that there was no just wars within the West African kingdoms, and to a lesser extent with Portugal. This is where the Iberian and Dutch discussions meet.

The next Voetian theologian to raise his voice against the peculiar trade was Cornelis van Poudroyen. He was from Utrecht and called for radical Christian action. In his *Catechisatie Over de Leere des Christelicken Catechismi,* he argues against every point and claim of the Cocceians and pro-slavery jurists before him (Vink, "A Work of Compassion" 3). His main argument is that parents cannot sell their children into slavery. This is a direct challenge to Grotius's legal reasoning that an impoverished father can sell his child, and that children of war captives can be sold into slavery ("The Law of War and Peace" 255-259; 690-691; 718; 761-769). Contrary to Grotius, Poudroyen maintained that people offering themselves for sale should be aided through charity and almsgiving, rather than enslavement:

> It is unbefitting for Christians to engage in this rough, insecure, confusing, dangerous, and unreasonable trade, adding to a person's troubles and being an executor of his torments. Instead, if one desire to bring forth good from evil, one should purchase him [the slave] in order to be manumitted and freed from such great servitude to cruel tyrants, and, if possible, instruct him in the Christian religion (993-95).[10]

Poudroyen's evaluation of the trade was deeply pessimistic and disparaging, equating it with evilness. He also highlighted the fact that in order for a slave to become a Christian, he must be manumitted first.

In 1679 Dutch Reformed minister Jacobus Hondius denounced slavery as a sin, in his alphabetical list of sins *Swart Register van Duysend Sonden* [Black List of a Thousand Sins] (Hodges "Encyclopedia of African American History" 433). He excepted no justification for slavery (Kennedy, "A Concise History of the Netherlands" 212). Accordingly, he held that Africans were humans and born in natural liberty as much as the Dutch (Hodges "Encyclopedia of African American History" 433). He also maintained that the fact that Jews, Turks, and Catholics practiced slave trading did not mean that Dutch Protestant Christians had to practice it as well (*ibid*). Overall, he decried the amassing of wealth of the leaders of the VOC and WIC through the suffering of enslaved peoples (Procter-Smith 126-27).

David B. Davis presents a paradox, "although bondage was sanctioned and taken for granted in the Old Testament, the central message and dynamic of the Hebrew Bible involves an *escape* from slavery and a forty-year struggle to find the meaning of freedom" ("Inhuman

[10] Cited in Schute 203-206; See also Vink, "*A Work of Compassion?*"

Bondage" 36). If so, how then did theologians make claims to justify the enslavement of peoples? Undeniably, the Bible and its interpretation was fundamental to the world-vision of the Dutch people, such that it set the political-religious context during the Cocceius-Voetius debate. On the one hand, the Voetians looked into the Bible and saw the unrighteousness of stealing human lives and enslaving them. Yet, on the other, the Cocceians saw in the Bible the legal precedents of the Hebrews in enslaving the Canaanites, because it was understood as a source of divine (voluntary) law (to be discussed at length in section 5.4). Surely, the place given to the Bible was fundamental to the Dutch world-vision in the early modern era, which shaped morality.

Theologian Joan Lockwood O'Donovan asserts that Genesis 1 and 2 was understood to lay the foundations of God's government and meta-commands to all of humanity through Adam. Essentially, the rational creature made in God's image exercises rulership over irrational creatures (O'Donovan 293; Fleteren and Schnaubelt 206; Erreygers and Cunliffe 24). While for some Dutch theologians, *black* Africans and Asians had the *imagine Dei*, others did not ascribe it to them. How did they lose the divine image? While correspondences between Sephardi and Dutch merchants on the morality of slave trading have yet to be found, in Chapter 3 we explored the rabbinic literature and the Sephardic classics that Cocceius and his followers studied and drew from (See section 3.4). Therein, they found rabbinic understandings of ambiguous biblical passages on the institution of slavery.

Most importantly, the Cocceains were connected to the merchant elite in the port cities of Amsterdam, Rotterdam, and Middelburg. The majority of the Companies' financial contributions came from these locations. Whereas the Voetians declared that God would reign through

individual reformation and piety, the Cocceians advocated in favor of the odious trade as a means to usher in God's kingdom. Although initially the WIC committee discussed whether they should engage in slave trade or not, the economic and political interests of the elite class overshadowed the Voetian minority. This is not to say that the WIC directors chose profits over piety. The WIC directors "clearly believed that they were doing God's work by attacking Catholic Spain, cutting off the resources that fed its war chest, and ending its reign of tyranny" (Noorlander 150). The Dutch participation in the systematic enslavement of peoples required the stripping away of their natural rights. The "Curse of *Ḥam*" was the vehicle utilized by the Cocceians to do just that [Refer to Chapter 3]. With the Bible as a source of divine (voluntary) law, the myth of the "Curse of *Ḥam*" contributed to the construction of racial difference that influenced legal consciousness.

In the seventeenth century, many Dutch citizens adopted the same negative attitudes toward *black* Africans that the Spanish had developed about a century before (Handler 237). Whereas the term "Moors" [*mooren*] was used in sixteenth-century Dutch municipal records to refer to dark-skinned Africans, the term "Negros" [*swarten*] became the term that the Dutch utilized to refer to a slave, or at least a person who could be enslaved (Zeeuws Archief, Middelburg: Archief van de Staten van Zeeland, Notulen boeken 15 November 1596; Handler 237, Ponte "De Swarten van de 17de EEUW"). Thus, if the descendants of the biblical *Ḥam* were divinely accursed, then they lack the natural condition of *freedom* which is granted to all humans (to be discussed in depth in the next section).

The amalgamation of Sephardic thought and Christian Hebraism harbored a new era for the Dutch Republic and its legal outlook on slave trade. Consequently, the ideas about the trading

activities of the VOC and the WIC steered morality in Amsterdam and the Republic in a direction that eased the conscience of slave traders, to the dismay of the powerless Voetian minority. Despite the disagreements among the Dutch clergy, historian Danny Noorlander puts forward that they generally supported the trading activities of the Companies, since the spread of Protestantism and the welfare of Reformed Church back at home depended on them ("For the Maintenance of True Religion 85). At the end of the day, what mattered most was the constant flow of money into the Church, at the expense of dehumanized souls overseas (86).

The debate between Cocceius and Voetius continued to the end of the seventeenth century by way of their followers. The position of Voetius represented the theological convention at the time, but the Cocceians had financial and political interests in the successes of the VOC and WIC. Consequently, the practice of slavery and slave trading required "innovative" use of legal concepts and legal reasoning to justify and legitimize illegal practices.

5.4 Seventeenth-Century Legal Slavery Debate in Amsterdam and the colonies: *Dominium*, *Servitus*, and *Libertas*

As mentioned in the introductory chapter, the Great Council of Mechelen had contributed to the notion of the "free soil" tradition, which granted *liberty* to any enslaved person arriving in the Netherlands. The "free soil" tradition emerged in the Netherlands during the Middle Ages, establishing important legal foundations for the stance against slavery therein. The Van der Hagen case challenged this notion when in 1596 a Dutch vessel arrived on the port of Middleburg with a group of over one-hundred African men, women, and children (see infra section 1.1).

Although the owner of the cargo expressed desire to set up a slave trade market therein, the local authorities declared the Africans free, and to be raised as devout Christians (Hondius, "Blackness in Western Europe" 87). Not happy with this ruling, Van der Hagen appealed to the States General in the Hague. He made a request to leave the crew in Portugal, and to transport the Africans to the Spanish West Indies. Initially, the States General denied his request. However, two weeks later, after having appealed a second time, he was granted the liberty to do as he pleased with his cargo of African slaves (Zeeuws Archief, Middelburg: Archief van de Staten van Zeeland, Notulen boeken 15 November 1596). It is difficult to accept the States General's decision, considering that the Great Council of Mechelen already had expressly decided in the sixteenth century that enslaved peoples entering the Low Countries were to be freed, regardless of religion (Verhaegen and Gachard 504-06).[11]

The Leuven professor, Petrus Gudelinus (1550 – 1619), mentions in his book the case of a Spanish merchant whose slave escaped from his possession, while on business in the Netherlands ("Commentariorum de iure novissimo" libre sex.1 :4). The owner of the fugitive slave had requested the Council of Mechelen to command its judges to detain and return the fugitive to his rightful owner. To the owner's dismay, the magistrates denied his petition because *servitus personarum* was not acknowledged as a lawful institution in the Netherlands. According to Gudelinus, the fugitive slave immediately became free *de iure,* even against the will of the owner [*invito domino*], when he entered a territory where slavery was not permitted. Legal historian, Filip Batselé, asserts that "municipal authorities and notaries were unconcerned about the pronouncement of the Great Council of Mechelen, or the nascent 'free soil tradition'"

[11] For the primary source see Grand Conseil de Justice des Pays-Bas à Malines, T. III, 376-379; "Inventaire des mémoriaux du Grand Conseil de Malines." Tome I: XIVe, XVe et XVIe siècles (Weissenbruch 41).

because there is evidence that confirms that slavery did indeed exist in sixteenth-century Antwerp (Batselé 84). Furthermore, he argues that jurists—Groenewegen van der Made (1613 – 1652), Clenardus (1495 – 1542), Molanus (1533–1585), Gudelinus (1550 – 1619)—contributed to the "free soil" idea in the sixteenth century, thereafter disseminating it throughout both the Spanish Netherlands and the United Provinces in the seventeenth century (82).

This section includes a contextualization and a reconstruction of what Dutch lawyers were doing when they used the notions—*dominium, servitus* and *libertas*, thereby contributing to new meanings thereof. This task entails an examination of the works of jurists: Hugo Grotius, Willem de Groot, Ulrich Huber, and Cornelius van Bynkershoek. I argue that the practice of slavery and the slave trade, and as well as the theological discussion concerning them, influenced how these legal concepts were utilized by jurists in order to provide legal justifications in their favor.

The idea of European enslavement of Africans and Asians stirred up legal debates within the seventeenth-century Dutch Republic. In contrast to the notion of the "free soil" tradition in the urban cities of the Netherlands, Willem de Groot maintained that the selling of one's children into slavery during a time of extreme necessity did not pose any challenge to the natural-born *freedom* granted by *ius naturale* (W. de Groot chap. 10). Despite the opposition to slavery from some within the Dutch Republic, the slave trading endeavors and profits of the VOC prevailed. This will be explained further in the following sections. Nonetheless, the VOC forbade slave owners to bring their slaves into the Netherlands in 1636 (Chijs I, 409). Thus, as long as the experience of slavery was not visible within the Netherlands, Dutch morality concerning it remained within the realms of the merchants, politicians, lawyers and theologians.

In the previous chapter I discussed how war captives became enslaved within the Iberian context. However, what legal justifications were used by Iberian humanists and Dutch private entities in order to continue slave trade, despite the absence of a *just war*? By revisiting the sixteenth-century Iberian debate on the law of nations and nature, Grotius theorized that the Dutch had a natural *right* to private property and to trade freely in any of the world's oceans. In other words, Grotius theorized that private trade companies could exercise public authority through the *rights* granted by natural law. In doing so, he provided a legal tool whereby constituents of the VOC and the WIC could enslave and traffic humans under the guise of *just war*.

Essentially, Grotius couched the law of nations on the principles of the natural law which de Vitoria and Vázquez had put forward. Building on Gentili, Grotius held that Roman jurisprudence could be applied in the extra-European world and between sovereign nations (Ittersum, "The Long Goodbye" 387; Pagden, "Gentili, Vitoria, and the Fabrication of a 'Natural Law of Nations'" 361). Most importantly, he conceived of a defensive *just war* theory based on the Natural Law. In *Mare Liberum*, Grotius constructs legal justifications for the VOC, against the monopoly of the Portuguese. Grotius theorized that private trade companies could exercise public authority through the *rights* granted by the natural law. Building on these notions, the Dutch States-General and West India Company lawyers make claims [*de iure*] against the

Spanish and Portuguese, thereby capturing their slave ports in West Africa (Heijer 69-73; Blanken 55).[12]

In *Hugo Grotius on "slavery,"* Gustaaf van Nifterik posits that Grotius' ambiguous use of language concerning *servitus* perhaps allows for the perpetuation of slave trade without the need of a *just war* ("Hugo Grotius on 'Slavery'" 233-43). He even goes as far to say that it might have been deliberate (233). Furthermore, he asserts "Grotius doesn't deal with the legal *persona* of the two types of slaves" (243). As a matter of fact, Grotius' *servitus in ius naturale* does not define if the master can sell the "perpetual servant" as property. Hugo Grotius writes extensively on *servitus* in his *De Iure Belli ac Pacis* [*DIBP*] (1625). He distinguishes between *servitus in ius naturale* and *servitus in ius gentium* [or *ius voluntarium*] (*ibid*).

Grotius disagrees with Aristotelian *servi* by nature "*Servi natura quiden, id est citra factum humanum aut primaevo naturae statu hominum nulli sunt*" (III,7,1). Thus, every human being has the *right* over his or her life, body, limbs, reputation, honor, and freedom to act (The Rights of War and Peace" II, 17, 2, 1).[13] However, a person can forfeit his natural *liberty* as either a punishment or by voluntary act, subjecting himself into *servitus*. In this type of agreement, the master provides the *servus* with food, shelter, and other necessities of life, in exchange for

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[12] For the primary source see Pamphlet Knuttel 9005, 'Afgedrongen en Welgefondeerde Tegen-Bericht Der Coninckliycke Deensche Geoctroyeerde Affricaansche Guineesche, en in de Hooft verstinghe Gluckstadt opgerichte Compagnie. Gestelt tegens. Die van de Hollandtsche West-Indische Compagnie, voor weynich tyts, onder den titul van een Remonstrantie, in opeenbaaren Druck gespargeerde, gantsch onwaarachtige Calumnien en valschen attentaten gemanifesteert, aan alle Weerelt ten ton gestelt, en krachtig gerefuteert werden. Aan die tot Deenemarcken Norweegen, der Wenden en Gotten Coninckliycke Mayesteyt, alderonderdanigst overgegen.' (Gluckstadt 1665), 27.

[13] The edition that I consulted is *The Rights of War and Peace, including the Law of Nature and of Nations,* translated from the Original Latin of Grotius, with Notes and Illustrations from Political and Legal Writers, by A.C. Campbell, A.M. with an Introduction by David J. Hill. M. Walter Dunne, 1901. For an in depth analysis on Grotius' Image Dei anthropology see Nijman, Janne. Grotius' *Imago Dei* Anthropology: Grounding *Ius Naturae et Gentium* in *International Law and Religion.*

perpetual services on his behalf. Grotius puts forward that although this form of *servitus* is not in itself natural, it is can be based according to the natural law and walk in harmony with it:

> *Servi natura quidem, id est citra factum humanum aut primaevo naturae statu hominum nulli sunt, ut et alibi diximus: quo sensu recte accipi potest quod a Iurisconsultis dictum est contra naturam esse hanc servitutem: ut tamen facto hominis, id est pactione aut delicto servitus originem acciperet, iustitiae naturali non repugnat, ut alibi quoque ostendimus*
>
> There are no humans that are by Nature slaves to others, that is, in his original state considered, independently of any human fact, as I have a said in another place; in which sense we may take the Jurists, when they say that enslavement is against Nature, but it is not repugnant to natural justice, that humans should become slaves by a human volition, that is, by Virtue of some Agreement, or in Consequence of some Crime, as we have also said already. (III, 7, 1, 1).

Grotius agrees with Fernando Vázquez that individuals "can be under servitude because they made such a contract…for those who sold themselves into servitude—having exchanged their *liberty* at will and for a price, they have abdicated their *right* in themselves permanently" (Brett, "Liberty, Right, and Nature" 195-96).

In chapter 4 we saw that Luis de Molina argued, contrary to Vázquez and Grotius, that an African who offered himself to others in perpetual servitude was not legally permitted to be

bought as property [*dominium*] on the slave markets ("Tractatus de Iustitia et de Iure" col. 189, E). While Luis de Molina did not agree that someone could relinquish his natural *liberty* to be sold into *slavery* and enslave his descendants *ad perpetuam,* Grotius maintained that a *servus in ius naturale* relinquished his or her rights to *freedom* (Hespanha 955;). According to de Molina, even in the presence of just wars in Africa, the Arab and European buyers did not certify that the slaves were true slaves. This leads me to think that many people were actually selling themselves and their children (Peabody, "Slavery, Freedom, and the Law in the Atlantic World" 604). If so, then Grotius' *servus in ius naturale* could serve as a legal justification for these cases.

Van Nifterik asserts that a better translation for this type of *servitus* is "perpetual service," rather than *slavery* ("Hugo Grotius on 'Slavery'" 236). This suggests that the contractual nature of the agreement is perpetually relevant. Why did Grotius need *servitus in ius naturale* [perpetual servitude] when he could provide *servitus* as in accordance with the law of nations? Slavery according to the law of nations requires a *just war*, whereas *perpetual servitude* according to the law of nature requires the voluntary handover of one's *liberty*.

Ultimately, Grotius' *servus in ius naturale* is the crux upon which the Dutch Atlantic slave trade stands. There was no true war in accordance with *ius gentium* between West Africans and the Dutch. Neither was there any record of WIC merchants and investors verifying the legal condition of African slaves upon purchase (*ius gentium*). However, due to poverty of condemned *criminals*, they sold themselves and their children to the Dutch (Emmer, "The Dutch Slave Trade" 12; Maluleke 56). As such, according to Grotius' conception of *servitus in ius naturale*, the *servi* relinquished their rights and freedoms *ad perpetuam*.

It is possible that the Protestant Dutch Reformed Church clergy convinced the *servi* that it was better for them to voluntarily give up rights to freedom, undergo baptism, and receive eternal bliss at the Resurrection. This would grant the *servi* an opportunity to escape from those seeking to kill them locally. In the Upper Guinea Coast in the late seventeenth century, a convicted commoner would clamor, "Señor, don't kill me, sell me for rum" (Peabody, "Slavery, Freedom, and the Law" 604). One could argue that those West Africans who accepted baptism, became voluntary slaves [*servi in ius naturale*] to their masters. What remains unclear is if as "perpetual servants" they could be sold legally and their descendants enslaved forever.

Grotius held that nature invests every individual with the *right* to punishment, an ancient *liberty* which remains in force where courts of justice are lacking (Koskenniemi, "Imagining the Rule of Law" 46). In doing so, he provided a justification for the VOC to exact punishment on the Portuguese in the East Indies. Poverty forced many Asians to sell themselves and their children into *slavery* to survive. In addition, slaves were part of the booty [law of nations] collected by the Dutch from the Portuguese in the East Indies.

In chapter seven of the third book of his *De Iure Belli ac Pacis* [DIBP], Grotius supplies the traditional justification for *servitus in ius gentium,* i.e. a captor has the right to make his *just war*-captive a *servus*. Thus, Grotius agrees that according to the law of nations, a master can transfer his *right* over the *servus*, in a similar way that he can transfer ownership of other property [*dominium*] ("The Rights of War and Peace" III, 7, 5, 2). This is what he calls *servitus vera*, i.e. a real right over the *servus*. Herein, Grotius agrees with de Vitoria's conception of *dominium*: lordship and sovereignty, in the same way that princes are called *domini*; owning

property, whether an object or a person; a right (Brett, "Liberty, Right, and Nature" 128-29). As such, this *right* belongs only to *rational* and *spiritual* beings. Janne Nijman asserts:

> Arminian *imago Dei* anthropology is foundational to Grotius' theory of the law of nature and nations in (at least) three ways…He saw God's image reflected in the natural human capacities of reason and free will, thanks to which humans are able to know natural law and justice, are able to reason, judge, and to make free choices on the basis of this knowledge…*imago Dei* has human beings live in a society and care for others (*appetitus societatis*)…Finally, from its creation in the image of God follows that humanity is called to represent God on earth and intrusted with the function of *dominium*
> ("Grotius' Image Dei Anthropology" 89).

That humans are created in the "image and likeness of God' served as the basis in Grotius" legal anthropology. Nijman holds that "we need dig deeper and examine the theological anthropology grounding Grotius' ideas on the law of nature and nations ("Grotius' Image Dei Anthropology 88). In the same vein, jurist Christoph Stumpf and historian Sarah Mortimer maintain that at the heart of Grotius' political and legal project was his ecumenical point of view of what minimum principles Christians should share in common, thereby harboring a political environment based on Christian ethics (Stumpf 32; Mortimer 38).

Grotius distances himself from divine law, arguing that humans have access to natural law through right reason. However, despite Grotius' theology, I argue that Grotius lays the groundwork for jurists after him to construct arguments in favor of slavery and slave trade

according to *ius naturale*. The ambiguity in Grotius' conception of *servitus in ius naturale* paves the way for a legal justification for the reality of voluntary enslavement in the East Indies and West Africa (Cairns 201). So even though all humans have *dominium* and are born with *libertas*, they can relinquish this, according to *ius naturale* (Nifterik "Hugo Grotius on 'Slavery'" 236). The natural law of nations is binding upon Christians and non-Christians alike. In turn, Grotius conceives of a *naturalized* law of nations which accepts all human legislations as customs which have a natural and universal character (Brett, "Natural Right and Civil Community" 35). Since it became customary for Asians and Africans to sell themselves into slavery, then this practice became part of Grotius *naturalized* law of nations.

Some questions still remain, what purpose does *servitus in ius naturale* serve in Grotius' legal thought and what are the legal parameters of it? For Grotius, the Pentateuch is a source of divine law, which testifies of natural law in accordance to Arminian interpretation. He held that war was in agreement with natural law, since God could not have legislated against it; this is the reason why the Hebrews were permitted to engage in lawful wars ("The Rights of War and Peace II,17-18). He states "[a]part from a human act, or in the primitive condition of nature, no human beings are slaves" (III, 7, 1, 1). Thus, he argued that it is correct to accept that slavery goes against natural law (III,7,1,690). Indeed, in his *Meletius* (1611), Grotius clearly rejects Aristotle's *natural slavery* theory. He even says that the Jews have erred in this regard (Grotius, "Meletius" 126).

Based on these early years his position in the Republic and with contacts in Amsterdam (soon to be asked to write the Remonstrance for the Jews) makes it very likely that he was aware of the slave trading activities of contemporary Jews and that they subscribed to *natural slavery*

theory (Wilde "Offering hospitality to strangers"). This is a clear indication of the racial difference which was constructed through the "Curse of *Ḥam*" myth, being an amalgamation of Aristotelian thought and biblical interpretation. So it would seem that Grotius did not subscribe to this myth, especially because he held that all humans were created in the divine image (Nijman, "Grotius' Image Dei Anthropology" 3).

In *DIBP* he insists that *servitus in ius naturale* is not illegitimate (II, 5, 27, 255; II, 22, 11, 551). Grotius consulted Justinian's *Institutes* law to explain that although slavery violated natural law, it has been established by the law of nations (I.2; I, 3; I, 5). In addition, he argued that human law was necessary for the survival of society [This is what Suárez calls expediency, i.e. slavery had been revealed by the almost universal practice of nations] (Davis, "The Problem of Slavery" 109). Hence, Grotius argued that human law tightened the moral laxity of the natural law. What remains a questions is if whether according to Grotius a *servus in ius naturale* can be sold or if the offspring of this *servus* are born as *servi*.

The kinsman of Hugo Grotius, Willem de Groot, puts forward his legal conceptions in his work *De Principiis Iuris Naturalis Enchiridion,* during his time as a jurist for the VOC (1639) (Ahsmann 376) .Therein, he argues that *servitus* is in agreement with the law of nature, stating:

> Nature conceded that some men to be free, which were born in liberty (we will only discuss these here) and also liberty was born unto them…It suffices to say that it [slavery] does not go against the *ius naturale,* and where liberty is granted, it cannot be alienated in any way. Being that liberty is of inestimable value and its price is of infinite value; therefore, it should be understood indeed that the appraisal of liberty should not

extend itself indefinitely [*ad infinitum*]

(W. de Groot chap. 7, para. 5; translation by Húdson Canuto).

According to this passage, one could argue that if Nature concedes that some humans are born *free*, this implies that some humans are born as slaves by the same Nature. For that matter, *servitus* cannot go against the *ius naturale*. In chapter ten, he argues:

> It is the intention here to know if it is licit for a father to trade or sell his children, to which we deem to be lawful through the *ius naturale* in time of necessity. A father should feed his child, since he is the cause through which man exists, he should take care of him, which is also seen in the animals. Justinian states: Parents are exhorted through natural stimulus to educate their children. And elsewhere: It is necessary that the son or daughter feed his father by force of nature. If he becomes impoverished, such that he cannot feed himself nor his children, it is not unjust that they take from what is left in order to sustain him. It is better to lose innocence than life…(chap. X, para. 1).

Here, W. de Groot agrees that it is lawful to sell one's children in agreement with natural law principles, since animals and parents are the cause through which their offspring subsist. However, he posits that the greatest law against the *liberty* of humans is that one can sell himself in slavery [*apparet quod seipsos in servitutem vendere possunt*] (chap. VII, para. 5).

This conception of *servitus in ius naturale* stands in opposition to Luis de Molina's position, which denied and thus argued that an African who offered himself to others in perpetual

servitude was not legally permitted to be bought as property [*dominium*] on the slave markets. In harmonizing natural law with *slavery,* jurists for the VOC were able to justify Dutch slave trade operations in the East Indies. These natural law theories certainly provided the legal framework by which the WIC functioned thereafter.

According to the *ius gentium*, a prisoner of war can be enslaved and then sold to another. W. de Groot espouses this idea:

> It is true that it has something of the *ius civile*, surely in the *ius gentium*, by way of imprisonment during war [*in ius bello*], it is evident that anyone's liberty can be taken away, however not one's life, which the victor can take from the defeated through law. This is what the poet states [Horacio, Epístolas, Lib. I, XVI, 69-70]: *Vendere cum possis captiuum, occidere noli; seruiet utiliter; sine [mediis] pascat durus [mercator] aretque* etc. Even though one can sell the prisoner, one cannot kill him; he will serve in the most useful fashion; with food and drink so that he does not suffer thirst (chap. VII, para. 5).

Indeed, one can enslave a war captive, sell the *servus*, but not kill him or her through starvation or thirst. Despite this legal permission, W. de Groot esteems *liberty* and asserts that "it is legal for all to struggle until death for it" (*ibid*). This echoes Vázquez's *naturalis libertas laxitasque:* the natural condition of man which is both free from captivity and free from servitude. In arguing thus, *libertas* can best be understood as freedom from slavery, or having "*dominium* of one's will" (Brett, "Liberty, Right, and Nature" 14). Overall, Willem de Groot's legal conceptions

exemplify the conventions among Dutch jurists, known as the Dutch school [*Hollandse Elegante School*] (Nifterik, "Arguments Related to Slavery" 2).[14]

After the establishment of the WIC charter, the involvement of merchants and companies operating from Amsterdam and the Republic in slave trade, became ubiquitous in the West Indies. Slavery as an institution became part of the Dutch colonial lifestyle an economy. The use of slaves on South American plantations, and the slave markets in Brazil and Curaçao, cemented a new morality for the Amsterdam and Dutch Republic merchant elite. Deviating from the *free soil* tradition in the Netherlands, new laws were instituted in the colonies in order to promote civil order, while jurists in the Netherlands theorized about the legality of slavery within the context of *just war*.

Another important Dutch jurist was Ulrich Huber. Huber was born on March 13, 1636 in Dokkum, in the Gasthuisstraat. His father Zacharias was the local notary and secretary to the rural municipality of Westdongeradeel. Initially, Ulrich attended Latin school at Dokkum, then at Leeuwarden (Hewett 79). In 1651, he began studying at Franeker, where he studied at the Faculty of Arts, concentrating on Greek, philosophy, history, and rhetoric. In addition, he had a working knowledge of the Hebrew language. During his second year, he studied law under Johannes Jacobus Wissenbach, while also studying history and other languages. On April 9, 1657, he defended his thesis *De Iure Accrescendi*, and on the 14th of May, was promoted *Iuris Utriusque* Doctor. Two years later he married Agneta Althusia in December. In 1679 he decided to leave the university at Franeker for the Hof van Friesland in Leeuwarden, assuming the position as Senator (Hewett 80). Huber upheld a strict position, i.e. that Cartesian reasoning [all

[14] This paper has not been published. I received permssion from the author.

matter, beliefs, ideas, and thoughts should be put into doubt and proven] was not applicable to law or law teaching (Hewett 82). In 1672, he published his first major work, *De Iure Civitatis libri tres,* assuming its final form in 1694. Ulrich Huber passed away in November 1694, at the age of fifty-eight (83).

Huber considered captivity in war, criminal conviction, the voluntary renunciation of *liberty*, and being born from a female slave as legal grounds for *servitus* (Vink, "A Work of Compassion"). In chapter six of *De Iure Civitatis libri tres* (1694), entitled, *De Dominis et Servis, Atque Famulis,* he deals exhaustively with the notion of *servitus*. In paragraph five, he discusses *servitus in ius gentium*. In the sixth paragraph, he says that *servitus* is *contra naturam,* contrary to the natural state or primitive condition of humans, but it is not against natural law*,* nor against the dictates of natural reason, nor the dictates of the law of nations [*Unde efficacius Juris Civitatis, servitutem esse docent; constitutionem juris gentium, qua quis dominio alieno contra naturam subjicitur*] (chap. VI). Thus, he posits, "As we just said, slavery is not necessarily at odds with reason. For the Christians themselves only late disapproved of slavery, nor is it disapproved of in the Old or New Testament" [*Contra naturam id est, contra statum naturae, non contra ius naturae, sive dictamen rectae ration*] (Watson, "Seventeenth-Century Jurists" 1353). This statement echoes the humanists who argued: "Like the physical degeneration of old age, slavery was a useful and necessary, if somewhat painful, means of fulfilling the purposes of nature. It was agreeable to man's natural reason, which determined the specific meaning and consequences of natural law in the world of nations" (Davis, "The Problem of Slavery 96).

Huber reconciled the institution of *servitus* with natural law and divine law. In the seventh paragraph, Huber expounds on many just causes for *servitus,* in agreement with Roman and Mosaic [voluntary divine] law. He cites Exodus 32:6 as a justification for *servitus,* according to Mosaic law [*Multae enim servitutis justae possunt esee causae, veluti conventio, cum quis impos sui tuendi se dedit alii defendendum aut alendum; hace lege, ut in ejus potestate sit, & imperata faciat, quod iure Roman & Mosaico permissum*] (chap. VI).[15] This synthesis between Roman law with voluntary divine law is paramount within the Dutch discourse on the morality of slavery and slave trade. To that effect, Sally Hadden asserts "The Bible, natural law, and *just war* theories provided the rationales used by enslavers to legitimize the capture or retention of bondsmen in the early modern period" (253-87). Therefore, by utilizing the language of the Bible to justify the trade, Dutch mercantilists and opportunists were able to silence and ease consciences from the horrors of Atlantic slavery and slave trade.

In the ninth paragraph, Huber discusses *servitus in ius bello,* stating, "*Tertio ius belli, nam quod occidere honestum est, ut iure belli notissimo constat, eos servare ad serviendum non potest esse inhonestum neque injustum*," [The third right of war, killing is honest, as usually the laws of war are honest, their is no evil in enslaving nor retaining the unjust], i.e. that *slavery* as a result of a *just war* is not a moral evil, since it is a right according to *ius gentium* (Huber II, VI, 9, 334). This statement can only make sense amid the seventeenth-century Dutch theological debate on slavery. Dutch Christians questioned whether it was lawful and moral for Christians to enslave humans? (Vink, "The World's Oldest Trade" 152). Furthermore, in paragraph twelve,

[15] It appears that he made a mistake in his citation of the Bible. Exodus chapter 21 makes more sense according to the context, because it is the only chapter in the Book of Exodus that discusses slavery/servitude.

Huber explains how someone can be enslaved as punishment for a crime committed (*ibid*). From paragraphs thirteen until twenty-one, he discusses *servitus in ius bello* in further depth:

> Likewise laws of Charlemagne, Louis the Pious, and Lothar on slaves survive in the Laws of Charlemagne and the Lombards. Indeed, there exist rulings of King William of Sicily and of the Emperor Frederick on runaway slaves in Neapolitan Decisions. But from that time, that is 1212 A.D. or not much later, Christians stopped enslaving one another, which is also the case among the Muslims and Turks according to Busbequius, Letter 3, where he also argues that slavery was not rightly removed from among us. The specious pretext of charitableness was adduced, but in vain. The result was a flood of free persons whose wantonness and need drove them to wickedness or beggary. The ministrations of the enlarged family were reduced. Add that slaughter in war became more frequent when slavery was removed, which the Romans put to the test in civil wars in which the captives were not made slaves. Tacitus, Histories 2, chap. 44, Plutarch, Otho, and D49.15.21.1. This reasoning is not without weight. See Berneggerus on Tacitus, Germania, question 134 (Watson, "Seventeenth-Century Jurists" 1353).

Huber implies that outlawing *slavery* among Christians was an act of kindness, albeit producing a wanton of *free* persons to crime or beggary. Evidently, Huber agreed that it was better to enslave prisoners of war than granting them their *freedom* (*ibid*). The amalgamation of Dutch

Christian theology and legal thought is evident in the legal works of Ulrich Huber, where morality is translated into legal terms.

In the latter half of the seventeenth century, legal ideas vis-à-vis slavery and slave trade continued to develop within the framework of a *naturalized* law of nations. In 1667, under the Treaty of Breda, Suriname was reclaimed by the States of Zeeland from the English. Amsterdam and Zeeland rivaled for the control of Suriname, since the colony of Suriname laid within the area charted to the WIC. Zeeland had issues in maintaining the colony. Thereafter, under the leadership of Cornelis Aerseen van Sommeldsdyck, Amsterdam founded the Suriname Company. The Suriname Company and the WIC shared the colony costs and benefits together (Fatah-Black 20). During that time, many Jewish settlers left for nearby English islands, but returned within a short time period (*ibid*). Already in 1668, there were nine plantations therein, consisting of 233 slaves, 55 sugar kettles, 106 head of cattle, and 28 white men. These plantations belonged to the Portuguese Jews surnamed: Mesa, Pereira, da Costa, de Silva, Casseres, and de Fonseca (Gordon 41). In 1674, the WIC reorganized itself under the Heren X. The board of directors made policy decisions, meeting once or twice per year, while the daily activities were governed by its largest chambers in Amsterdam and Zeeland (Postma 22). Five years later, a group of *Nação* plantation owners appear in the records of the WIC in Curaçao: David Levy and Jacob Nunes da Fonseca, and others (Goslinga 169). Amsterdam-born Philipe Henriquez (a.k.a. Jahacob Senior) was the only Jew to whom the Holland Board of Admiralty ever granted a concession to purchase slaves from Africa directly and to transfer them to Curaçao on his ship [*De Vrijheid*]. After the loss of Brazil, Curaçao became an entrepôt for marketing slaves to the Spanish territories of the New World. Moreover, Jacob Calvo d'Andrade, the director of the Jewish communal burial society in

Curaçao, was appointed (1701–1705) as an expert by the WIC to examine the slaves upon their arrival (77; West India Company Archives 200, 242, 277). Dutch jurist and justice, Cornelius van Bynkershoek, presented his legal ideas within this social reality.

Cornelius van Bynkershoek was born on May 29, 1673 in Middelburg. He studied humanities and Roman law at the University of Franeker, in Friesland. He received the highest praise from Ulrich Huber. Afterwards, he moved to the Hague where he worked as a lawyer. He initiated his work on Dutch municipal law, *Corpus juris Hollandici et Zelandici*, and published various dissertations on Roman law (Phillipson 27). In 1737, he published *Quaestiones de Iuris Publici* [Questions of Public Law], where he discusses various topics on *ius gentium* and Dutch law (Akashi chap. 51). He sat as a Supreme Court judge of Holland, Zeeland, and West Friesland for nearly forty years. His life expired on April 16, 1743.

Whereas his predecessors [Gentili, Grotius, W. de Groot] couched the law of nations on natural law, Bynkershoek argued that the will of the nations was more important than elaborate theories of natural law (Phillipson 32). He posited that the law of nations was derived from customs, usages, and traditions, and the *consensus gentium* [expressed consent of the State], as expounded in treaties. Usage was also based on evidence of agreements and *pacta et edicta*. In his understanding of jurisprudence, consent played a crucial role, such that in the absence of written law, the existence of long-established universal customs and practices was a presumption of their legal nature, and of their obligation upon everyone, "*Si…ratione utantur*" (Bynkershoek "*Deforo legatorum*" c. iii., Vicat. II. 12). Overall, Bynkershoek attempted to reach at a harmonized synthesis of reason and custom as the whole basis of international law (Phillipson 32).

Bynkershoek was the first jurist to acknowledge that the Dutch practiced slavery and participated in slave trading (Allain, "Slavery in International Law 49). Bynkershoek states:

> To the right of killing our enemies has succeeded that of making them slaves, which was formerly exercised during many ages. But this custom of making slaves of prisoners has now fallen into disuse among most nations, in consequence of the improvement of their manners. Slavery has now generally fallen into disuse among Christians. While this is so, others may be enslaved…we might still make use of it, if we so desire, and the Dutch usually sell as slaves to the Spanish the people of Algiers, Tunis, and Tripoli…that they capture, for the Dutch do not use slaves except in Asia, Africa, and America ("A Treatise on the Law of War 21).

Bynkershoek holds that the disuse of making slaves of war captives is due to the advancement of human nature, thereby assuming a linear view of human anthropology. One can conclude here that it was not lawful for the Dutch to enslave other Dutchmen or Christians. However, the enslavement and selling of North African prisoners fell within the legal limits of the Dutch law. This type of enslavement and the selling thereof is in agreement with the Roman conception of *servitus in ius gentium*. Therefore, one can infer that during the latter half of the seventeenth century, the Dutch did not practice slavery within the Netherlands, except in the colonies.

Although Bynkershoek does not provide any legal justification for the taking of slaves from Africa, he evidenced that slaves were purchased there. If taking war captives as slaves had fallen in disuse among most nations, what legal justification existed for the enslavement and

selling of African and Asian peoples, in the absence of *just war*? (Allain, "Slavery in International Law" 49). The silence on this matter leaves one to think that the answer lies in the realms of economics, politics, and racism. In this sense, Dutch public policy concerning slavery and slave trade was no different than the Spanish and Portuguese. Whereas in the Iberian context there were a few jurists that raised their concerns about the odious trade, with my limited knowledge, I have not found any jurist within the seventeenth-century Dutch Republic speak against it. More research with primary Dutch sources is needed to reconstruct a fuller picture.

The difference between scholastic and humanist thought is crucial in the debate, since humanist jurists [elites with vested economic interests] in the sixteenth century gravitated toward Aristotle's theory of natural slavery [See chapter 4]. Consequently, those peoples that violated the law of nature were identified as "barbarians" by Europeans, and thereafter punished with enslavement. Even though in his *Meletius* Grotius takes a stance against slavery, in *De Iure Belli ac Pacis*, he expounds on *servitus in ius naturale* and *servitus in ius gentium*. Thereafter, Ulrich Huber constructed pro-slavery arguments via Grotius, and subscribed to the "Curse of *Ḥam*" theory. I have demonstrated this in Chapter 3, and how it played a role in the Iberian context. It is here where it plays a role within the Dutch context.

By the second half of the seventeenth century, the "Curse of *Ḥam*" theory had become solidified in the rhetoric of Johannes Cocceius' followers. Consequently, the Dutch confiscated enslaved Africans and Asians as confiscated *property* from the Portuguese. The destructive theory eventually impacted legal thinking. How did the myth of the "Curse of *Ḥam*" construct racial difference then influence legal consciousness? Such is evidenced in the legal works of Emmanuel van der Hoeven (ca. 1660 – ca.1728). During that time, the synthesis between

Sephardic thought, Dutch Protestant theology, and natural law-thinking, began to steer Dutch legal discourse concerning *servitus, libertas,* and *dominium,* on a path that normalized the legality of the Atlantic slave trade until the end of the eighteenth century.

In his *Hollands Aeloude Vrijheid* (1706), Dutch jurist Emmanuel van der Hoeven (ca. 1660–ca.1728) juxtaposes the "ancient freedom" of Holland with the biblical rationale of slavery based on the "Curse of *Ḥam.*" By "ancient freedom", Van der Hoeven compares the biblical narrative of Hebrew freedom from Egyptian bondage to Dutch freedom from the Habsburg Empire. Accordingly, Van der Hoeven asserts "The pride and impudence of Canaan was deserving of the curse, which it incited. He was foretold to leave behind a servile people, whose body from the eighth day of their birth will be covered by black paint to distinguish them from the free, along with their despondent and ungainly facial features" (Vink, "A Work of Compassion?"). This comment supposes that African *blacks* are not only ugly, but a people who are also the cursed descendants of *Ḥam.* This echoes the commentaries of Rashi, Radak, and Abarbanel (see infra section 3.3). The allusion to the eighth day is important, since the biblical Abraham was commanded to circumcise his children on the eighth day after birth.[16] This juxtaposition of biblical ideas conveys that African *blacks* are cursed by divine decree, destined to natural bondage by *whites*. Thus, Van der Hoeven suggests that *Ḥam's* descendants acquire *black* skin on the eighth day after birth and the "curse" of slavery thereafter.

The "Curse of *Ḥam*" myth and Aristotelian *natural slavery* played critical roles in the development of the natural law of nations within the Dutch context. According to Grotius'

[16] God said to Abraham, "As for you, you must keep my covenant, you and your descendants in every generation. This is my covenant that you and your descendants must keep: Circumcise every male. You must circumcise the flesh of your foreskins, and it will be a symbol of the covenant between us. On the eighth day after birth, every male in every generation must be circumcised, including those who are not your own children: those born in your household and those purchased with silver from foreigners (Genesis 17:9-12).

understanding of the law of nations, a master can transfer his right over a *servus* to another person as property ("The Rights of War and Peace" III, 7, 5, 2). He also put forth that according to natural law, a person can voluntarily give up his or her *libertas/dominium* and hand it over to someone else. After the establishment of the WIC, one evidences a change of the conception of the law of nations and nature within the works of W. de Groot and Ulrich Huber, such that *servitus* is reconciled with *ius naturale*. However, it is not until Van der Hoeven that the "Curse of *Ḥam*" myth is reconciled both with voluntary divine law and natural law. At that stage, the natural law of nations within Dutch legal thought marches in concert with the slave trading activities of the WIC and the VOC. The ambiguity of Grotius' *servitus in ius naturale* became normalized by Van der Hoeven.

By the end of the seventeenth century, shareholders, brokers, merchants, and everyone with an interest in the VOC and WIC were heavily steeped in slave trade. At that time, Cornelius van Bynkershoek appeared on the scene and declared that enslavement within the context of war had fallen into disuse among Christians, and that the Dutch sometimes sold North African Muslims to the Spanish and that the Dutch only use slaves except in Asia, Africa, and America. The fact that he did not provide a legal justification for the slave trading activities of the VOC nor WIC leads one to conclude that African and Asian slaves were dehumanized, thereby lacking natural rights.

5.5 Conclusions: The Effects of the Atlantic Slave Trade on the Dutch Legal Understanding of the Law of Nations and Nature

At the outset of this chapter I sought to contextualize the legal, political, and theological discourse surrounding the Dutch Republic debate on slavery and the slave trade, with the aim of understanding how the law of nations and nature and its key concepts were used or mobilized. In this chapter I have shown that reverted Jews and Dutch merchants in Amsterdam created business partnerships in order to establish a trade network between the United Provinces, Africa, and the East and West Indies. When the VOC engaged in slave trade between Africa and the East Indies, and the WIC in the Atlantic slave trade, the *Nação* and Dutch Christians constructed arguments in such a way that they were espoused by a politically-dominant majority.

I substantiated my claims by weaving together the theological, political, and legal debates on slavery and slave trading in the seventeenth-century Dutch Republic. Section 5.2 demonstrated that after the debate on the status of slaves within the Synod of Dordrecht, slaveholders had the power to decide whether to liberate, enslave, or baptize slaves.[17] Section 5.3 highlighted the debate between the Voetians and Cocceians on slavery and slave trade. The former was vehemently against the enslavement of African and Asian peoples in the Dutch colonies, while the latter justified it on the Bible. The Voetians condemned those that enslaved others, on the grounds that the Decalogue equated it with theft.

One learns that the Cocceius' interpretations of the Bible gained supremacy in the debate on slave trade in the West and East Indies pushed by economic elites connected with Constantijn

[17] The VOC prohibited the bringing of East Indies slaves into the Netherlands. As such, whenever an enslaved Asian came into the Netherlands, he or she was immediately manumitted. See (Welie 49) and (Mbeki and Rossum 96) for more details.

L'Emprereur, Menasseh b. Israel, and Johan Maurits. Cocceius and his followers influenced the lawyers (and vice versa). Finally, section 5.4 discussed the influence of the Voetius-Cocceius debate and the "Curse of *Ḥam* and Canaan" myth on the Amsterdam legal debate on slavery and slave trade. I analyzed selected works of four seventeenth-century Dutch jurists, namely, Hugo Grotius, Willem de Groot, Ulrich Huber, and Cornelius van Bynkershoek. All of them agree that the institution of slavery is possible within the legal realms of the law of nations. With the exception of Bynkershoek, the others argue that slavery is not against the natural law. Moreover, they all agree that slavery had diminished or had been abolished among Christians. While Willem de Groot asserts that war captives can be enslaved and sold according to natural law, only van Bynkershoek acknowledges that the Dutch trade in slaves throughout its colonies. By the early eighteenth century, jurist Emmanuel van der Hoeven mobilizes the "Curse of *Ḥam*" theory as a theological and legal justification for the enslavement of *black* persons.

Nevertheless, the question still stands, what legal justification did Dutch jurists construct in order to trade and enslave the West Africans? The legal innovation that Grotius introduced to the discourse was that natural *rights* could be applied not only to individuals and states, but also to private entities, such as the VOC and the WIC. In doing so, he provided a legal concession for these companies to confiscate Portuguese property under the premise of defensive war. Hence, Portuguese slave ports, and slave systems became property of the VOC and WIC.

The Atlantic slave trade influenced the debate on the law of nations and nature within the Dutch Republic. Grotius' concept of *servitus in ius naturale* was an innovation at the time. International legal scholar and justice, Hersch Lauterpacht (1897 – 1960) suggested that Grotius had reflected "the essential needs of the times" and that his approval of people selling themselves

into slavery was in fact “humanitarian,” because enslavement was preferable to other ways of treating captives (“Grotian Tradition” supra note 9, at 44, 45). If so, this would mean that even though he was against Aristotelian *natural slavery*, he did accept that individuals sell themselves into slavery. Being that he utilized *servitus in ius gentium* for war slavery, according to Roman legal convention, he would then have to suggest another legal basis for voluntary enslavement.

If individuals can give up their freedom and become enslaved perpetually, then there is somewhat of a legal basis for their enslavement without the premise of a *just war*. However, Grotius did not clarify if these slaves could be sold or if their children acquired the enslaved status *ad perpetuam*. If truth be told, the European buyers did not verify if the sellers had legitimate *rights* of ownership over their slaves. By the end of the seventeenth century, theologians and jurists amalgamated ideas and notions to forge Dutch legal theory, such that slavery and slave trade became an integral part of the culture and economy (Noorlander "For the maintenance of the true religion” 85; Amposah 434).

During the Dutch Republic seventeenth-century debate on slavery and slave trade, the Portuguese Jews’ community in Amsterdam made significant contributions to that end, as I will demonstrate in the following chapters. Some of the reverted (ex) *conversos* thereof synthesized legal notions from the “School of Salamanca” with Biblical and rabbinic jurisprudence on slavery, and the “Curse of *Ḥam*,” in order to justify their activities in the Atlantic slave trade. How they accomplished this will be the topic of the next two chapters.