



Seventeenth Century Albany:

A
Dutch
Profile

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Wilcoxon

**SEVENTEENTH CENTURY ALBANY:
A DUTCH PROFILE**
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Published by the Education Department, Albany Institute of
History and Art, Albany, New York
1981

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Chapter 4: Crime and Punishment

The Dutch settlements in America were governed by the legal code of Holland, which was based on Roman law modified by the local customs of the Netherlands.¹ In addition to the regular courts, which functioned under the aegis of the West India Company, the patroonships had their own manorial courts that had grown out of the courts of the Middle Ages. For these, the patroons claimed High, Low, and Middle Jurisdiction, which included the right to hand down the death sentence.²

When the English took over the former territory of New Netherland in 1664, they introduced a set of statutes known as "the Duke's Laws," so-called in honor of its new proprietor, the Duke of York and Albany, later King James II.³

It appears, however, that the local courts did not break with the past sharply nor interpret the new laws so rigidly as to bring them into open conflict with the earlier Dutch customs and practices, but instead, effected a gradual and essentially peaceful transition from the Dutch to the English system. Even in the traditionally sensitive area of tariff regulations compromises seem to have been made, since it is known that a highly profitable though illegal trade was allowed to go on between New York merchants and Holland in the seventeenth century, long after the province became English.⁴ This lenience doubtless grew out of the reluctance of the English officials to antagonize the Dutch majority — either the common people, who had proved complacent but might become unruly, or the merchants, who were wealthy and powerful and could exert pressures in high places.

Under Dutch criminal procedure for the seventeenth century, conviction of an accused person depended upon confession, which could be legally extorted by torture if necessary. That this was resorted to in New Netherland we know from the following entries in the records: Council

minutes of New Netherland for October 5, 1639, give the case of a gunner's mate on a ship lying off Staten Island who had attacked an officer of the law just prior to the ship's sailing. The director-general, "wishing to do justice in the matter, ordered the ship to return and caused the said Hendric to be arrested and put to the torture, but he persisted in his denial." Later, "the said prisoner, being released from torture and irons, has voluntarily confessed."⁵

On July 5, 1646, Tomas Gridj, accused of theft, was ordered to "be put to the torture,"⁶ and there are other instances mentioned in the New Netherlands records for this period. There is no account of the use of torture in the surviving court minutes of the Albany area, but the implication is there, when a woman is reported to have confessed to a crime "without torture or irons."⁷

Next to murder, which rarely occurred in the Albany area in the seventeenth century but for which the penalty was death by hanging, the most serious crimes were attacks with lethal weapons, causing grievous bodily harm, selling guns and strong drink to the Indians, and theft. For the last named, if property of high value had been taken, the punishment was burning in the right hand and banishment. For lesser crimes, fines and being put in irons usually constituted the punishment, though public and private flogging was often resorted to.

The manorial court of Rensselaerswyck, in 1644, banished two persons from the *colonie*, and the same court, in 1646, sentenced Wolf Nyssen to be executed. If the latter sentence was carried out (and Van Laer says it was), this shows that the claim of the Rensselaerswyck court to High Jurisdiction was allowed by the authorities in Holland.⁸

Beverwyck and Ft. Orange had several licensed taverns and a number of unlicensed places where liquor was sold illegally. The citizens resorted often and in numbers to both types of establishments and many violent crimes were the result: fights, knifings, and attacks with what was almost invariably referred to in the complaint as "a naked rapier" — all committed in varying degrees of drunkenness.

In a typical case of this kind in 1657, Jacob Loockermans "cut Meuwes Hoogenboom [across the face] with his knife, so that the said Hoogenboom will be disfigured all his life." The

defendant admitted the act, and after witnesses had deposed that he had "deliberately and without cause" disfigured Hoogenboom, he was condemned to pay 300 guilders and compensation for pain, lost time, board, and medicines, and, if necessary, to earn the sums by the hardest kind of labor.⁹

From the earliest years of New Netherland's existence, a tight control over firearms was attempted, with persons forbidden to sell guns, gunpowder, or lead to the Indians. Because of the unique position of Ft. Orange as the center for the fur trade, the authorities saw fit to relax these restrictions for that area, as we learn from a communication of 1652 from the authorities in Amsterdam to those at Manhattan, in which the former say:

We have seen that you have been obliged, at the written request of those of Ft. Orange and the *Colonie* of Rensselaerswyck, to connive somewhat in regard to the Edict enacted about contraband Goods. You ought to deal herein with a sparing hand, and take good care that through this winking no more ammunition be sold to the Indians than each one has need of for the protection of his house and for obtaining the necessities of life, so that this cruel and barbarous Nation may not be able, at any time, to turn and employ their weapons against ourselves there.¹⁰

As would be expected, strict laws governed the fur trade and persons not under company jurisdiction were sharply restricted in pursuing it.¹¹ But the rewards from illegal trading in this valuable commodity were so great that it was almost impossible to control smuggling and illegal soliciting of the Indians, and such misdemeanors came often before the courts. Some of the town's leading citizens engaged in this illegal trade.

The selling of wine, brandy or beer to Indians was considered one of the most heinous of crimes in early Albany, not on moralistic grounds but because of its potential danger to town and citizens. Under the influence of strong drink the Indians often became violent. Court records show that sometimes, upon regaining their senses, they would be extremely contrite and would tell the authorities who it was who had sold them the spirits. Although the testimony of Indians was generally disallowed in the courts, it was accepted in cases involving the illegal selling of liquor.

In 1656, several persons, one of them a woman, were fined heavily and banished from Beverwyck for having sold brandy to the Indians, the court commenting that "this is a matter of dangerous consequence which may cause the ruin of the country."¹²

The women of the town were among the most frequent offenders in the illegal traffic of liquor. They usually received lighter sentences than those given to men; often they received suspended sentences. Children were also employed illegally because they drew light sentences.

A commodity controlled almost as strictly in Beverwyck as spirits and guns was bread, though the penalties in connection with discrepancies in its weight were not so severe as those attending illegalities in regard to guns and liquor. Father Jogues commented in 1646 that the inhabitants of the Ft. Orange neighborhood "sow wheat and oats for beer," but not long afterwards, in 1652, an ordinance was passed making it illegal to use grain for making beer in the numerous brew houses. At the same time there were protests from citizens that the bakers were bolting the wheat and using the white flour thus obtained to make white bread, sweet cakes, and cookies to sell to the Indians, while "the burghers must buy and eat largely bran for their money."¹³

This brought forth numerous laws, not only regulating the making of white bread, but also regulating what could be sold to Indians. In the court minutes there are frequent cases involving the several bakers of the town. One of these, in December, 1655, concerned Jochem Wesselsen, who "sold to a certain savage a sugar bun, contrary to the ordinance passed on that subject." On another occasion Jochem got into trouble for "peddling white bread and blowing a horn."¹⁴

Bakers who did not bake in the winter when the Indians were away were forbidden to bake in the summer. There were also ordinances establishing the weight of the loaves, a wheaten loaf being set at eight pounds with a cost of eighteen *stivers*, or around thirty-five cents, while a white loaf was one pound in weight and cost five *stivers*. There were numerous complaints against the bakers for giving short weight.

Besides such simple domestic regulations, the little court at Beverwyck was called on to deal with smuggling (of liquor and

skins), arson, divorce, breach of promise to marry, paternity suits, theft, debt, insults and slander, and a variety of problems that still afflict us. The exception was mugging, of which there is no instance in the records. In 1686, however, a constable charged certain citizens with failing to come to his aid when he was making an arrest.

Both sexes in Albany were given to using slanderous and abusive language, and the courts were clogged with suits resulting from this intemperance of the tongue. The principals in one suit often became involved in counter suits growing out of the first. Though legal counsel was not involved, and each person presented his own case, it was a relatively expensive matter, since fines imposed were surprisingly high. Defamation of character, insults and assault, were among the favorite charges, and even the sitting magistrates became parties to these contests.

One such series of suits involving two neighboring families, with friends, relatives, and assorted persons joining in from time to time, was still going on after a year, during which hardly a court session was held without some action being taken, and with a total of eighteen separate suits or court orders involved.¹⁵

As has been previously mentioned, the citizens of Beverwyck had a somewhat cavalier attitude toward the streets and other public passageways of the little town, and often used them as if they were an extension of their own yards and premises, as a place to store firewood, lumber, and a host of other things. This greatly annoyed the authorities, who passed frequent laws against the practice without, it would appear, much success.

The commissaries and magistrates seem to have endeavored to insure that justice and fairness were served by the court. Most of the time they passed prompt sentences and made quick decisions, but now and then they referred cases to arbitration, as when Jan Baptist van Rensselaer's horse killed Jan Hendriksen's pig. At such times, men of integrity were chosen for the task.

The public records of the time make one suspect that the Dutch often imposed harsher sentences than they intended to carry out. In 1647, Willem Juriaens, habitually in trouble with authorities, was sentenced to banishment from the *Colonie* of

Rensselaerswyck, but Willem was still around many years later, and still causing trouble.

Van Laer states that the Wolf Nyssen case is the only instance of capital punishment known for the Albany area while it was under Dutch control. At a special court of Oyer and Terminer held in February, 1673, two Indians were sentenced to be hanged for the murder of John Stewart, a soldier of the garrison at Albany.*

Persons convicted of lesser crimes might be put in the stocks, restrained by chains and leg irons, or publicly flogged.

*According to a persistent local tradition, the hill in the vicinity of the former DeWitt Clinton Hotel was known as "gallows hill" in the early times.

Hollenbeck declares that even the directors of the poor fund of the Dutch church accepted these funeral customs and habitually allowed ample funds for potables, sweetmeats, and tobacco for the funerals of paupers.

Games and Amusement

The games and amusements of Beverwyck and early Albany followed closely those of all western European countries at the period, with only minor variations. Ironically, we get the clearest idea of the recreational pursuits of this area from reading the public ordinances forbidding them. Here again we encounter Director Stuyvesant's intervention, this time to insure a pious atmosphere for Sundays and days of religious thanksgiving.

To this end, he sponsored ordinances forbidding card playing and "dicing," playing ball, trick-track, tennis, cricket, or ninepins on the Sabbath. Also prohibited were "going on pleasure parties in a Boat, Car [Cart], or Wagon" on Sundays, or fishing, hunting, gathering strawberries or nuts. Children playing in the streets during divine services were legally frowned upon as well.⁶ The Dutch did not meekly endure these statutes but did their best to circumvent them, as anyone who appreciates the fun-loving and unquenchable nature of that people will understand.

Among the more strenuous amusements of the young blades of Beverwyck were pulling the goose, shooting the target, and racing horses, all of which were discouraged or actually prohibited by the laws.

The rivers and canals of Holland had for centuries been winter playgrounds for both adults and children, and undoubtedly the river in Albany served somewhat the same purpose, although the volume of snow, much greater here than in the Fatherland, would have curtailed its use to some degree. However, Jeremias van Rensselaer, in 1666, wrote his brother in Holland that: "Last winter we passed the time in racing on the river in the little sleigh. Your old ice sleigh I sold to Willem Teller for three beavers."⁷

Among the sports enjoyed on the frozen Hudson was *kolf*, an ancient Dutch game played with sticks closely resembling modern ice-hockey sticks and a hard leather ball. Many landscapes by Dutch artists show men playing the game on

frozen rivers and canals, and we know it was popular in Albany, since court minutes of around 1650 mention it as being played for a prize of brandy, while a court of December 1659 prohibited its being played in the streets because of danger to windows.⁸

In seventeenth century Holland skating was not merely a sport but a way of life, since it offered the fastest and cheapest means of travel on the frozen canals from one community to the other. Hundreds of Dutch winter landscapes of the great artists testify to the many activities in which skating was employed. Yet, oddly enough, no mention of skating is found in the Laws of New Netherland, nor do skates appear in Albany inventories. The Dutch in Albany, adults and children alike, almost certainly skated as a means of transportation, though the distances between settlements, the danger from roving Indians influenced by the French and other factors may have limited this sport. A Wildwyck (near Kingston) inventory of 1665 lists a pair of skates, and we know from official accounts that skates were used by the French on Lake Champlain in 1690, in retreating to Canada after the Schenectady massacre.

Skittles, called in Dutch *kégelspēl*, was a favorite game in the Netherlands and New Netherland as well. It was played with large wooden balls and ninepins on a bowling green. It was this game, played by the ghostly denizens of the Catskills, that is immortalized in Irving's story of Rip van Winkle.

Battledore and shuttlecock, another popular game with the Dutch, was undoubtedly played here as was tennis, as we know from the law forbidding it on Sundays. It is likely, too, that wrestling, cockfighting, bear-baiting, and other sports of that nature were practiced in Albany in the seventeenth century, though they would have been disapproved of by the more solid citizens. However, none of these diversions is specifically mentioned in those ordinances that have survived.

Music and dancing were popular with the Dutch, both here and in the Fatherland.

Chess, an ancient pastime, was almost certainly played by the more serious minded Dutch of the Hudson Valley. From an inventory that lists a tick-tack board we know that that game, a complicated form of backgammon, was also played in Albany in the seventeenth century. The Dutch sometimes called it "trick-track" and forbade it on the Sabbath.

The small Dutch boys played the game of cockalls, or *kooten*, which was popular in the Fatherland. This is sometimes called knucklebones, but it was actually played with the ankle bones of sheep, substituting for dice.

A seventeenth century Albany inventory mentions a bat and ball, while stool-ball appears in ordinances, being forbidden on the Sabbath. This was an outdoor game of the sixteenth and seventeenth centuries that was often played by women. It resembled cricket.

The games discussed here were by no means all that diverted Albanians during the seventeenth century, and it should be remembered that they engaged in English pastimes as well as Dutch.

"In addition to the Dutch, the rowdy little town surrounded by a dangerous wilderness was peopled by Flemings, Scandinavians, Frenchmen, Portuguese, Croats, Irishmen, Englishmen, Scotsmen, Germans, Spaniards, Blacks from Africa and the West Indies, Indians and persons of mixed blood, all of whom lived together in varying relationships

"The presence of this heady mixture of humanity does not support the stereotype of Albany as an orderly community of stolid Dutchmen smoking their long-stemmed pipes of an evening on the *stoep*; or of happy Blacks picking pinksters, Dutch housewives scouring the cobblestones and placid Indians giving belts of wampum to their friend Quidor. There undoubtedly were peaceful Indians and contented persons about, but in its early years Albany was, for the most part, an untidy, contentious, sometimes violent place made up of persons of conflicting morals and conflicting aims. It is a tribute to the Dutch minority that they were able to stamp their own national character on a populace so heterogeneous."

-From Chapter 1
Seventeenth Century Albany