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The 1580 Political Ordinance of the States of Holland and West Friesland: Certain Examples of its Influence in the English- Speaking World

*Hollandia és Nyugat-Frízföld 1580. évi Politieke Ordonnansie-ja
és annak egyes hatásai az angolszász világra*

ABSTRACT

The present study deals with certain influences the 1580 Political Ordinance of the States of Holland and West Friesland had in the English-speaking world, specifically in relation to the Plymouth Colony in the present-day Commonwealth of Massachusetts and South Africa. Regarding the former, there is a survey of the introduction of the institution of civil marriage by the Pilgrims at the Plymouth Colony and the Dutch background to this particular development. In relation to South Africa, there is an analysis of the lack of intestacy inheritance between spouses in that country in the past due to the system of inheritance rooted in the 1580 Political Ordinance, and the changes that took place in connection to this with the passing of time.

Keywords: *civil marriage, intestacy, Plymouth Colony, South Africa, 1580 Political Ordinance*

ABSZTRAKT

A tanulmány az Egyesült Holland Tartományokra és Nyugat-Frízföldre vonatkozóan 1580-ban kiadott "politikai rendeletnek" az angolszász világra gyakorolt hatását vizsgálja, különös tekintettel a Massachusettsi Nemzetközösségben ma élő Plymouth-kolóniára és Dél-Afrikára. Az előbbi illetően az elemzés arra koncentrál, hogy a Plymouth-kolóniába érkező zárandokok (pilgrimek) miképpen vezették be a polgári házasság intézményét a közösségben, továbbá az említett intézmény fejlődésének holland gyökereit is feltárja. Ezek után a házastársak közötti, végrendelet nélküli öröklési rendet ismerteti, és történeti szempontból elemzi annak változásait az 1580-as, az öröklési rendszer e területen módosító jogszabály alapján.

Kulcsszavak: *polgári házasság, végrendelet hiányában történő öröklés, Plymouth-kolónia, Dél-Afrika, Politikai Rendelet (1580)*

From the time of the Age of Exploration and beyond, Europeans, along with the spread of their military and economic power throughout the world, also transplanted various aspects of their civilization and culture to foreign territories, including legal norms and standards, the Dutch being no exception to this. One example is the in-

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fluence of the 1580 Political Ordinance of the States of Holland and West Friesland, which dealt with such issues as the regulation of marriage and intestacy inheritance. Here there shall be a survey of the basic content of the Political Ordinance relevant to this study, and certain influences it had beyond the Netherlands, specifically relating to the marital relationship, that is, the institution of civil marriage and spousal inheritance in the case of intestacy. This includes its influence with regards to the institution of civil marriage upon the Pilgrim community that would establish the Plymouth Colony in the present-day United States of America in the year 1620. This is a fact particularly worth noting as 2020 marks the 400th anniversary of the landing of the Mayflower at Plymouth Rock and the subsequent foundation of the Plymouth Colony by the Pilgrims.¹ In the case of the Pilgrims, we see a group of English men and women transplanting Dutch legal influences which they had come under due to their sojourn in the Netherlands, specifically in the city of Leiden. The other example to be examined here relates to South Africa, where we see the reception of the Roman-Dutch legal system in that territory, including the Political Ordinance of 1580. Here there shall be a specific focus upon the issue of spousal inheritance in case of intestacy, which shall include a survey of the reception of the Political Ordinance in South Africa, the rules of intestacy according to that particular statute, and eventual changes that took place with regards to this matter. Lest anyone be tempted to think that the subject matter of this study is purely of interest to antiquarians, it should be pointed out to the reader that the issues raised in this article have a relevance for our present age. Here we see how certain societies' ideals and conventions relating to family relationships, particularly regarding marriage, underwent evolution and change over time, with concepts which had long been established and accepted due to such factors as religion and custom eventually being challenged and overturned, bringing into being new forms and manifestations. Similarly, in the present era we have also been able to observe changing concepts and standards regarding such things as marriage and family relationships more generally, changes which have been given concrete expression in law. This study presents examples of how such processes have taken place in the past, illustrating that a society's norms and standards are not necessarily static and fixed, but rather subject to reinterpretation and periodic revision.

1. Background to the Roman-Dutch legal system and the adoption of the Political Ordinance

The Low Countries had originally been under the rule of the dukes of Burgundy, with this title eventually going to the kings of Spain.² Later, there were rebellions against Spanish rule in the sixteenth century, culminating in the seven provinces of the north coming together in the 1579 Union of Utrecht, with Holland being the lead-

¹ See <https://www.mayflower400leiden.com/>.

² Peter Stein, *Roman Law in European History* (CUP 1999) 97 (doi.org/10.1017/CBO9780511814723).

ing province of the Union.³ The legal system of the province of Holland that developed was a mixture of Dutch customary law and Roman legal principles, and came to be known as Roman-Dutch law.⁴ The reception of Roman law in Holland has been described by Dionysius Godefridus van der Keessel as having been received in Holland *in subsidium*.⁵ Additionally, another Dutch legal authority, Johannes Voet, writes that in the case of a legal controversy, where firstly written and unwritten municipal law is consulted, then unwritten laws, as well as established custom, “*then only are the decisions of the Roman law and the Canon Law to be admitted, ...*”⁶

The Political Ordinance of the States of Holland and West Friesland was passed on 1 April 1580 and is one of the great statutes of the Roman-Dutch legal system.⁷ It is considered to be the most important piece of legislation of 16th century Holland, and sought to bring a certain order to the confusion that existed regarding laws dealing with various different matters, including marriage and inheritance.⁸ As to the historical background of this particular statute with regards to the matter of marriage, it happened that in the year 1572 Protestants took control of the provinces of Holland and Zeeland.⁹ This subsequently led to important changes as to the institution of marriage within these territories,¹⁰ with there being an attempt to create a new legal framework conforming to reformed Protestant conceptions of marriage, eventually resulting in the Political Ordinance of 1580.¹¹ The traditional Roman Catholic conception of marriage as a sacrament was a view which came to be challenged by the Protestant Reformation, which did not see it in such terms.¹² This allowed for a role for government with regards to the institution of marriage, which manifested itself in the state having the authority to conduct marriages according to the Political Ordinance of 1580.¹³ The secular governmental authorities were invested with the power to regulate marital issues, which included the solemnization of marriages before

³ Ibid.

⁴ Randall Lesaffer, *European Legal History: A Cultural and Political Perspective* (Jan Arriens tr, CUP 2019) 361.

⁵ Dionysius Godefridus Van der Keessel, *Select theses on the laws of Holland and Zeeland: being a commentary of Hugo Grotius' Introduction to Dutch jurisprudence, and intended to supply certain defects therein, and to determine some of the more celebrated controversies on the law of Holland* (J. C. Juta 1884) 2.

⁶ Johannes Voet, *His Commentary on the Pandects: Wherein, Besides the principles and the more celebrated controversies, of the roman law, the modern law is also discussed, and the chief points of practice* (James Buchanan tr, J. C. Juta 1880) 7.

⁷ R. W. Lee, *An Introduction to Roman-Dutch Law* (5th edn, Clarendon Press 1915) 5–6.

⁸ Johannes Wilhelmus Wessels, *History of the Roman-Dutch Law* (African Book Company 1908) 222. It should also be added that the Political Ordinance dealt with other issues in addition to marriage and succession, including leases, sales, registration and mortgages. See Wessels, 222–223.

⁹ Thomas Brady jr, Heko A. Oberman, James D. Tracy, *Handbook of European History 1400–1600: Late Middle Ages, Renaissance and Reformation* (E. J Brill 1995) 403.

¹⁰ Manon Van der Heijden, *Women and Crime in Early Modern Holland* (David McKay tr, Brill 2016) 103. (doi.org/10.18352/bmgn-1chr.10535)

¹¹ Manon Van der Heijden, 'Marriage Formation: Law and Custom in the Low Countries 1500–1700' in Silvana Seidel Menchi with Emlyn Eisenach (eds), *Marriage in Europe 1400–1800* (University of Toronto Press 2016) 161. (doi.org/10.3138/9781442625488-008)

¹² Pieter Coertzen, 'Marriages, Civil Unions, Partnerships, and Religion in South Africa after 1996' in W. Cole Durham Jr. and Donulu Thayer (eds.), *Religion and Equality: Law in Conflict* (Routledge 2016) 117.

¹³ Ibid.

magistrates or the Dutch Reformed Church.¹⁴ This would have ramifications beyond the borders of Holland, and would influence a group of English guests in their county that would come to be known to history as the Pilgrims.

2. The Pilgrims: Beginnings in England and sojourn in the Dutch Republic

For the beginnings of the group that came to be known as the Pilgrims, we must look to the Reformation as it manifested itself in England. With the establishment of the independent Church of England, certain issues and contentions arose as to what the nature of that ecclesiastical body should be. There were those that felt that reform did not go far enough in purifying it of Roman Catholic influences.¹⁵ One such group was the Puritans, who were divided between those who wished to remain within the Church of England, but to bring about further reform within it and those known as the Separatists, who desired to pull away completely from the established church.¹⁶ The Pilgrims were Separatists located in East Anglia,¹⁷ and due to persecution a portion from among their number took the decision to migrate from England to the Netherlands in 1607 and actually made the move in 1608.¹⁸ One of the founders of Plymouth Colony who also served as its governor, William Bradford, wrote that “*Yet seeing themselves thus molested, and that there was no hope of their continuance there, by a joint consent they resolved to go into the Low Countries, where they heard was freedom of religion for all men.*”¹⁹ The group initially relocated to Amsterdam, but eventually settled in Leiden.²⁰ However, at the same time the material circumstances of the group in Leiden were strained and difficult.²¹ In time the city became increasingly uncomfortable for the group, becoming less safe due to a changing political and religious environment.²² Additionally, there had been fears about the morality of the surrounding society and the impact on their community, and also there was a motivation to spread the Christian faith in another part of the world.²³

¹⁴ J. A. Schiltkamp, ‘On Common Ground: Legislation, Government, Jurisprudence, and Law in the Dutch West Indian Colonies in the Seventeenth Century’ in Elisabeth Paling Funk and Martha Dickinson Shuttuck (eds.), *A Beautiful and Fruitful Place: Selected Rensselaerwijck Papers Volume 2* (New Netherland Institute 2011) 227.

¹⁵ Donald A. Ritchie, *Heritage of Freedom: History of the United States* (Scribner Educational Publisher 1985) 41.

¹⁶ *Ibid.*

¹⁷ Samuel Eliot Morison, Henry Steele Commager and William E. Leuchtenburg, *The Growth of the American Republic: Volume 1* (7th edn, OUP 1980) 52.

¹⁸ Eugene Aubrey Stratton, *Plymouth Colony, Its History & People, 1620–1691* (Ancestry Publishing 1986) 18.

¹⁹ William Bradford, *Of Plymouth Plantation 1620–1647. A New Edition: The Complete Text, with Notes and Introduction by Samuel Eliot Morison* (Alfred A. Knopf 1984) 10.

²⁰ *Ibid* 16–17.

²¹ *Ibid* 23.

²² Øyunn Hestetun, ‘Pilgrims’ Progress: Leaving the Old World for the New World, with Robert Cushman’ in Helge Holm, Sissel Laegreid and Torgeir Skorgen (eds), *Europe and its Interior Other(s)* (Aarhus University Press 2014) 41.

²³ Bradford (n 19) 25.

These various factors together contributed to the community turning its thoughts to the possibility of relocating to America.²⁴ The preparations for the project included the elders of the Leiden Pilgrim community entering in negotiations for land in America in 1617.²⁵ They received a patent to settle near the Hudson, which at that time belonged to the colony of Virginia.²⁶ In August 1620 they departed from Delfshaven, first stopping in England, and then embarking for the New World.²⁷ In the words of William Bradford, “*So they left that goodly and pleasant city, which had been their resting place near twelve years; but they knew they were pilgrims, and looked not much on those things, but lift up their eyes to the heavens, their dearest country, and quieted their spirits.*”²⁸ The Pilgrims, however, did not land in the territory of Virginia, but instead at Plymouth Rock, in the area of New England on 26 December 1620.²⁹

Due to the fact they landed in an area outside of that stipulated in their patent, Bradford wrote that it was argued “*That when they came ashore they would use their own liberty, for none had power to command them, the patent they had being for Virginia and not for New England, which belonged to another government, with which the Virginia Company had nothing to do.*”³⁰ As a result, the Pilgrims signed the Mayflower Compact on 11 November, in which they agreed to

“Covenant and Combine ourselves together into a Civil Body Politic, for our better ordering and preservation and furtherance of the ends aforesaid; and by virtue hereof to enact, constitute, and frame such just and equal Laws, Ordinance, Acts, Constitutions and Offices, from time to time, as shall be thought most meet and convenient for the general good of the Colony, unto which we promise all due submission and obedience.”³¹

3. Dutch influence and civil marriage

The time spent in the Dutch Republic could not have left the Pilgrims unaffected in various ways, and indeed it has been noted that “*Leiden is where the character of the Pilgrim Church and its subsequent colony took form.*”³² For our purposes here, one particularly notable example of a long-term influence on the Pilgrims as a result of their time in Leiden was the introduction of the practice of civil marriage at the Plymouth Colony. William Bradford (who himself had been elected as governor) recorded that in the year 1621, specifically on

²⁴ Ibid.

²⁵ Richard D. Brown and Tager, Jack, *Massachusetts: A Concise History* (University of Massachusetts 2000) 15.

²⁶ Samuel Eliot Morison, *The Oxford History of the American People* (OUP 1965) 55.

²⁷ Bradford (n 19) 47–49.

²⁸ Ibid 47.

²⁹ Ibid 72, 75.

³⁰ Ibid 75.

³¹ Ibid 75–76.

³² Jeremy Dupertuis Bangs, *Strangers and Pilgrims, Travellers and Sojourners: Leiden and the Foundations of Plymouth Plantation, Plymouth* (General Society of Mayflower Descendants 2009) xiii.

"May 12 was the first marriage in this place which, according to the laudable custom of the Low Countries, in which they had lived, was thought most requisite to be performed by the magistrate, as being a civil thing, upon which many questions about inheritances do depend, with other things most proper to their cognizance and most consonant to the Scriptures (Ruth iv) and nowhere found in the Gospel to be laid on the ministers as a part of their office."³³

Bradford goes on to cite Jean F. Le Petit's 1601 work, *La Grande Chronique Ancienne et Moderne de Hollande*, who states that "This decree or law about marriage was published by the States of the Low Countries Anno 1590. That those of any religion (after lawful and open publication) coming before the magistrates in the Town, or State house, were to be orderly (by them) married to one another."³⁴ Here there appears to be some confusion as to the date of the institution of civil marriage, for as we have already seen, it was introduced in 1580 in Holland, and not 1590.³⁵ In any case, it should also be noted that a number of those among the Pilgrims that settled at Plymouth were themselves married in civil ceremonies during their time in Leiden.³⁶

Regarding the matter of marriage in England at the time, according to the established church there, matrimony was a sacrament to be performed by a priest, with it being virtually impossible to obtain a divorce.³⁷ Thus, it can be said that this sacramental view and system relating to marriage which had been replaced in Holland still existed in England at the time, basically conforming to the view of the Roman Catholic Church.³⁸ To illustrate the stark difference in approach between the Pilgrim settlement in America and England with regards to the matter, when Edward Winslow, the groom in the first marriage in Plymouth Colony mentioned above, returned to England in 1635 on colony business, the anti-Puritan Archbishop of Canterbury, William Laud, questioned him with regards to the issue of marriage, with Winslow stating that as a magistrate he had indeed married people, which led to Laud arranging for him to be incarcerated in prison for a period of seventeen weeks.³⁹

Ultimately, the institution of civil marriage was established at the Plymouth Colony and persisted, appearing to become the general practice there.⁴⁰ Thus, this can be

³³ Bradford (n 19) 86.

³⁴ Ibid.

³⁵ George Elliot Howard, *A History of Matrimonial Institutions Chiefly in England and the United States with an Introductory Analysis of the Literature and the Theories of Primitive Marriage and the Family: Volume 2* (The University of Chicago Press Callaghan & Company 1904) 129.

³⁶ Chilton L. Powell, 'Marriage in Early New England' (1928) 1 *The New England Quarterly* 323, 325. <<https://www.jstor.org/stable/pdf/359877.pdf?refreqid=excelsior%3A58fe3731b0697e97775f11fa915a3f52>> accessed 20 October 2020.

³⁷ David Hackett Fischer, *Albion's Seed: Four British Folkways in America* (Oxford University Press 1989) 77. There existed exceptions for monarchs and the high aristocracy. See Fischer, *ibid*.

³⁸ George L. Haskins, 'The Legal Heritage of Plymouth Colony' (1962) 110 *University of Pennsylvania Law Review* 847, 855 <https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=6905&context=penn_law_review> accessed 12 March 2020.

³⁹ Judith C. Areen, 'Uncovering the Reformation Roots of American Marriage and Divorce Law' (2014) 26 *Yale Journal of Law and Feminism* 29, 64 <<https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2654&context=facpub>> accessed 12 October 2019.

⁴⁰ Haskins (n 38) 855.

said to be a legal influence upon the English settlers at Plymouth from the 1580 Political Ordinance, an example of a Dutch practice utilized by the Pilgrims in their creation of a legal and governmental order in the foundation of their settlement in the New World. Furthermore, it is accepted that the Massachusetts Bay Colony also likely adopted the Plymouth Colony practice with regards to civil marriage, and in relation to the United States as a whole, it has also been argued that this particular institution is, at least partially, rooted in the custom of the Plymouth Colony.⁴¹

4. South Africa, the 1580 Ordinance and Spousal Inheritance

The Dutch East India Company is famous as the world's first multinational and joint-stock company which played a major role in spreading Dutch power and influence around the world.⁴² One aspect of this also included the dissemination of Dutch law to various parts of the globe, including to Southern Africa. A refreshment station was established by Jan van Riebeeck of the Dutch East India Company on 6 April 1652 at the Cape of Good Hope (in what is now South Africa), which included the transplanting of Roman-Dutch law to that territory.⁴³ Later, the Cape Colony became a British possession in 1806, however Roman-Dutch law stayed in place, though its legal system experienced an influx of English influences which led to the creation of something of a hybrid legal system.⁴⁴ On 31 May 1910 the Union of South Africa came into being, a polity which was granted the status of a self-governing colony of the British Empire.⁴⁵ The Union was brought about with the joining together of the Cape Colony, Natal, the Orange Free State, and the Transvaal,⁴⁶ these three latter territories having been settled by Boers from the Cape as a result of the Great Trek that had begun in the 1830s.⁴⁷ In effect the law of the Cape Colony came to be the common law of the whole of South Africa.⁴⁸ A component of the legal inheritance of Roman-Dutch law in South Africa was the 1580 Political Ordinance, with this study

⁴¹ Ibid.

⁴² P. J. Rietbergen, *A Short History of the Netherlands: From Prehistory to the Present Day* (Bekking & Blitz Publishers 2019) 97.

⁴³ Deon H. Van Zyl, 'After Cicero: Legal Thought from Antiquity to the New Constitution' in Grant Parker (ed), *South Africa, Greece, Rome: Classical Confrontations* (Cambridge University Press 2017) 269. (doi. org/10.1017/9781316181416)

⁴⁴ Francois Du Toit, 'Roman-Dutch Law in Modern South African Succession Law' (2014) *Ars Aequi* 278. <<http://repository.uwc.ac.za/xmlui/bitstream/handle/10566/1316/Du%20Toit%20Ars%20Aequi.pdf?sequence=1>> accessed 28 October 2020. It is also worth noting that later Napoleon in 1809 made the Code civil the law of the Netherlands, the Roman-Dutch law being abolished, with that legal system surviving in those formerly Dutch territories that came under British rule before the adoption of the French-based Civil Code. See Konrad Zweigert and Hein Kötz, *Introduction to Comparative Law* (Tony Weir tr, OUP 1998) 232.

⁴⁵ Stephen Leacock, 'The Union of South Africa' (1910) 4 *The American Political Science Review* 498, 498 <https://www.jstor.org/stable/1944928?seq=2#metadata_info_tab_contents> accessed 1 December 2020.

⁴⁶ Ibid.

⁴⁷ Vincent Kuitenbrouwer, *Dutch Pro-Boer Propaganda and the South African War (1899–1902)* (Amsterdam University Press 2012) 66.

⁴⁸ JH Pain, 'The Reception of English and Roman-Dutch law in Africa with reference to Botswana, Lesotho, and Swaziland' (1978) 11 *The Comparative and International Law Journal of Southern Africa* 137, 166 <<https://>

focusing specifically upon the issue of spousal inheritance in the case of intestate succession.

In addition to setting out laws with regards to marriage, the Political Ordinance of 1580 also sought to create a uniform set of rules regarding intestate succession in Holland (specifically Articles 19 to 28) with Article 19 of the Ordinance stating that

“Regarding inheritances, the States are hereby withdrawing and repealing all written rights, customs and laws applicable in the States and countries of Holland and Friesland concerned with intestate deaths or where a person dies without a last will. These regulations concern all movable and immovable properties. From now on only these new Articles that follow will be applicable.”⁴⁹

There had been a great deal of diversity in Holland regarding the question of intestate succession, with Aasdom law being applied in Northern Holland, while in Southern Holland Schependom law was applied.⁵⁰ The 1580 Ordinance sought to enforce the system of Schependom law uniformly throughout Holland.⁵¹ The term Schependom derives from the magistrates known as Schepenen, while the term Aasdom derives from Aazing, who were officers of the law engaged in the administering justice in regions of the northern part of the Netherlands.⁵² As to the principle features of these differing systems, the Aasdom system was based on the principle of the deceased’s next of kin inheriting the estate, with no recognition of the principle of representation.⁵³ The essence of the Schependom system was rather what could be described as a parentelic system in which the guiding principle was that the property was to return to whence it came.⁵⁴ Despite the attempt to apply Schependom law through the 1580 ordinance, it must be noted this attempt to impose a uniform system of intestacy was met with resistance by Northern Holland, and subsequently that region obtained in 1599 a statute which came to be known as New Aasdoms law.⁵⁵

For our purposes here, the most important principle of the Schependom system, as adopted by the 1580 Political Ordinance, is that it did not recognise spousal inheritance in *ab intestato* cases. When a case of intestacy arose, according to the 1580 Ordinance the order of succession was firstly that the inheritance was to go to one’s

www.jstor.org/stable/pdf/23245418.pdf?refreqid=excelsior%3A390631deb733ab2aafc98a33e9917dda accessed 1 December 2020.

⁴⁹ Political Ordinance of 1 April 1580, Translation and summaries from Howard, *The Administration of Estates*, 1908, *Frans v Paschke and Others* (unknown-2005/1548) [2007] NAHC 49 (11 July 2007), Heatchote, A.J., footnotes 10-11 <<https://namiblii.org/na/judgment/high-court/2007/49>> accessed 12 May 2020.

⁵⁰ R.W. Lee, ‘The Fate of Roman-Dutch law in the British Colonies’ (1906) 7 *Journal of the Society of Comparative Legislation* 297, 367.

⁵¹ *Ibid.*

⁵² Lee (n 7) 326.

⁵³ Wilbert D. Kolkman, ‘Intestate Succession in the Netherlands’ in Kenneth Reid, Marius De Waal and Reinhard Zimmerman (eds), *Comparative Succession Law Volume II: Intestate Succession* (OUP 2015) 227.

⁵⁴ *Ibid.*

⁵⁵ R. W. Lee, ‘The Intestate Succession of Husband and Wife in Roman-Dutch Law’ (1912) 12 *Journal of the Society of Comparative Legislation* 310, 313.

descendants, and then in the absence of descendants, parents, then after came siblings and their descendants, then grandparents, and finally uncles and aunts and their descendants.⁵⁶ The Schependoms system as embodied in the 1580 Political Ordinance and subsequent 1594 interpretation, makes no mention of law regarding succession between husbands and wives⁵⁷ and in the case of there being no relatives to inherit, the property was to be handed over to the state, with the surviving spouse being unable to inherit.⁵⁸

With the spread of the influence and possessions of the Dutch East India Company there arose the practical matter of the application of law in overseas Dutch settlements, and in 1621 it was decided by the authorities in the Netherlands that the 1580 Political Ordinance (among other statutes) was to apply in the VOC's territories.⁵⁹ Later, the Estates-General of the Netherlands issued the *Octrooi* (or statute) of 1661 in order to regulate intestate succession in the Dutch East Indies and also for its various outstations, as well as for those who died going to or coming from these territories, and thus, it also applied at the Cape, as this was one such outstation (as already mentioned, having been established in 1652).⁶⁰ The 1661 *Octrooi* followed the law of intestate succession as set out in the 1580 Political Ordinance. As the judgement in the 1880 case of *Raubenheimer v. van Breda's Executors* F.111 states,

"The law bearing upon these questions, although complicated, is by no means obscure. The Charter granted by the States-General to the Dutch East India Company on the 10th January, 1661, regulates the law of succession ab intestate in this Colony [the Cape]. That Charter adopted as the law of succession the provision of the Political Ordinance of 1580, as interpreted by an Edict of the States bearing date the 13th of May, 1594, with one modification."⁶¹

It is also worth noting that in 1714 the Governor in Council at the Cape of Good Hope directed the Board of Orphan Masters, which dealt with the administration of intestate estates at the Cape, to follow the 1580 Political Ordinance in the case of intestacy, in conjunction with the 1594 interpretation and the 1661 *Ortooi*.⁶²

Thus, the 1580 Political Ordinance became part of the common law of what would become South Africa. However, in time moves were made to change this system, with the 1934 Succession Act being passed in South Africa, which sought to address

⁵⁶ Political Ordinance, Articles 20–28, translation and summaries from Howard, *The Administration of Estates Frans v Paschke and Others* (unknown-2005/1548) [2007] NAHC 49 (11 July 2007), Heatcote, A. J., paragraph 10, <<https://namiblii.org/na/judgment/high-court/2007/49>> accessed 12 May 2020.

⁵⁷ Lee (n 55) 313.

⁵⁸ Lee (n 7) 330.

⁵⁹ Heleen C. Gall, "'European" Widows in the Dutch East Indies: Their Legal and Social Position' in Jan Bremmer and Lourens Van den Bosch (eds), *Between Poverty and the Pyre: Moments in the History of Widowhood* (Routledge 1995) 103.

⁶⁰ Marius J De Waal, 'Intestate Succession in South Africa' in Kenneth Reid, Marius J De Waal and Reinhard Zimmerman (eds), *Comparative Succession Law Volume II: Intestate Succession* (OUP 2015) 255.

⁶¹ Quoted in D.H. Spafford, 'Intestate Succession in Rhodesia' (1967) 7 *The Rhodesian Law Journal* 174, 175. <https://journals.co.za/doi/pdf/10.10520/AJA0035483X_130> accessed 31 October 2020.

⁶² Hercules Tennant, *The Notary's Manual, Containing Instructions for the Notaries at the Cape of Good Hope* (A. S. Robertson 1844) 133–134.

“*The unfairness of intestate succession under the common law*”, by granting intestate succession rights to surviving spouses.⁶³ The 1934 Succession Act specifically stated that

“If the spouses were married in community of property and the deceased leaves descendants who are entitled to inherit *ab intestato*, the surviving spouse takes a child’s share (the surviving spouse is counted as a child for this purpose) or so much as together with his/her share in the joint estate does not exceed R10 000 whichever is the greater”.⁶⁴

If it so happened that the deceased was married “*out of a community of property and there are descendants, the surviving spouse takes a child’s share or R10 000 whichever is the greater*”.⁶⁵ In the case that there no actual descendants, but a surviving parent or siblings, the surviving spouse would be entitled to “*half of the deceased’s estate or R10 000 whichever is the greater*”, and this is the case regardless of whether or not “*the marriage is in or out of community of property*”.⁶⁶ And finally, in the case that the deceased spouse has no living parents or siblings, the whole estate was to go to the surviving spouse.⁶⁷ With the passing of this Act we see a departure from the inherited Roman-Dutch law of South Africa, which up until this time made no provision whatsoever for surviving spouses to have rights of inheritance *ab intestato*.⁶⁸

This change acknowledged that in the course of a marriage both spouses make contributions to their partners’ respective estates, and also allowed for a surviving spouse to be provided for, something which would be particularly important in the case of widows, who constituted a vulnerable group within society.⁶⁹ A surviving husband would have his own estate he could live from, while a surviving wife often lacked such means and would subsequently have to depend on her children to survive.⁷⁰ Thus, here we see a modification of a longstanding principle of Roman-Dutch law received in South Africa, as embodied in the 1580 Political Ordinance, via a legislative instrument. Finally, in 1988 the 1661 *Octrooi* and thus the Political Ordinance of 1580 was completely repealed in South Africa by the Intestate Succession

⁶³ Tjingaete v Lakay NO and Others [2014] NAHCMD 178 (11 June 2014) at para 34, <<https://namiblii.org/najudgment/high-court-main-division/2014/178>> accessed 7 December 2020.

⁶⁴ The Succession Act 13 of 1934, Article 1, quoted in Pierre EJ Brooks, ‘Matrimonial Property Regimes and Succession in South African Private International Law (1978) 11 The Comparative and International Law Journal of Southern Africa 289, 294. <<https://www.jstor.org/stable/pdf/23906329.pdf?refreqid=excelsior%3A21f54cec826af65b660be6c156e3c326>> accessed 7 December 2020.

⁶⁵ The Succession Act 13 of 1934, Article 2.

⁶⁶ The Succession Act 13 of 1934, Article 3.

⁶⁷ The Succession Act 13 of 1934, Article 4.

⁶⁸ Case No. 1646/01, In the High Court of South Africa, (Cape of Good Hope Provincial Division) 74. <<https://wlce.co.za/wp/wp-content/uploads/2017/02/Juleiga-Daniels.pdf>> accessed 24 November 2020.

⁶⁹ Ibid.

⁷⁰ Juanita Jamneck, ‘The Problematic Practical Application of Section 1(6) and 1(7) of the Intestate Succession Act under a new Dispensation’ (2014) 17 Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad 973, 982. <<http://www.scielo.org.za/pdf/pej/v17n3/05.pdf>> accessed 6 December 2020. (doi.org/10.4314/pej.v17i3.04)

Act 81 of 1987.⁷¹ The Act itself explicitly lists Sections 19 to 28 of the 1580 Political Ordinance, the 1594 Interpretation and the 1661 *Octrooi* as being repealed.⁷²

5. Conclusion

In this study we have seen certain effects of the Political Ordinance of 1580 beyond the Netherlands, with principles which it contained spreading to lands that would eventually become part of the English-speaking world, being an example of Dutch legal norms and standards spreading beyond their original homeland to faraway territories. This obviously was a manifestation of Dutch and more general European expansion into the wider world. In the case of the introduction of civil marriage by the Pilgrims at the Plymouth Colony in what is now the present-day Commonwealth of Massachusetts, we have seen how the years spent in exile in the Dutch Republic left its mark upon the community, their sojourn their being an example of the meeting of the English and Dutch civilizations and cultures.

Thus, the establishment of the Plymouth Colony is in fact an event of significance to be viewed not solely in terms of English and American history, but also within the broader context of Dutch history as well. In the case of South Africa, we see not only certain legal influences but rather the entire transplantation of the Roman-Dutch legal system, which came with Dutch settlement in that territory. Part of this Dutch legal heritage was the 1580 Political Ordinance according to the 1661 *Octrooi*. We also see in South Africa the meeting of the English and Dutch legal traditions, as the Dutch settlement in South Africa eventually came under British rule, which subsequently led to a hybrid legal system which included both Roman-Dutch and English elements. In the case of the concept of civil marriage as contained in the 1580 Ordinance and introduced and adopted by English settlers at the Plymouth Colony, it can be observed that this is a legal concept and principle which continues to have an enduring and lasting influence. However, in the case of the rule regarding spousal inheritance as transplanted in South Africa, we see an alteration and change brought about by parliamentary legislation when it came to be felt that the principle of the exclusion of spouses from intestate succession was unjust and undesirable.

⁷¹ De Waal (n 60) 255.

⁷² Intestate Succession Act 81 of 1987 <<https://www.justice.gov.za/legislation/acts/1987-81.pdf>> accessed 5 December 2020.