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CLINICAL LEGAL EDUCATION IN DUTCH LEGAL CULTURE:
CLASHES OF TRADITION, TOLERANCE AND PROGRESS IN GLOBAL
LAW'S CAPITAL

Richard J. Wilson*

Abstract

This paper examines the current context of legal education within Dutch legal culture as a case study focusing on the growing role of clinical legal education in the Netherlands, a progressive country in Western Europe, where traditional legal education has held sway for centuries. The Dutch experience with clinical legal education, though limited, is expanding even as the traditional apprenticeship phase of law training there is undergoing major reform, responsive to the growth of "big law." These reforms are largely attributable to a history of innovation and openness in Dutch legal culture, one dimension of which is the general acknowledgement that the Netherlands has become the international law capital of the world. Dutch law schools offer four distinct models of legal clinics, each examined in some detail here.

For the U.S. public interest lawyer, there appears to be much to admire – indeed, to envy – in Dutch culture and in the Dutch legal system. The Netherlands has always been a liberal, tolerant society that seems open and inviting to those with progressive political views. Dutch views on drugs are well-known and draw legions of young people, a la "Harold and Kumar Escape from Guantanamo Bay," to what they see as the lawful bliss of a toke at Amsterdam's coffee-houses. Visitors to Amsterdam routinely visit the red-light district, if only to see scantily-clad women on display in windows along the street. Although lesser known, Dutch government views on issues such as euthanasia, prisons, and the welfare state also contribute to this vision; the

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Dutch legal aid is to be envied for its broad coverage of the middle class and its relatively stable budget, assuring adequate payment to widely-participating legal aid lawyers. In the international arena, the Dutch government's willingness to host both international tribunals and specially-designed international criminal trials all bring added luster of Dutch legal cosmopolitanism.

There are some ways, however, in which Dutch legal culture represents deeply traditional and conservative elements; in no area is this more apparent than with regard to legal education and training for law practice. This article will give a brief and broad sketch, from an outsider's perspective, of the Dutch spirit and legal culture with a particular eye toward the creation and maintenance of a surprisingly limited domestic public interest law culture. Within that culture, I will then examine the Dutch legal profession and legal education, both locally and within the context of the tradition of legal education in continental Western Europe. I will conclude with a look at innovations in clinical legal education in Holland, where the traditional *Rechtswinkel*, or "law shop," continues to draw law student participation and where some new legal clinic offerings bring an international flavor to training for newly emerging transnational law practice.

DUTCH CULTURE AND THE TRADITION OF TOLERANCE

The Netherlands lie low, both by name and geographic location; "Netherlands" means "low countries," and indeed, much of the country still lies below sea level. At least a third of the country was recovered from areas previously filled with water. The Dutch relationship with water forms the basis for the first observations of author Simon Schama in his work on the Dutch Golden Age, *The Embarrassment of Riches*. Schama notes the early use of the drowning cell as a form of punishment that is deeply emblematic of what he calls the "moral geography" of Holland. If sentenced to the drowning cell, the penitent was put into a room in which the water would slowly rise to fill the closed space, and only by furiously pumping to empty the room would the convict avoid the death penalty by drowning. "To be wet was to be captive, idle and poor. To be dry was to be free, industrious and comfortable. This was the lesson of the drowning cell."¹

¹ SIMON SCHAMA, *THE EMBARRASSMENT OF RICHES: AN INTERPRETATION OF DUTCH CULTURE IN THE GOLDEN AGE* 23-24 (1987). Schama points to the ways in which Dutch frugality and non-conspicuous consumption made them a wealthy yet humble country, and the source of the "embarrassment" of his title. The "glitter and swagger" of one burgher's lifestyle was "exactly the kind of profligate behavior most deplored by [Dutch] ministers and moralists. Spending sprees, and the addiction to opulence, they warned, could only have one end: a material and moral enfeeblement that would inevitably culminate in collapse.

Dutch mastery of both the high seas and financial matters made this tiny country a world power during the seventeenth and eighteenth centuries, with colonies that stretched from New York, in the new world, to Indonesia and South Africa in the global south. Niall Ferguson notes that the Dutch East India Company – the *Vereengde Oostindische Compagnie* – effectively controlled the Asian trade routes from its founding in 1602 until the late eighteenth century. The inventive Dutch also showed their flair for finance by grounding the Company’s capitalization in an investment device called the permanent joint stock company, not the first of its kind but part of a pattern of Dutch government-corporate cooperation that served both interests and provided a virtually guaranteed return on investment.² After a series of wars against the British on purely commercial grounds – control of the spice trade – a compromise was reached between the two countries with the ascendancy to the British crown, by invitation, of William of Orange, the Dutch Stadholder, in 1688.³ The Kingdom of the Netherlands, a constitutional monarchy, still includes a cluster of Caribbean islands that are dependent on the Dutch crown.⁴

Russell Shorto has written beautifully on the Dutch period of control, from 1625 to 1664, of Manhattan, the central borough of New York City that was then called New Amsterdam. His book, *The Island at the Center of the World*, points to the role of the Dutch spirit in making modern New York the vibrant cultural center it is today. Scores of city locations are named for Dutch cities or persons: Harlem, the Bronx, Brooklyn, Flushing, Flatbush, the Bowery and Yonkers, among others, all owe their original names to Dutch roots, as do two of our best-known presidents, the Roosevelt cousins, Theodore and Franklin. Shorto emphasizes the historical inclination of the Netherlands toward tolerance. The Dutch, unlike their Puritan English immigrant neighbors in New England who were to engage in protracted religious struggle, “had always put up with differences. Just as foreign goods moved in and out of their ports, so foreign ideas (and for that matter foreign people), did as well. . . [I]n Europe of the time the Dutch stood out for their relative acceptance of foreignness, of religious difference,

The wages of fecklessness would be the old familiar horrors: war, invasion, servitude and a new, punishing deluge.” *Id.* at 321.

² NIALL FERGUSON, *EMPIRE: HOW BRITAIN MADE THE MODERN WORLD* 18-20 (2003).

³ *Id.* at 22.

⁴ That changes on October 10, 2010, when each of the islands in the Dutch Antilles will become independent countries and become Dutch municipalities. *The Netherlands Antilles will Cease to Exist as a Country within the Kingdom of the Netherlands on Oct. 10, 2010*, NRC Handelsblad, http://www.nrc.nl/international/article2375096.ece/Netherlands_Antilles_to_cease_to_exist_as_a_country (1 Oct. 2009) (last visited on August 24, 2010).

of odd sorts.”⁵ The Dutch spirit is well-represented by the Leiden theologian, Arminius, writing in the 1620s, who opined that “many will be damned on Judgment Day because they killed innocent people, but nobody will be damned because he killed nobody.”⁶

In a more recent article praising the Dutch welfare state, Shorto notes that the people of the Low Countries developed under what he calls the “polder model,” a collectivist approach that worked by mandatory consensus. The polder, or low-lying plain surrounded by dykes, required a collective approach to water removal where everyone in Holland lived within a gigantic delta and inland lake. Water had to be pumped from individual, privately held lands across other private lands; it could not be done on a classic model of private and exclusive property ownership. It is this model, as old as the Middle Ages, that gives rise to a Dutch reputation for “no-holds-barred liberalism.”⁷ That liberalism is also found in Dutch tolerance and pragmatism toward diverse faiths and religions. It allowed Jews and French Huguenots to seek refuge in the Netherlands during the Dutch heyday, and those same attitudes allowed the philosophic free-thinkers of the day to thrive in residence and in exile: Locke, Spinoza and Erasmus of Rotterdam, to name a few.⁸

The Netherlands was occupied during World War II, and it was the locus of both great battles and devastating destruction, captured in popular culture through such movies as “A Bridge Too Far.” The tiny Anne Frank house in central Amsterdam remains one of the most poignant reminders – and popular tourist attractions – of the plight of Dutch Jews during German occupation. During that time period, 70 percent of the Jewish population was deported or killed, with 90% rates in Amsterdam.⁹

In the late 1960s, Dutch culture showed its tolerant attitude to student rebellion and dissent, some of which gave rise to law students (with tepid institutional support) reaching out to surrounding poor populations through the *rechtswinkel*, or law shop, to be discussed below. Also well-known in the same period were the so-called “provos,” a name proudly adopted by a group of “mellow anarchists” when accused by their detractors of being provocateurs. The provos, with strong elements of hippy and

⁵ RUSSELL SHORTO, THE ISLAND AT THE CENTER OF THE WORLD: THE EPIC STORY OF DUTCH MANHATTAN AND THE FORGOTTEN COLONY THAT SHAPED AMERICA 49 (2005).

⁶ *Id.* at 135.

⁷ Russell Shorto, *Going Dutch*, N.Y. Times Magazine, May 3, 2009, at 42.

⁸ Ybo Buruma, *Dutch Tolerance on Drugs, Prostitution and Euthanasia*, 35 Crime & Just. 73, 76-77 (2007).

⁹ Michael Tonry & Catrien Bijleveld, *Crime, Criminal Justice, and Criminology in the Netherlands*, 35 Crime & Just. 1, 6 (2007).

anarchist culture,¹⁰ protested what young people everywhere else did in that era: government rigidity and formality – and in their case, particularly the monarchy. Provos squatted in unused buildings, gave fruit to the police to encourage their humanity, built up the coffee house culture, and even developed a system of “white bikes,” visibly left in central areas for anyone to ride and replicated recently in many European cities with government backing.¹¹

In recent decades, along with the rest of Western Europe, the Netherlands has experienced a dimension of immigration: growing refugee populations, a more diverse ethnic culture, and at least a perceived threat of terrorism, giving rise to growing right-wing and anti-immigrant sentiment and more harsh policies across the board and tempering traditional Dutch tolerance. In fact, “zero tolerance” is the new Dutch mantra, not only for immigration policy but particularly as to violent political crimes and hard drugs. First, decolonization contributed to massive migrations into the already very dense population of the Netherlands. From 1945 to 1965, a total of some 300,000 people moved from Indonesia, a former colony, to the Netherlands, followed by similar heavy flows from Suriname.¹² During the 1970s, a group of Indonesian islanders called Moluccans sought independence for their region, an independent Republic of the South Moluccas. The Moluccans carried out a number of terrorist actions in the Netherlands, including hostage-taking and train hijackings, between 1970 and 1978.¹³ Several young people were tried and convicted for these actions, and Dutch attitudes began to shift to the center and right on immigration, although current scholarship on the era suggests that the Dutch government failed in its efforts to successfully assimilate those who emigrated from its former colonies.

A deeply embedded secular society in the Netherlands also contributes to ethnic and religious tension today. In 1999, 63% of the Dutch population was not affiliated with any church.¹⁴ In 1972, only 9.2% of the population was of non-Dutch ethnic origin; by

¹⁰ Piet Thoenes, *The Provos of Holland*, *The Nation*, April 17, 1967, at 494.

¹¹ David Downes & René van Swaaningen, *The Road to Dystopia? Changes in the Penal Climate of the Netherlands*, 35 *Crime & Just.* 31, 36 (2007). The “free bicycle” movement is mocked in the subversive text of *The Invisible Committee*, *THE COMING INSURRECTION* (2009), seized by French authorities as a “terrorist manual” in 2008. “There is the existence of a youth to which no political representation corresponds, a youth good for nothing but destroying the free bicycles that society so conscientiously put at their disposal.” *Id.* at 10.

¹² Joanne van Selm, *The Netherlands: Death of a Filmmaker Shakes a Nation*, MIGRATION POLICY INSTITUTE (Oct. 2005), <http://www.migrationinformation.org/Profiles/print.cfm?ID=341>.

¹³ Ronald Janse, *Fighting Terrorism in the Netherlands: A Historical Perspective*, 1 *Utrecht L. Rev.* 55, 56-61(2005).

¹⁴ Buruma, *supra* note 8, at 80.

2006, that number had shifted to 19.3% of the population, with more than half of that number coming from non-Western countries. Almost all of the new immigrants were Muslims from Turkey and Morocco. In 1971 there were just over 54,000 Muslims in the Netherlands; by 2004, that number had risen to 944,000.¹⁵ The number of refugees seeking legal protection in Holland has risen steadily until recent years, when Dutch tolerance has been tested. One report indicates that Dutch authorities had been generous in awarding asylum, either in a one-off pardon (2,200 people in 2003) or through judicial review, where the grant rate ran at 41% as recently as 2005, most prominently for groups from Iraq, Iran, Azerbaijan, the former Yugoslavia, and Somalia.¹⁶ However, the Dutch experienced their own version of the U.S. 9/11 attacks: the assassinations of the right-leaning politician Pim Fortuyn, in May 2002, and the filmmaker Theo van Gogh, in November 2004 by a Dutch Moroccan fundamentalist. Those events, involving two very public and gruesome deaths, have contributed to a deep-seated fear of terrorism, anti-immigrant feelings, and a hardening of attitudes within the legal culture.

DUTCH LEGAL CULTURE TODAY:
GREATER DIVERSITY, LESS TOLERANCE, INTERNATIONAL
LEADERSHIP

Scholars have noted a number of shifts in Dutch policy over past decades within the legal culture. The greater diversity of the population, together with rising rates of violent crime and anti-terrorism responses, has contributed to a hardening of Dutch attitudes towards crime and criminals. Tolerance, it seems, is not the same as leniency.

During the post-World War II years Dutch prison policy was considered among the most enlightened and liberal in Europe. This continued well into the late 1980s, with low sentences (and low recidivism), humane conditions, early releases and frequent pardons, home leaves and “conjugal visits.” There are now signals that that policy is in retreat, although the Netherlands, like the rest of Europe, has abolished the death penalty, and the law still permits sentences to a maximum of only twenty years with small prisons and generally good conditions.¹⁷ Several scholars, though, have noted with concern the trend in Dutch incarceration rates which has moved from one of the most lenient systems in Europe and the world during the 60s and 70s to one that approaches that of British rates which are considered some of the harshest in Europe. In the 1970s, 72 percent of the Dutch population felt that criminals should be rehabilitated rather than punished. Four decades later, the prison population has quadrupled, approaching 160 per 100,000

¹⁵ *Id.*; Tonry & Bijleveld, *supra* note 9, at 5-6.

¹⁶ Van Selm, *supra* note 12.

¹⁷ Downes & Swaaningen, *supra* note 11, at 32; Tonry & Bijleveld, *supra* note 9, at 9-11.

in 2005. Serious crimes are up, prison capacity is limited, hard-drug laws are being more aggressively enforced, and harsher sentences are in.¹⁸

There also is some evidence of the classic Dutch tolerance with regard to practices toward which Americans have generally taken a hard line: drugs, prostitution, abortion and euthanasia. All of these policies have been adopted with nuance and sophistication and without particularly adverse consequences to the social or moral fabric of the nation. Dutch drug policy is the epitome of tolerance, whether in Europe or elsewhere; while possession of any amount of marijuana is technically a misdemeanor criminal offense, Dutch officials choose to deal with it by a policy of non-enforcement and strong public health components with public spending for such programs among the highest anywhere. Hard-drug offenses, by contrast, are aggressively prosecuted.¹⁹ A similar policy underlies the Dutch approach to prostitution, with about 20,000 prostitutes working legally in the Netherlands. Again, because up to a quarter of these women are victims of trafficking, Dutch policies focus on prosecution of forced sex work.²⁰ Dutch law, through a combination of progressive legislation and court decisions, has yielded a regime that permits both abortion and euthanasia in carefully controlled situations. Deaths associated with euthanasia rose to a peak of about 2,200 in 1999 with only three successful prosecutions of doctors for their role in contributing to unjustified patient deaths.²¹

One would expect this relative leniency to produce relatively less activity for lawyers in the courts in general, with a generally open, pacific and genial population. When one looks at the justice system more broadly, however, one sees a discernable rise in the litigation work of lawyer-advocates. While one study, now more than fifteen years old, showed that the Dutch tended to use their legal system for the resolution of civil claims less often than their German neighbors did,²² a more recent study found that despite a relatively small bar (estimated by the author at 7.7 lawyers per 10,000 inhabitants, compared with about 30 per 10,000 in the U.S.), there has been a relative increase in trials, particularly

¹⁸ Buruma, *supra* note 8, at 81-81; Tonry & Bijleveld, *supra* note 9, at 12-14, 17.

¹⁹ Buruma, *supra* note 8, at 88-89.

²⁰ *Id.* at 96-97.

²¹ *Id.* at 100-105; see also Jackson Pickett, *Can Legalization Improve End-of-Life Care? An Empirical Analysis of the Results of the Legalization of Euthanasia and Physician-Assisted Suicide in the Netherlands and Oregon*, 16 Elder L. J. 333 (2009) (showing *reduction* in the annual rate of euthanasia through legalization).

²² Erhard Blankenburg, *The Infrastructure for Avoiding Civil Litigation: Comparing Cultures of Legal Behavior in the Netherlands and West Germany*, 28 L. & Soc'y Rev. 789 (1994).

trials that go to judgment – about 70 percent, on average.²³ The same study notes what is true for most countries in the civil law tradition: trials are less adversarial, judges are more active, and there are no juries. In addition, more cases are diverted into alternative dispute resolution processes. In general, the author concludes, the rates of filings in labor law, commercial law, and family law issues on support, inheritance and mentorship over financial matters have increased, while divorces have held constant.²⁴ The litigation work described in the study discussed here was largely that of the general practitioner in small to medium-sized domestic law firms in Holland while there is some evidence that the law practice of the large, multi-national firm is simply a different kind of practice altogether.²⁵ These data might be contrasted with “big law” practice, which seems to have gone without precise study thus far in the Netherlands, at least in English.

THE NETHERLANDS AS GLOBAL LEGAL CAPITAL

In modern times, the Dutch are perhaps best known for their reputation as the international law capital of the world. It is no coincidence that Delft, a small city most known today for its fine porcelain, gave us the great international law scholar of his era, Hugo de Groot, known as Grotius (1583-1645). The Netherlands is one of the founding members of the European Union, as it was with the North Atlantic Treaty Organization and the World Trade Organization. It is home to no less than five international tribunals, most famously the International Court of Justice in The Hague. That city, however, is also home to the Permanent Court of Arbitration, the International Criminal Court for the Former Yugoslavia, the Permanent International Criminal Court, and the Special Court for Lebanon. Another special tribunal, one applying Scottish law in the Dutch courts, was set up to try Libyans arrested for the bombing of Pan Am flight 103 over Lockerbie, Scotland on 21 December 1988. The proceedings in the trial of Charles Taylor, ex-president of Sierra Leone, are being held by the Special Court for Sierra Leone in The Hague. In short, The Hague can easily be called the center of the international law universe.

Even within their domestic legal system, the Dutch have been among the most aggressive countries of the world in using

²³ Carolien Klein Haarhuis, *Vanishing or Increasing Trials in the Netherlands?*, 2006 J. Disp. Resol. 71, 75-76 (2006). See other data with regard to Dutch bar size, *infra* text accompanying notes 45-49.

²⁴ *Id.* at 104.

²⁵ See discussion of the Law Firm School, *infra* text accompanying notes 94-100.

international criminal law to prosecute crimes in violation of universal or other extraordinary uses of criminal jurisdiction beyond territoriality. As early as 1997, the Dutch courts used its own War Crimes Act of 1997 to prosecute Darko Knezevi for his role in war crimes in Bosnia.²⁶ Having adopted the International Crimes Act of 2003,²⁷ the domestic legal order has seen numerous trials for extraterritorial international crimes, including two Afghan asylum seekers convicted of atrocities in their home country during the Soviet occupation;²⁸ a Congolese national, for torture in his home country; a Rwandan asylum seeker alleged to have been involved in war crimes and torture following the Rwandan genocide of 2004;²⁹ and two Dutch nationals, Frans van Anraat and Guus van Kouwenhoven, for their roles in supplying chemicals destined for weaponry used by Saddam Hussein in Iraq and delivery of arms to Liberia, respectively.³⁰ In the Kouwenhoven case, an appellate court acquitted the accused of all charges, leading to an appeal by the government that is now pending in the national Supreme Court. Such cases, as noted by at least one scholar, can be challenging on both geographic and cultural grounds for the conduct of extraterritorial investigations and evidence gathering and assessment.³¹ Finally, the government itself has been the subject of actions in both domestic and international human rights bodies, to which the Dutch authorities have willingly submitted in upholding their role as responsible actors in the international community.³² These results, both good and bad, might be compared with the timid and infrequent use by U.S. prosecutors of such jurisdiction. The only example to date is the trial in a Miami federal court of Roy Belfast Jr., a.k.a. Chuckie

²⁶ Wolfgang Kaleck, *From Pinochet to Rumsfeld: Universal Jurisdiction in Europe 1998-2008*, 30 Mich. J. Int'l L. 927, 943 (2009).

²⁷ Human Rights Watch, *Universal Jurisdiction in Europe: Netherlands*, June 27, 2006.

²⁸ Guénaél Mettraux, *Dutch Courts' Universal Jurisdiction over Violations of Common Article 3 qua War Crimes*, 4 J. Int'l Crim. Just. 362 (2006).

²⁹ Kaleck, *supra* note 26, at 943-945; *see also* Cedric Ryngaert, *Universal Jurisdiction over Genocide and Wartime Torture in Dutch Courts: An Appraisal of Afghan and Rwandan Cases*, 2 Hague Just. J. 13 (2007).

³⁰ Kaleck, *supra* note 26, at 945.

³¹ Larissa van den Herik, *The Difficulties of Exercising Extraterritorial Criminal Jurisdiction: The Acquittal of a Dutch Businessman for Crimes Committed in Liberia*, 9 Int'l Crim. L. Rev. 211, 215-221 (2009).

³² Johan G. Lammers, *The Role of the Legal Advisor of the Ministry of Foreign Affairs: The Dutch Approach and Experience*, 18 Tul. J. Int'l & Comp. L. 177, 202-204 (2009) (actions include 29 judgments against the Netherlands for violation of the European Convention on Human Rights; several decisions by individual complaint under the UN treaty bodies; and domestic legal actions against the State of the Netherlands).

Taylor, the son of Liberian president Charles Taylor, for torture in Liberia and other international crimes.³³

PUBLIC INTEREST LAW IN THE NETHERLANDS AND THE CIVIL LAW
TRADITION OF EUROPE

At the same time that there has been a strong development of international law and institutions within the welcoming Dutch state, there does not seem to be a strong indigenous public interest law community outside of the generally commendable and extensive work of the Netherlands legal aid program. Before passing on to the system of legal education and the use of clinical education in particular, a few observations on the general state of public interest law in the Netherlands, and more broadly in the civil law countries of continental Western Europe are worthwhile. There is, as noted above, a relatively robust community of public interest law related to international tribunals, mostly headquartered in The Hague, while there is almost a complete absence of public interest organizations within the domestic realm, or even a sense of public interest law in the way that the term is used in the United States.

The space for what is called public interest practice here seems to be occupied in the Netherlands almost exclusively by an expansive and generously funded national legal aid program. The program has quite ample scope and range of issues, as will be discussed below. That program, however, does not see itself as acting in the public interest, *per se*. The national director of the Legal Aid program stated recently that “the objective of the Dutch Legal Aid program is to provide access to justice for individuals who cannot afford legal aid themselves. In this way, the program can be seen as part of the social security system. This means the program itself does not strive for social change: it merely facilitates those who wish to do so.”³⁴

³³ *Press Release: Roy Belfast Jr., a.k.a. Chuckie Taylor, Sentenced on Torture Charges*, FED. BUREAU OF INVESTIGATIONS (January 9, 2009), <http://miami.fbi.gov/dojpressrel/pressrel09/mm20090109.htm> (sentence of 97 years imprisonment for conspiracy to commit torture in Liberia, first conviction under torture statute). For a general overview of international humanitarian law prosecutions in the U.S., see Ralph G. Steinhardt, *International Humanitarian Law in the Courts of the United States: Yamashita, Filartiga and 911*, 36 *Geo. Wash. Int'l L. Rev.* 1 (2004). In March of 2010, the U.S. Department of Justice created a new Human Rights and Special Prosecutions Section to prosecute international war crimes, complex immigration crimes and human rights violations. The new office has greatly expanded powers under new legislation permitting prosecution for extraterritorial offences. The HRSP website is at <http://www.justice.gov/criminal/hrsp/>.

³⁴ E-mail from Peter van den Biggelaar, director of the Dutch national legal aid program (May 5, 2010) (on file with author).

There are several factors that contribute to the absence of a domestic public interest movement in the Netherlands. First, the term “public interest law” is not used in the same sense in the Dutch legal culture as it is in the United States or even in the U.K. Where the term appears, it is used in a much broader sense having more to do with general interests for which the *state*, not the bar or lawyers with conscience, bears responsibility. “Public interests,” says one Dutch study, “refer to interests for which the states bear responsibility.”³⁵ This is not a uniquely Dutch position; such views can be found throughout the civil law tradition.³⁶

Second, one searches in vain for scholarly writing, at least in English, which addresses public interest strategies in the Netherlands courts. The literature is scant.³⁷ The most prominent reasons for the absence, one group of authors suggests, are procedural impediments to all litigation. Most important is the “loser pays” disincentive in Dutch (and many other European) courts, where the losing party in litigation may be made to pay court and legal fees of opposing counsel.³⁸ This dissuades less affluent people and more controversial causes from use of the courts, due to practical fears of the financial consequences of losing. A related issue is limitation by law on contingent fee arrangements, as well as narrower limits on lawyer solicitation of clients. Other structural limitations within the civil law tradition,

³⁵ Gijsbert J. Vonk & Albertjan Tollenaar, *The Public Interest and the Welfare State: A Legal Approach* 5 (Univ. of Groningen, Faculty of Law Working Paper, 2008), available at <http://ssrn.com/abstract=1269372> (using a human rights framework to argue for a state responsibility to respect, protect and fulfill the socio-economic right to social security).

³⁶ Vera Langer, *Public Interest in Civil Law, Soviet Law, and Common Law Systems: The Role of the Public Prosecutor*, 36 Am. J. Comp. L. 279 (1988); Lesley K. McAllister, *Revisiting a “Promising Institution”: Public Interest Litigation in the Civil Law World*, 24 Ga. St. U. L. Rev. 693 (2008) (discussing the role of the Brazilian *Ministério Público*, the state prosecutorial agency charged with enforcement of public interests in civil cases).

³⁷ I found only two articles on topics related to public interest lawyering, both dealing with *international* enforcement issues in the environmental area. See Hanna Tolsma, Kars de Graaf & Jan Jans, *The Rise and Fall of Access to Justice in the Netherlands*, 21 J. Envtl. L. 309 (2009) (dealing with the closing off of judicial avenues for environmental groups to enforce compliance with international environmental treaties in the Netherlands); Nicola M.C.P. Jägers, Marie-José van der Heijden, *Corporate Human Rights Violations: The Feasibility of Civil Recourse in the Netherlands*, 33 Brook. J. Int’l L. 833 (2008) (discussing the potential for use of the Dutch domestic courts to enforce corporate responsibility for environmental damage abroad, much as is currently being litigated under the Alien Tort Claims Act (28 U.S.C. §1350) in the United States).

³⁸ Nicola M.C.P. Jägers & Marie-José van der Heijden, *Corporate Human Rights Violations: The Feasibility of Civil Recourse in the Netherlands*, 33 Brook. J. Int’l L. 833, 861-62 (2008)

and replicated in Holland, are narrow, strict rules on standing and limitations on collective or class actions.

Third, the public interest community in the Netherlands seems more focused on international than domestic work. One can immediately see the influence and prominence of the international NGO community in work with the various international criminal tribunals headquartered in The Hague. Both the Coalition for the International Criminal Court, an organization with more than a thousand local NGO affiliates, and the Victims' Rights Working Group, another NGO coalition, are examples of this work.³⁹ One example of the contrast between international and domestic public interest work is offered by a letter sent by twenty-two Dutch NGOs to Pascal Lamy, the European Commission member charged with labor issues oversight, asking for EC intervention on cheap access to patented medicines for HIV/AIDS victims in Africa. Virtually every one of the Dutch organizations was focused on external work, not work within the Netherlands.⁴⁰

Yet another reason for lack of domestic or local public interest focus may lie with legal education itself, as this article suggests. The deep formalist tradition of legal education, as described below, may well contribute to the absence of a culture of local public interest commitment on the part of young lawyers graduating from Dutch law schools. There is an absence of focus on the creation of a public conscience by lawyers, fostered and encouraged by profoundly traditional, theoretical, and generally socially isolated law curricula, not only in the Netherlands but throughout Western Europe. This is a subtle but important point, perhaps the most important of those summarized here. One author notes that the broadest definitions of public interest lawyering hearken not merely to court procedures, but to “a **way of working with the law** and an attitude **towards** the law.”⁴¹ One organization devoted to the expansion of public interest lawyering in Central and Eastern Europe and beyond concludes that public interest law can be found in three central arenas: as access to justice, as law reform, and as political empowerment.⁴² Where that cultural

³⁹ COALITION FOR THE INTERNATIONAL CRIMINAL COURT, <http://www.iccnw.org/?mod=home> (last visited Aug. 13, 2010); VICTIM'S RIGHTS WORKING GROUP, <http://www.vrwg.org/> (last visited on August 13, 2010).

⁴⁰ Letter from 22 Dutch Non-Governmental Organizations to European Commissioner Pascal Lamy, <http://www.cptech.org/ip/health/sa/22ngos.html> (last visited March 4, 2010).

⁴¹ Vinodh Jaichand, *Public Interest Strategies for Advancing Human Rights in Domestic Systems of Law*, 1 Sur – Int'l J. on Hum. Rts. 127, 128 (2004) (discussing use of public interest law strategies in the courts of South Africa) (emphasis in original).

⁴² PUBLIC INTEREST LAW INITIATIVE, PURSUING THE PUBLIC INTEREST: A HANDBOOK FOR LEGAL PROFESSIONALS AND ACTIVISTS 5 (Edwin Rekosh, Kyra

attitude is not cultivated as a formal aspect of legal training, it is hard to inculcate later.

THE DUTCH LEGAL PROFESSION AND PROFESSIONAL TRAINING IN
LAW: A COMPARATIVELY SMALL BAR STRONGLY
INFLUENCED BY BIG LAW

It is somewhat difficult to write in English about the legal profession and legal education in Europe, as many of the rapidly-changing regulations governing the profession and training for it throughout the European Union have not appeared quickly in English translation and because many of the post-academic aspects of apprenticeship training in Europe simply have not been studied or written about, at least in English. This may be in part because the post-academic stage of training is in the hands of the bar, as in the Netherlands and England, or in the courts, as in Germany, and not within the realm of academic study of the university professor. Another particular difficulty is how one defines the legal profession and how one counts lawyers. For example, the term “lawyer” itself is defined quite differently in local legal culture; the “lawyer” we know in the United States may be called something entirely different in other parts of the world – barrister, solicitor and advocate are some of the terms used. I use “advocate” here generally to refer to one who has been licensed to practice law within a law firm or solo practice, within government, or in commercial work such as in-house counsel. The term “jurist” is often applied to those who have completed formal academic training but not the formal professional apprenticeship requirement.⁴³ In addition to these roles, one Dutch academic suggests there are no less than eight categories within the legal profession in the Netherlands: advocate, judge, public prosecutor, civil servant, in-house counsel, tax consultant, notary and academic.⁴⁴

By comparison with its larger European neighbors and the United States, the legal profession in the Netherlands is small when measured by advocates per capita. Estimates of the total number of persons in the legal profession are fairly constant, at

A. Buchko & Vessela Terzieva eds. 2001); *see also* Edwin Rekosh, *Constructing Public Interest Law: Transnational Collaboration and Exchange in Central and Eastern Europe*, 13 *UCLA J. Int'l L. & Foreign Aff.* 55 (2008).

⁴³ Kees Schuyt, *The Rise of Lawyers in the Dutch Welfare State*, in *LAWYERS IN SOCIETY: THE CIVIL LAW WORLD*, VOLUME TWO 200, 201 (Richard L. Abel & Philip S.C. Lewis eds., 1988).

⁴⁴ Dr. Jenneke Bosch-Boesjes, *Experience of Defining Learning Outcomes at University of Groningen, the Netherlands* 1 (March 20, 2009) (unpublished PowerPoint presentation) (on file with author). There are different and advanced studies for tax lawyers.

“close to 16,000” according to the chief operating officer of the Dutch Bar, Prof. Dr. R.C.H. van Otterlo.⁴⁵ This compares with some 146,000 advocates in next-door Germany, a vastly greater percentage, despite its larger population.⁴⁶ There are about 10 Dutch advocates per 10,000 persons, compared to about 30 lawyers per 10,000 in the United States and about 56 advocates per 10,000 in Germany.

Trends in law school enrollment show two phenomena affecting the legal profession. First, as is generally true throughout the world, there has been explosive growth in law school enrollments causing the legal profession to grow precipitously within the past several decades. Data on the Netherlands show, for example, that in 1986, there were some 4,700 advocates in the country, with 1,200 of that number being graduate trainees.⁴⁷ Another study of the legal profession attributes its “explosion” to the more general phenomenon of greater access to higher education with a tripling of the rate of all 20-year-olds with university educations to a full 25% of the population. The same study notes 6,368 advocates in 1990 and double that number, 12,290, in 2000.⁴⁸ Recent declines in the economy show no signs of abatement in that trend. In fact, the evidence shows that young people retreat into academic life when the job market dries up, at least in the United States.⁴⁹

Women make up a growing, indeed astonishing, percentage of all enrollments in Dutch law schools, another reflection of a general worldwide trend. Although the first woman judge in the Netherlands was appointed in 1947, 72% of all judges in that country were women by 2006.⁵⁰ Another authority notes that more than 65% of all law school enrollees today are female, and women

⁴⁵ Interview with Rob van Otterlo, former COO, Dutch Bar, in Den Haag, Netherlands (October 19, 2009). The bar’s own publication puts the number at 15,465, in 2009. KSU UITGEVERIJ, *DE STAND VAN DE ADVOCATUUR 2009* [KSU Publishing, *The State of the Legal Profession 2009*], at 64, Table 6.1.

⁴⁶ Heribert Hirte & Sebastian Mock, *The Role of Practice in Legal Education: Country Report, Germany 6* (2010) (unpublished report from Eighteenth Int’l Cong. on Comparative Law) (on file with author).

⁴⁷ A.T. Voss, *Methods of Training Young Advocates in the Netherlands*, 4 J. Prof. Legal Educ. 7 (1986). *But see* Jaap E. Doek, *Legal Education and Training in Europe: The Netherlands*, 2 Int’l J. Leg. Prof. 25 (1995) (noting decline in law school enrollments between 1987 and 1993 due to “demographic developments”).

⁴⁸ Erhard Blankenburg, *Dutch Legal Culture: Persisting or Waning?*, in INTRODUCTION TO DUTCH LAW 13, 21, Table 3 (Jeroen Chorus, Piet-Hein Gerver & Ewoud Hondius eds., 4th ed. 2006).

⁴⁹ Rebecca R. Ruiz, *U.S. Sees Surge at Graduate and Law Programs*, Int’l Herald Tribune, Jan. 11, 2010, at 4 (noting 20% rise in numbers of takers of the Law School Admission Test in October, 2009, and “substantial” increases in law school applications in fall 2009).

⁵⁰ Blankenburg, *supra* note 48, at 22.

make up an estimated 95% of entering judges. Worthy of note, though, is that women have yet to ascend to the higher ranks of the judiciary in numbers⁵¹ and that women are not generally numerous among partners in large, traditional law firms.

WHAT DO DUTCH LAWYERS DO?

English-language data about Dutch law practice indicate that many graduates of law schools do not practice law but take up other careers. Data on this cohort is understandably scant, and such data as exist in English show little but a broad sketch of law practice, perhaps outdated in fast-moving markets. With those caveats, the profile does seem to have held true for the past several decades. As of 1995, about 40% of all graduates pursued a “classic” career at the bar or on the bench, about 20-22% worked for private companies such as banks or insurance companies, about 15% worked in government, and about 11% pursued a job in education. The author of this study concluded that “most students find a job although it seems more difficult (longer periods of unemployment or odd jobs after the completion of the education) than some years ago.”⁵² More recent data on practice, from 2009, is mixed in other ways. It shows that 36% of all graduates go into law firms, notary work or tax firms, 28% go into civil service as judges, prosecutors or other government workers, 10% go into banking, insurance or domestic and international industry work, while 4% pursue academic careers.⁵³ Two prominent officials in the bar confirm that the rate of formal bar admissions is in decline. One suggests that only one-third of graduates go on to become admitted advocates,⁵⁴ and another suggests the rate may be as low as 20%, as students seek quick and easier routes into the labor market.⁵⁵

There are three noteworthy aspects to these career choices, all related to the particulars of Dutch legal culture. First, many judges come to their careers later in their professional lives, as is true in the United States. This distinguishes Dutch judges from other civil law jurisdictions where the judicial assignments begin immediately after law school and are seen as the pinnacle of career choices. About 40% of all Dutch judges come into the career after significant law practice, while the remaining 60% pursue the traditional judicial career from the start. Second, and of even

⁵¹ Van Otterlo, *supra* note 45.

⁵² Doek, *supra* note 47, at 26.

⁵³ Bosch-Boesjes, *supra* note 44.

⁵⁴ Van Otterlo, *supra* note 45.

⁵⁵ Interview with Leonard Böhmer, in Utrecht, the Netherlands (December 17, 2009). Böhmer is a partner in CMS Derks Star Busmann in Utrecht and chair of the local committee on bar training for apprentice lawyers in the Utrecht district.

greater interest here, the legal profession has always been closely involved with legal aid work, and legal aid benefits have extended deeply into the middle class in the Dutch welfare state. In the 1980s, more than 60% of all Dutch residents were entitled to some form of legal aid, and an impressive 16% of all lawyer/advocates worked on legal aid cases. Today, austerity budgets have cut into that total, but some 40% of the population still has access to justice through legal aid programs, and 8% of advocates do legal aid work. Pay for legal aid work also is relatively generous, averaging around 100€ an hour. Third, Dutch residents largely seem to trust law, lawyers and the courts. In a 1992 poll, only 29% of Dutch respondents said that they agreed with the statement that their interests are rarely represented in law, rather than being represented by “those who want to control me,” while Belgians (39%) and Italians (44%) tended to be more cynical in their answers. Similarly, only 18% of Dutch respondents felt that they could ignore a law they felt was unjust, while Belgians (58%), French (68%) and Spanish (55%) respondents felt less inclined to follow unjust laws.⁵⁶ Another more recent poll concluded that the Dutch tend to trust their judiciary and legal system as being free of corruption, as is true in much of northern Europe and Scandinavia.⁵⁷ While Dutch attitudes might have swung a bit more to the conservative side on matters of multi-culturalism, these figures on the scope of legal aid coverage, combined with trust in the legal system, may well help to explain the absence of a strong domestic public interest bar in the Netherlands today.

Dutch law firms range from small (less than 5 advocates) to large, multidisciplinary international firms located in Amsterdam and Rotterdam, one of the largest seaports in Europe.⁵⁸ Loyens & Loeff is the only Dutch firm listed in the AmLaw Global 100 law firms, with headquarters in Amsterdam and offices in 13 countries. It was ranked 48 as to number of advocates, with 866 in 2008. It ranks 83 in gross revenues, at \$439,000,000 in 2009, or \$505,000

⁵⁶ On the general legal culture issue, see Blankenburg, *supra*, note 48, at 19-26. Interview with Peter van den Biggelaar, director of the national legal aid program, Utrecht, December 17, 2009).

⁵⁷ The Global Corruption Report for 2007 indicates that only about 25% of all Dutch respondents describe their legal system as corrupt, joined by lesser percentages for Finland, Sweden and Denmark. Reported in HAZEL GENN, JUDGING CIVIL JUSTICE 146, Figure 4.1 (2010).

⁵⁸ *From Lawyer to Solicitor: Professional Legal Training and Continued Professional Legal Training, a Road to Professional Competence*, NEDERLANDSE ORDE VAN ADVOCATEN [DUTCH BAR ASSOCIATION], http://www.advocatenorde.nl/english/education/lawyer_to_sollicitor.asp (last visited Sept. 21, 2009).

revenue per partner.⁵⁹ CMS Derks Star Busmann, based in Utrecht, is another, more regional model, with 220 advocates based throughout Europe and working on issues involving European law.⁶⁰ Although not included in the “global” list of AmLaw, the CMS group of affiliates has more than 2,400 lawyers on staff and works in 54 offices in 28 jurisdictions.⁶¹

Estimates on the earning power of Dutch advocates vary widely from an estimated average of about 36,000€ per year to one of 80,000 € per year.⁶² There was greater agreement on the starting salaries for new associates in large law firms, which average around 40,000-45,000€ While this seems low by comparison with starting salaries for associates in big U.S. firms, associates quickly move up in salary to the 200,000€ level by the time they make partner after 5-7 years. In addition, the new associate is “worth” less than in the U.S., as that recent graduate is still in the mandatory 3-year training phase, during which firms bill about 800 hours per year, as compared with an average of 1400 hours for partners. New associates in training, even in small firms, are expected to be paid a monthly salary of between 2,000-2,500€, although there were suggestions that a few law firms may falsely report compliance with payments or billed hours for these new employees.⁶³ Senior partners in large law firms may make upwards of a million Euros a year, but burnout is common, as big-firm partners “work themselves to death.”⁶⁴

Two other aspects of law practice are worth noting here: one on mobility within Europe of the Dutch law license and one on legal aid insurance. First, there has been much talk about mobility within the European law market due to the adoption of EU rules permitting an advocate to move relatively freely between European countries and establish a practice within another jurisdiction. Implementation of this policy has both legal and practical consequences. As to the legal aspects, there have been at least two cases from the European Court of Justice dealing with efforts by advocates or trainees to gain access to a second country’s bar. First, the *Morgenbesser* case⁶⁵ made clear that authorities in the

⁵⁹ *The Global 100: The World’s Highest Grossing Law Firms in 2009*, AMERICAN LAWYER, Oct. 2009; *The Global 100: Most Lawyers in 2008*, AMERICAN LAWYER, Oct. 2008.

⁶⁰ Böhmer interview, *supra* note 55.

⁶¹ CMS DERKS STAR BUSMANN, http://www.cms-dsb.com/aboutus/cms/facts_and_figures2/pages/default.aspx (last visited Mar. 10, 2010).

⁶² Bohmer and Van Otterlo interviews, *supra* at notes 55 and 45, respectively.

⁶³ *Id.*

⁶⁴ Van Otterlo interview, *supra* note 45.

⁶⁵ Case C-313/01, *Morgenbesser v. Consiglio dell’Ordine degli avvocati di Genova*, 2003 E.C.R. I-13467, discussed in Laurel S. Terry, *The Bologna*

arriving country must give at least some weight to home country law study before determining that the graduate is not entitled to status as a trainee attorney. There, Morgenbesser presented her French diploma to Italian authorities, but she was denied status as a trainee because she had not graduated from an Italian law school. Another more recent decision in the *Pešla* case leaves the issue more ambiguous. There, a Polish graduate with a degree from a German law school as a “Master in German and Polish Law” applied for admission to the trainee stage of German licensure. He was denied. The court seemed to uphold the German Lander (state) decision to deny admission, but it suggested, as in *Morgenbesser*, that “a degree of flexibility” was in order by the German authorities.⁶⁶ There are also practical consequences of such a move, implied by the two decisions. First, one must manage the local language, and obviously one must have a working knowledge of local law, as all legal systems operate on a national basis. As such, one authority mentions that only 50 to 100 Dutch advocates have dual licenses outside of the Netherlands given the difficulty of meeting local admission criteria.⁶⁷

Another new phenomenon affecting Dutch advocates is the growing practice of legal aid insurance. In this arrangement, individuals or families can buy low-cost insurance to cover routine legal work. Annual fees for coverage now run at 180-250€ per year, which can prove to be less expensive than the contribution or recoupment fee required by all residents for use of the legal aid system. Two law firms, DAS and Arag, located in a small town outside of Utrecht, do the lion’s share of the insurance business with about 15 staff advocates each, assisted by “hundreds” of law graduate jurists not formally admitted to practice.⁶⁸ The legal aid program does not oppose these services because insurance work is barred in several of their important practice areas: divorces, criminal cases, asylum cases in immigration, and house fires.⁶⁹ Another study suggests that similar services are offered by trade unions and other membership organizations.⁷⁰

Process and Its Impact in Europe: It’s So Much More than Degree Changes, 14 Vand. J. Transnat’l L. 107, 128-129 (2008).

⁶⁶ Case C-345/08, *Pešla v. Justizministerium Mecklenburg-Vorpommern*, 2009 E.C.R. (10 Dec. 2009), discussed in Hirte and Mock, *supra*, note 46.

⁶⁷ Van Otterlo interview, *supra* note 45.

⁶⁸ Bohmer interview, *supra* note 55.

⁶⁹ Van den Biggelaar interview, *supra* note 56

⁷⁰ Blankenberg, *supra* note 48, at 24.

LEGAL EDUCATION: TRADITION-BOUND WITH LITTLE SPACE FOR INNOVATION

Preparation for admission to the bar as an advocate throughout Europe, indeed throughout much of the rest of the world outside of the United States, is composed of two distinct phases: an academic phase within the university and a second period of formal professional apprenticeship for a fixed period of time. The traineeship phase may, as it does in the Netherlands, require practice-focused courses with exams for each subject as part of practical training. After completion of these two phases, an advocate is licensed to practice; there is no final bar examination as is given throughout the states of the United States.

Until recently, law study in the Netherlands, as is true in the rest of Europe, including much of the United Kingdom, has been undergraduate study, undertaken after completion of what we would call high school in the U.S. Again like much of Europe, the Netherlands now has a combination of bachelor and masters law study pursuant to the Bologna reform process, discussed below. Secondary education in Holland itself begins to focus on either trade or university preparation. In the Netherlands, anyone who has successfully completed the so-called VWO (*Voorbereidend Wetenschappelijk Onderwijs*, or Pre-University Education (a track distinct from preparation for vocational education or other non-university study) is eligible for law school without other criteria or testing. Law school options are also relatively small with only ten state-funded law schools in the Netherlands⁷¹ as compared with 43 in neighboring Germany; all but one of these law schools is state-funded.⁷² Many of these schools have long and respected traditions in European higher education: the University at Utrecht was founded in 1636, and one could study law in Groningen as early as 1616. Utrecht University counts René Descartes and nine Nobel laureates among its graduates.

Applicants to law school express a preference, but placement at the law schools is left in the hands of a central government admissions office. Legal education is relatively inexpensive compared with even public law schools in the U.S. Although tuitions at Dutch law schools now run around 10,000€

⁷¹ See, e.g., G.R. de Groot, *Legal Education and the Legal Profession*, in INTRODUCTION TO DUTCH LAW 27 (Jeroen Chorus, Piet-Hein Gerver & Ewoud Hondius eds., 4th ed. 2006). The ten Dutch law schools include three large faculties of the universities at Leiden, Utrecht and Amsterdam; three mid-sized law schools in Tilburg, Rotterdam and Groningen; and three smaller law schools at Nijmegen, Maastricht and the VU University Amsterdam. Some do not count the Open University in Heerlen among the faculties, as it operates solely through distance learning.

⁷² *Id.* at 1.

per year, relatively generous government subsidies for university study reduce costs to around 2000€ per year.⁷³ This open and relatively inexpensive admissions process makes legal education an attractive career option, and placement through a centralized process avoids competition for entrants.⁷⁴ There is no formal ranking of law schools.⁷⁵ Critics complain that it takes selection out of the hands of those most affected by the distribution of students and that law faculties must maintain an open profile for the general study of law rather than develop specialty areas that might attract a particular pool of applicants. Open admissions also mean that there are high dropout and failure rates at Dutch law schools during the first and subsequent years. Data from 1995 indicated that only about 45% of those who enter law school finish, and one study recommends that graduation rates should be improved to 60%.⁷⁶

Dutch academic legal education has simultaneously maintained a profoundly conservative character while adapting to the radically changing environment of the new, integrated Europe. Its most traditional elements are three: its heavy reliance on required courses; a conservative professoriate who are products of a system that emphasizes theory over practice; and the rigid segregation of legal training into academic and practical tracks controlled by the academy and the profession or the courts, respectively. Its changing character might also be focused on three elements: the “Europeanization” of legal study; the wide use of student exchange programs; and the Bologna reform process of European integration.

Law school curricula are generally uniform at all national law schools with a few noteworthy exceptions set out below. Courses are a mix of general and specific law subjects, recalling that this is undergraduate study. As of 2006, mandatory first-year subjects included legal theory, constitutional or administrative law, criminal law and private law. After that, mandatory subjects include economics, history of law, one philosophical or sociological course, and one international or comparative subject. In order to gain what is called the *Effectus Civilis*, or “civil effect”

⁷³ Interviews with Tom Zwart, Leo Zwaak and Brianne McGonigle, Dec. 10, 12, 2006. At the time, Tom Zwart was Dean of Graduate Studies at the University of Utrecht law faculty. Leo Zwaak is a member of the faculty there, and Brianne McGonigle is a doctoral candidate there.

⁷⁴ De Groot, *supra* note 71, at 27.

⁷⁵ The University at Groningen points to a study by QANU (Quality Assurance Netherlands Universities), “an independent foundation” that, not surprisingly, ranks Groningen first among Dutch law faculties. Ranking Dutch Law Faculties, University of Groningen, <http://www.rug.nl/rechten/faculteit/ranking?lang=en> (last visited Mar. 12, 2010).

⁷⁶ Doek, *supra* note 47, at 26.

qualification to continue as a trainee advocate after graduation, law students must take a required set of courses taught in Dutch and focusing on Dutch national law. Additional specialized programs are offered in notary skills (mostly land transfers), tax law, and Antillean or Aruban law, those being the Caribbean islands in the colonial states of the Dutch Antilles.⁷⁷ Courses throughout undergraduate study tend to be taught in large classrooms with many students and in a very theoretical, code-based style. Practice and skills courses are few, and basic areas of oral and written communication are often overlooked or ignored on the theory that these skills will be taught in the trainee phase. Even in the old regime, however, there was some room for innovation. The relatively newer Maastricht law school was founded in 1982, and unlike any of the other law schools, gives a good deal of attention, to the teaching of legal skills such as legal research, legal reasoning, and social and lawyering skills. Many courses there are taught either through problem-based learning, moot courts or the law school's legal aid clinic, about which details will follow below.⁷⁸

Law school professors are chosen via a specialized track following the German and French traditions of academic and scholarly achievement. One must have achieved the doctoral level to enter into the teaching field, although most doctoral candidates act as teaching assistants, effectively making them pre-degreed teachers. The doctoral thesis, a long written work product produced over an average of four to six years of writing, must be published and orally defended in order for the degree to be conferred. The successful doctoral candidate enters directly into the teaching profession in a hierarchical system within departments of the law faculty: university lecturer (assistant professor), senior lecturer (associate professor), and professor (*hoogleraar*).⁷⁹ Most, but not all, university lecturers have the equivalent of tenure. Unlike many of its fellow European countries such as Germany, however, Dutch law professors are permitted to, and do, practice law. Similarly, one who has been successful in law practice or the judiciary, if combined with a sufficient publication record, may move into academia.⁸⁰ As noted above, law training after graduation falls to the bar and is entirely outside of the academy, although some law professors serve as training lecturers.

⁷⁷ De Groot, *supra* note 71, at 27-28.

⁷⁸ John Mitchell Milo, *The Maastricht Law Curriculum: "Learning by Doing."* (May 1992) (unpublished manuscript presented at a Workshop on Transnational Perspectives on Social Values in Legal Education and the Transformative Potential of Legal Services, Maastricht/Philadelphi) (on file with author).

⁷⁹ See generally René de Groot, *Recruitment of Minds: Selecting Professors in the Netherlands*, 41 Am. J. Comp. L. 441, 443 (1993).

⁸⁰ *Id.* at 28-29.

THE APPRENTICESHIP PHASE: LITTLE-STUDIED AND TRADITION-BOUND

The apprentice stage of legal training, although in very widespread use in both the civil and common law traditions outside of the United States, is an area that has not attracted much scholarly attention, at least in English-language sources. This may be partly because it is not controlled by the traditional scholars in the legal academy, or because it is seen as a subject for local study in the indigenous language, or merely because it is not seen as a worthy subject for academic study at all.⁸¹ In any event, this section draws on the few writings in English, personal interviews with relevant personnel, and particularly the Dutch Bar Association, which has taken the time to include a number of postings to its website on the apprenticeship process. This may in part be a marketing device used to draw English-speaking lawyers to the Netherlands, but it is helpful for understanding and analysis of that phase.

The apprentice in the Dutch bar system, often called a “trainee advocate,” is considered to be provisionally admitted to practice during the period of apprenticeship, thus permitting the trainee to enter appearances in court in his or her own name.⁸² It might be noted here that one of the curiosities of the informal Dutch legal system is that in many lesser civil and administrative proceedings, one need not be an advocate to appear on behalf of a party to a lawsuit. This contributes to the number of law graduate jurists who can appear in such proceedings without a license.

The formal apprenticeship in law has its roots in deep antiquity. Prof. Otterlo notes that the apprenticeship “originates in the Middle Ages.”⁸³ A paper from some 25 years ago on the Dutch apprenticeship notes that “authorities” (presumably the state) “have proved to be unwilling to introduce a professional course for

⁸¹ There is a somewhat dated but helpful website that includes a brief English-language explanation of apprenticeship requirements for 15 countries of the European Union, prepared by Julian Lonbay, a British academic and active member of the Council of Bars and Law Societies of Europe (CCBE), the regional bar association for the EU. See EUROPEAN LAWYERS’ INFORMATION EXCHANGE AND INFORMATION RESOURCE (ELIXIR), <http://elixir.bham.ac.uk/> (last visited Sept. 20, 2009).

⁸² A.T. Voss, *Methods of Training Young Advocates in the Netherlands*, 4 J. Prof. Legal Ed. 7 (1986); R.C.H. van Otterlo, *From Lawyer to Solicitor: Professional Legal Training and Continued Professional Legal Training, a Road to Professional Competence*, http://www.advocatenorde.nl/english/education/lawyer_to_sollicitor.asp (last visited Sept. 28, 2009) (using the term “solicitor” for an advocate admitted to practice law).

⁸³ Van Otterlo, *supra* note 82.

advocates at the university.”⁸⁴ Thus, the trainee phase has fallen to the bar, but the mandatory courses have crept back into the law schools through their frequent administration of continuing legal education programs, some of which are affiliated with a university, housed at a law school, and often taught by university law school faculty.⁸⁵

The general shape of the three-year trainee period has not changed much over the past 25 years. It consists of three broad elements: (1) work in a law office under the sponsorship or patronage of an admitted lawyer; (2) intensive and mandatory courses during the first nine months of the apprenticeship, for which the office at which the trainee works must provide time off; and (3) a selection of continuing education courses during the last two years, subject to the interests of the trainee and his or her specialization. Upon completion of the trainee phase, admission to practice follows without further testing, and membership in the national bar association is automatic. Design, structure and instruction in the nine-month mandatory course is controlled by each of the 19 judicial districts into which the national bar is organized, and training is given in the district in which the trainee’s office is located. The content of the training courses, however, is uniform nationally and includes both procedural courses and some practical training. Courses on particular subjects are offered in modules of 5 to 15 half-day sessions and include topics like civil, administrative, and criminal procedure, reading annual account statements, basic communication, writing skills, ADR and mediation, and practical training.⁸⁶ A one-day written examination is given in each subject at the middle and end of the nine-month period, and all mid-term and final exams must be passed to obtain admission; the trainee may take an exam up to three times in the three-year period. Three-time failures are rare, but as many as 20-30% of trainees fail an exam on first administration.⁸⁷ Methods used in the course are largely by lecture, but there are also discussions, videos, demonstrations and occasional role-plays.⁸⁸ The Amsterdam bar’s training requirements have been amended to require that the trainee submit

⁸⁴ Voss, *supra* note 82, at 7.

⁸⁵ Interviews with René Boes, Gen. Manager, Juridisch PAO, Utrecht, Nov. 16 and Dec. 17, 2009. (Juridisch PAO is one of eight continuing legal education programs affiliated with law schools, and one of the more than 260 such programs nationally to offer continuing education services).

⁸⁶ Van Otterlo, *supra* note 82.

⁸⁷ Bohmer interview, *supra* note 55. Bohmer, a partner at CMS who administers the Utrecht district training program, described himself as a “training Taliban,” meaning that he demanded more of trainees under his jurisdiction than most, because he believed that law should be high in status among the professions, and that good lawyers must be zealous and competent.

⁸⁸ Voss, *supra* note 82, at 8-9; Van Otterlo, *supra* note 82.

evidence of 10 written submissions in actual court proceedings, as well as five demonstrated oral interventions in court hearings, a requirement that will be added to the Utrecht district in the near future.⁸⁹

In 1986, the bar had articulated several laudable goals for the apprenticeship. They included simple transfer of knowledge, as in the theory courses, but also included putting one's skill into action through simulation and role plays. In addition, the course sought to teach case analysis, the work of law practice, and "insight into [the trainee's] own functioning."⁹⁰ More recently, the nine-month training course seeks to make the trainee capable of advising and litigating – "the two core activities of the bar" – in simple administrative, criminal and civil matters; to have insight into "not complex financial and economic aspects of a specific case," and to evaluate the "other [legally] relevant aspects" of a specific case.⁹¹ Prof. Dr. Otterlo concludes his web-based article with the positive assessment that apprenticeship training "has not lost any of its luster yet and will provide in the future well trained and professionally competent solicitors who are capable of counseling all kinds of clients and their extremely diverse legal problems."⁹² During a personal interview, however, he cautioned that the legal field was becoming too commercialized - more a business than a profession. Internationalized firms, he believes, are taking over the field and focusing on deal-making rather than traditional legal skills. He lamented that legal education after the Bologna process was weakened by being narrowed in time. He believes that legal education should spend more time on teaching how to deal with the complex economic and financial transactions with which firm clients are involved.⁹³

BEYOND APPRENTICESHIP: THE LAW FIRM SCHOOL

The single most significant change in the trainee stage comes from outside of the formal bar program and seems to respond directly to the criticisms of legal training by Prof. Dr. Otterlo. The Law Firm School (LFS) was created by 14 big Amsterdam firms⁹⁴ in 2009 as an adjunct to the Bar's intensive

⁸⁹ Bohmer interview, *supra* note 55.

⁹⁰ Voss, *supra* note 82, at 10.

⁹¹ Van Otterlo, *supra* note 82.

⁹² *Id.*

⁹³ Van Otterlo interview, *supra* note 45.

⁹⁴ The participating firms are Allen & Overy, Baker & McKenzie, Boekel de Nerée, DLA Piper, Freshfields Bruckhaus Deringer, Houthoff Buruma, Linklaters, Lovells, Loyens & Loeff, NautaDuthilh, Norton Rose, Simmons & Simmons, and Stibbe en Van Doome. Law Firm School Brochure (unpublished document on file with author).

training course. Before moving to practical innovations in law school curricula, let us examine this new course of study and its implications for bar training.

One aspect of big firm training of lawyers has always been the necessity of providing extensive training and socialization into firm culture. Leonard Bohmer, a partner with CMS, said that he learned much of what he knows about his own specialization, litigation, through focused in-house training. He also remembers fondly that trainee advocates were required to carry and resolve a certain number of legal aid cases; those are cases about which he has some of his fondest memories. Mostly, however, he became a good litigator by beginning his practice with close proximity to a partner in the firm, by “going to court, listening and watching, and learning.”⁹⁵ One can see a similar pitch on the Dutch website of Linklaters (in English), where a page is devoted to telling beginning lawyers how they can “Become one of the best legal minds.”⁹⁶ Among the training benefits of joining Linklaters is access to the Law Firm School.

The LFS is coordinated by a continuing legal education program in Utrecht and has now been through three cycles of training young firm associates with the participating firms. The firms created the program when a group of senior members, meeting informally, concluded that bar-sponsored training was inadequate to provide the associates with the tools they needed for effective practice and that the firms could realize an economy of scale by pooling their resources to create a single program. Willing firm lawyers put the course together and teach it once a week, alongside the bar’s own 9-month course described above.⁹⁷

Courses at the LFS include Litigation, ADR/Mediation, Administrative Procedure, Criminal Procedure, Writing Skills, Accounting, Contracts and Property: Economic Matters, Stocks and Bonds, Business Law and Tax Law, and Ethics/Civility.⁹⁸ Although some of these course names sound similar to those offered in the bar’s own course, the choice of reading materials comes from more concrete and practical sources such as practitioner’s manuals, sometimes in English. Students are tested in nine separate disciplines during that nine-month training cycle, some administered by the bar and some by the LFS. Some courses

⁹⁵ Bohmer interview, *supra* note 55.

⁹⁶ *Become One of the Best Legal Minds*, LINKLATERS NETHERLANDS, <http://www.linklatersgraduates.nl/join/training/default.aspx> (last visited Mar. 12, 2010).

⁹⁷ Boes interviews, *supra* note 85.

⁹⁸ *Toelichting Curriculum Law Firm School* [Curriculum Explanation: Law Firm School] (undated document on file with the author). Thanks to Laura Henderson, an LLM student at the Utrecht law faculty, for her generous help with translation.

are subject to the written exam while others are judged by performance. For the first cycle, 98 trainees participated, and the pass rate was just over 80%, a result that was lower than anticipated, particularly on performance aspects of the Litigation course. That course is eight half-day sessions with a set of simulated materials from a case file, with trainees assigned to each side. Trainees go through the steps of preparing the case for trial. There is a moot court session at the end of the course, but no mock trial. More than 90% of the trainees ultimately passed all courses.⁹⁹

The LFS has been judged a success by the firms and was about to enter its fourth cycle at the beginning of 2010, although there had been some falloff in enrollment due to cutbacks in hiring by the big firms during the recent global economic crisis. There are discussions underway within the firms and bar to decide whether the Bar Association should move out of training entirely, leaving it to the privatized continuing education offices which are generally profit centers for the law schools at which they are located. The Bar would continue to grade exams, but it would not be involved in curricular implementation.¹⁰⁰

INNOVATIONS IN ACADEMIC LEGAL EDUCATION: SPECIALIZED ENGLISH-LANGUAGE DEGREE PROGRAMS

The structure of legal education has changed significantly as a result of the Bologna process, an effort to bring all aspects of higher education within the European Union into a set of relatively uniform criteria for admission, transfer, graduation and measurement of achievement within the university.¹⁰¹ The “classic” legal education system of the Netherlands called for four to five years of undergraduate study followed by a three year period as a formal trainee prior to admission to practice law.¹⁰² Government stipends for university study allowed the student to extend the study period for up to five years.¹⁰³ The most significant revision of the Bologna process has been the reduction of the undergraduate period to three years of study, followed by a one-year specialized masters program prior to entry into the trainee phase.¹⁰⁴ The major advantage of this program is that it permits completion of the mandatory courses in a shorter period of time. It allows broad flexibility to the student to pursue either the traditional Dutch law training route, through the so-called

⁹⁹ Boes interviews, *supra* note 85.

¹⁰⁰ *Id.* Boes suggested there is little impulse within law schools to take on bar training in addition to other scholarly duties.

¹⁰¹ See generally Terry, *supra* note 65.

¹⁰² Bohmer interview, *supra* note 55, as of his graduation in 1991.

¹⁰³ Doek, *supra* note 47, at 26.

¹⁰⁴ Zwart et al. interview, *supra* note 73.

“Togamasters,” a masters program focused on preparation for law practice, or to elect a specialized substantive area of study for the Masters phase. However, Professor Rob van Otterlo, the former Dutch bar official, believes that the shortened process has “weakened” formal legal education, leaving it without sufficient breadth of content or intellectual rigor. He asserts that its exclusive focus on legal doctrine, to the exclusion of the complex economic realities of today’s law practice, makes it inadequate to its task.¹⁰⁵

The switch brought about by the Bologna process has also allowed for several other innovations including the following: limited access to specialized “hybrid” degree programs, many offered in English; dual study options in the United States; and legal clinics. Some schools have taken more modest steps such as the extensive implementation of learning outcomes as part of reforms of the University of Groningen law faculty¹⁰⁶ or the ongoing development of problem-based learning at the Maastricht faculty during the first years of law school.¹⁰⁷

Examples of the hybrid English-language degree programs can be found in Utrecht, at Maastricht, and at the Hanse Law School, a unique faculty which shares classes between the Netherlands and Germany. In Utrecht, students can enroll in the English-language Transnational Law Program, held at University College Utrecht, a separate campus from the law school. Admission is competitive rather than open, based on grades and international interests. Students take law courses but are enrolled in the School of Social Sciences and are not permitted to pass from this program into the training phase without additional preparation in Dutch language and in Dutch law. In their third year, students from the program spend a semester at Washington University, in St. Louis, Missouri, and after completion of the degree, they are eligible for LLM study at either Washington University or Utrecht.¹⁰⁸

Another innovative and competitive program is the European Law School at Maastricht University, which began only recently. It can be taken as either an English-language track program or as a Dutch-English track, which permits entry into the trainee program after graduation. Again, the focus is on transnational issues such as European law, and courses are taught

¹⁰⁵ Van Otterlo interview, *supra* note 45.

¹⁰⁶ Bosch-Boesjes presentation, *supra* note 44.

¹⁰⁷ Interview with Fokke Fernhout, Dir. of the Maastricht Legal Clinic, Dec. 15, 2009.

¹⁰⁸ Information about the program is available on the University College Utrecht website, <http://www.uu.nl/EN/faculties/universitycollege/studying/majorinsocialscience/Pages/TransnationalLawProgram.aspx> (last visited Mar. 12, 2010).

with more practice-focused dimensions.¹⁰⁹ Finally, in 2002, the universities at Bremen and Oldenburg, in Germany, together with the University of Groningen, in the Netherlands, created a joint Bachelors/Masters program in European and Comparative Law known as the Hanse Law School. Entry is competitive and limited to 25 students, and all classes are in English. Because of its focus on comparative law, students must spend two semesters of the Bachelors program and one semester of the Masters program studying abroad.¹¹⁰ These programs depart from the classic pattern of legal training and turn to what seems to be the emerging *lengua franca* of global law instruction - English.

SLOW GROWTH OF LAW SCHOOL CLINICS

The most remarkable thing about legal clinics in the Netherlands is that there are any at all. Given the rigid segregation of traditional academic study in the realm of theory, as well as the relative strength and innovation within the apprenticeship phase of bar admission, the limited success of clinical legal education must be seen as a serious advance, not only in rigorous and engaging training for future lawyers, but as a significant adjunct to the local and international public interest movement in the Netherlands. This section will explore the limited extent to which clinical legal education has been able to establish roots in the Netherlands, and why. I have written elsewhere about the broad resistance to clinical legal education in Western Europe and will not rehearse that critique here.¹¹¹ However, based on close study of the Dutch example, there are some significant ways in which the Dutch experience both affirms and contradicts my earlier observations.

There is no question that law school clinics, if properly designed and maintained, contribute to the creation of a culture that nurtures and advances public interest law, if only because the mission of clinical training is explicitly focused on legal services in the public interest, whether by issue focus or by underserved clientele. The purpose of a law school clinic is primarily as a learning environment for development of law student skills, clinical judgment and conscience; it can teach students to practice

¹⁰⁹ A description of the program is available on the Maastricht University website, <http://www.maastrichtuniversity.nl/web/Faculties/FL/TargetGroup/ProspectiveStudents/BachelorsProgrammes/Programmes/EuropeanLawSchoolEnglishLanguageTrack1.htm> (last visited Mar. 12, 2010).

¹¹⁰ Franziska Weber, 'Hanse Law School' – A Promising Example of Transnational Legal Education? An Alumna's Perspective, 10 German L. J. 969 (2009).

¹¹¹ See Richard J. Wilson, *Western Europe: Last Holdout in the Worldwide Acceptance of Clinical Legal Education*, 10 German L. J. 823 (2009).

law with their hearts as well as their minds. Any benefit to public interest law may be an effect of good clinical legal education. Before proceeding any further, then, definitions should be clarified for both the legal clinic and work in the public interest.

By “clinical legal education,” I mean, ideally, a program within the law school’s curricular structure, for credit, in which students, working under the supervision of an experienced attorney, provide legal services to actual clients in order to solve the legal problems of those who would not otherwise have access to justice or the legal system due to poverty or unique claims. The period of time during which the student works on cases or projects should be preceded by or held in parallel with a course of study that prepares students for the legal, ethical, social and skills dimensions of their work through simulations or role-plays that replicate the work of lawyers in planning, doing and reflecting on problems presented while in an attorney-client relationship. The clients of the office should be either those who would not have access to justice because of poverty or because they are disadvantaged or marginalized in the legal process, thus making it difficult or impossible to find lawyer representation. Project-based work should focus on social justice or public interest causes.¹¹² These clients or causes provide students with work that is “in the public interest.”¹¹³ This fairly specific definition is, admittedly, often an ideal more than a reality. The politics of law school, the bar, or the judiciary may require compromise in order to permit student to practice with actual clients, even on a limited basis. Each law school and its clinical program must decide whether the definition is, in essence, met at that institution.

Clinical legal education, thus understood, has been underway in the Netherlands for a long time, though often in the shadows of legal education in terms of its formal recognition within the curriculum. Its history provides a trajectory across several decades, although the programs are few. Four Dutch clinical models will be discussed: (1) the *rechtswinkel*, or law shop, which gave rise to government-funded legal aid but which continue to operate throughout Holland; (2) the Legal Clinic at Maastricht University, the country’s oldest in-house, live-client legal clinic; (3) the Amsterdam International Law Clinic, founded a decade ago; and (4) the newly opened Utrecht Clinic on Conflict, Human Rights and International Justice. The first two are solely

¹¹² The literature on cause lawyering is rich and extensive.

¹¹³ This definition of public interest or cause lawyering differs significantly from that offered by conservative or right-wing groups that have attempted to claim space in the field of public interest law. See, e.g., Ann Southworth, *Conservative Lawyers and the Contest Over the Meaning of “Public Interest Law”*, 52 UCLA L. Rev. 1223 (2005).

domestic in scope; the third is domestic and international, and the fourth is solely international.

Rechtswinkels, or Law Shops. The first *rechtswinkel*, or law shop, opened in Tilburg in 1969. The law shops were a spontaneous social movement by local law students and trainee lawyers seeking to engage in the social problems of the day, part of the worldwide 60s youth rebellion. Students worked in local neighborhoods on the legal problems of the poor. By 1972, the law shops had grown to thirteen, and by 1975, they peaked at ninety.¹¹⁴ The law shops gave rise to both broader rebellion and greater stability. An Amsterdam law shop gave rise to the first of many law collectives, again seeking to work with the legal problems of the poor, but as qualified lawyers. The law collectives were still active well into the 1980s and were the locus of rebellious lawyers, those who “deliberately rejected some of the rules of professional conduct” by advertising their services, as well as participating in the social and political movements of the day. One such example was the unsuccessful effort by a law shop lawyer to challenge, in the European Court of Human Rights, her denial of access to a local prison outside Utrecht because prison officials felt she had breached her organization’s commitment to provide only legal advice to inmates, not press releases critical of prison official’s care and treatment of an inmate who committed suicide inside the prison.¹¹⁵

The success of the law shops drew the attention of the national bar, which originally opposed them as incursions into the business of lawyers but eventually took the idea and adapted it into a nationwide network of legal aid, institutionalizing the *rechtswinkels* even as they began to disappear within the law schools.¹¹⁶ The conventional wisdom is that the law shops slowly waned in influence as the legal aid program grew, perhaps as an intentional effort by the government and bar to weaken the movement and co-opt legal aid control.¹¹⁷ As of 1991, there were still 70 law shops, with 1,600 volunteers, 1,000 of whom were students. Law shops took on specialized roles in such practice areas as environmental law, tax, and children’s rights but were said

¹¹⁴ Kees Schuyt, Kees Groenendijk and Ben Sloot, *Access to the Legal System and Legal Services Research*, 1977 Eur. Y.B. L. & Sociology 98, 99.

¹¹⁵ *Vereniging Rechtswinkels Utrecht v. The Netherlands*, 46 D&R 200 (1986).

¹¹⁶ Schuyt, *supra* note 43, at 221.

¹¹⁷ Richard L. Abel, *Law Without Politics: Legal Aid Under Advanced Capitalism*, 32 UCLA L. Rev. 474, 530 (1985) (on state co-option of successful volunteer legal aid programs); Nick Hulls, *From Pro Deo Practice to Subsidized Welfare State Provision: Twenty-Five Years of Providing Legal Services to the Poor in the Netherlands*, 5 Md. J. Contemp. Legal Issues 333, 345 (1995) (law shops “no longer play a vital role in the public debate”).

to remain outside of the law school curriculum.¹¹⁸ Many law shops celebrated their 25th anniversary in 1997. A short and somewhat nostalgic article on the law shops by a Dutch author notes that they continue to do “structural legal aid,” meaning, for example, “promoting social change or approaching housing corporations, companies, or large employers to encourage them to change their way of doing business.” The article, however, notes that today’s law students are less activist than before that they have less time to devote to donated legal services because state subsidies for education have diminished, and that such activities are better left “to organizations which represent special interests, such as consumers organizations, unions, [and] housing organizations.”¹¹⁹

Today, the law shops do continue to operate, and at least six law schools – Amsterdam, Free University, Groningen, Maastricht, Tilburg and Leiden – provide law school credit for student participation. At Rotterdam, the university does not provide credit for participation, but it does provide subsidies to three local law shops and encourages student participation. At Utrecht and Nijmegen, there are law shops, but no credit is available for student participation. There is still a close relationship between the law shops and the legal aid program that took over many of them, and many of the law shops bill the legal aid program for fees as a means of subsidizing their operations.¹²⁰

*The Maastricht Legal Clinic.*¹²¹ The Maastricht Legal Clinic opened in 1988, only six years after the founding of the law school in 1982. The Maastricht clinic is the closest in design and operation to a “traditional” legal clinic in the United States. The law school itself is a set of remodeled glass and steel structures woven into the architecture and fabric of older, more traditional buildings around it. Etched in the glass walls along the corridors is “Faculty of Law,” in English. The clinic has its own building adjoining the law faculty’s facilities with a separate entrance and small sign for the public. The clinic faculty includes five advocates - all women, none with the rank of professor. The women all work less than a five day week, and most teach courses outside of the

¹¹⁸ Hulls, *Id.*, at 345-346.

¹¹⁹ Martin van den Broeke, *Is er nog werk aan de (rechts)winkel? De rechtswinkel nu en in de toekomst* (Is there still work for the (law)shops to do? The lawshop now and in the future), 10 *Rechtschulp* 8, 10 (1998).

¹²⁰ E-mails from Peter van den Biggelaar, director of the Dutch national legal aid program (Jan. 4, 2010; Jan. 19, 2010) (on file with author).

¹²¹ Information in this section comes from personal observation, and from interviews with Dorotheé Garé, Clinic Advocate at the Maastricht Legal Clinic office, Dec. 15, 2009; Fernhout interview, *supra* note 107. Dr. Garé holds a doctorate in criminal law, and taught on the classroom faculty before surrendering her professorship to become a clinic teacher several years ago.

law clinic, often in the Togamasters program preparing lawyers for domestic practice. All teaching is in Dutch. Some hold doctorates and others have practiced locally, one for 25 years before she joined the clinic faculty. The male program director, who handles administrative matters for the clinic and maintains faculty relationships supporting the clinic, holds faculty rank and performs additional curricular duties outside of the clinic. There is a space for client meetings, a file room, shared faculty offices, secretarial space (one secretary has been with the program for 21 years, since its inception), and a common student area equipped with computers in individual cubicles and referred to as “the garden.”

The clinic works in the national courts, with students appearing in both criminal and civil matters at trial and on appeal. Because an advocate signs all papers, there is no limitation as to the matters in which they appear, and in that broad range of legal matters for which an advocate is not required, students regularly appear in court for oral arguments and witness testimony. The practice of the clinic is thus a mix of criminal and civil matters, many of which are routine but some of which may be complex and accompanied by some publicity, including a fraud case involving pension funds that made national news. Clinic students come from the undergraduate program, and most are in their early 20s when they enter the case-work phase. Men and women are equally represented among student participants.

Clinic participation involves two stages: preparatory course work followed by casework immersion. All admitted students take a series of mandatory pre-clinic courses, including Communications (interviewing, counseling and ADR skills, taught by role play and simulation), Evidence and other substantive courses. Many clinic students continue with other courses after the clinic to permit them to prepare for the trainee phase. After the preparatory classes, students are immersed for a single eight-week “block”, or half of a semester, doing only clinic work full-time, five days a week. Cases are handled individually with four to 13 students enrolled in each block, depending on clinic demand. The clinic is elective and is seldom oversubscribed. Faculty and students meet daily in the garden to discuss case issues and work distribution, and faculty is available for additional meetings with students as needed. Students see clients by appointment, and new matters are taken by both phone interview and walk-in visits, with students covering intake interviews. The clinic’s philosophy is that a case assigned to a student is that student’s responsibility with close faculty oversight of all work product and review of client meetings. Workloads for each student vary widely depending on interest and ability; during my visit, one student was carrying 13 open files and another was carrying 16 with both quite enthusiastic

about their work. Upon entering the clinic, students sign a confidentiality agreement, and further agree to abide by professional ethics norms; ethical issues are a staple of clinic discussions. Faculty take cases back during the summer recess and continue work on them as part of their twelve-month contract with the clinic. Faculty do not practice outside of clinic, and a typical summer caseload per professor is somewhere around 45 open civil files.

Evaluation of student case-work is constant, during interactions with faculty and the courts, and by review of written submissions. In addition, students meet at the end of the block with all four supervisors, as a group, for oral feedback about their work. As a budgetary matter, the clinic takes both paying and non-paying clients, as the lawyers sign all documents. Their hourly rate is around 150€, and fees generated from litigation go a long way to subsidize clinic operations, although they do not fully offset all operational costs. Charging for services is a relatively new innovation of the clinic, arising from concerns by the podium faculty that the costs of clinic operation were too high. One clinic faculty member suggested that she and her colleagues do not do enough to promote the clinic's work and student successes with the faculty or deans, instead focusing their energies on students, clients, casework and their teaching.

The Maastricht clinic is an example of how a clinical component can be successfully woven into undergraduate law study. Students are not too young to handle cases, the law permits generally open access of students to court, and local judges embrace clinic students and their work, providing one of the most enthusiastic sources of support for clinic work. Many of the clinic graduates go on to the bar or bench locally, as do faculty, so there is a rich interchange between the practice community and the law school. And yet, the Maastricht clinic is unique among all law schools in the country.

*The Amsterdam International Law Clinic.*¹²² The Amsterdam International Law Clinic was founded at the University of Amsterdam Law School about ten years ago by a Dutch law professor who had just returned from an academic visit to the United States at both Berkeley and the University of Washington law schools where clinical programs were in operation. He was impressed with the clinical method and decided to try the model upon his return. He returned as Chair of the Department of Public International Law, and with the support of the law school

¹²² Information in this section comes from interviews with Heje Kjos and André Nollkaemper, by telephone (Sept. 30, 2009) and in person at the Univ. of Amsterdam Law School (Oct. 21, 2009).

administration, he was able to get the clinic operational as part of his academic course-work.

The clinic runs today in much the same way it did when it began, with three significant developments since its founding, all involving refinements in the original design. First, since the adoption of the Bologna structure, the clinic only accepts students in the LLM degree program, and second, they must show both written and oral fluency in English. Third, the clinic now has a faculty coordinator who works there in addition to the founding professor. A doctoral student from Norway, working under the direction of the director, runs the day-to-day operations of the clinic. The founding professor is licensed to practice law in the Netherlands, but the doctoral student is not, as is true for many of the law faculty at the law school. In addition to these two faculty members, a small group of faculty members at the law school have agreed to supervise clinic projects in their fields of expertise and enjoy working with the clinic on concrete projects.

The work of the clinic focuses on projects and litigation, although students generally cannot themselves appear in court on the litigation matters in which the clinic is involved. Their clients are usually law firms or NGOs, and student work is generally on matters that require significant legal research beyond the capacity – money or time – of the organization that makes the request. Students work in teams of three on clinic projects or cases, and are assigned a single case for their work during clinic participation. Much of their work over the years has been on matters involving “typical” international public law questions, such as law of the sea, international criminal law and substantive issues addressed by international NGOs in Amsterdam or The Hague. They have worked with individual clients as well as organizations but tend toward organizational clients because there is a strong national legal aid program to provide such services, and because there are lawyers with resultant expertise in individual client work, such as asylum matters. The work product of the clinic is often confidential and even the questions asked cannot be discussed publicly outside of the clinic, but clinic work covers an impressive array of issues including enforced disappearances, climate change, undue delay in criminal matters, and state responsibility in international bodies.¹²³ These often-extensive studies are designed to be comprehensive and balanced, although clients occasionally ask for only one side of potential arguments, as might be the case in background research for an appellate brief representing one of the parties in litigation. Students have occasionally traveled outside

¹²³ Exemplary reports of the clinic are posted and available on-line at <http://www.jur.uva.nl/ailc/object.cfm/objectid=DAB99ACD-19B3-4DF6-975BC275A03C2DDB> (last visited on Mar. 23, 2010).

of the Netherlands for their work, to Berlin and Geneva for example, always at client expense. Reports from the clinic have occasionally given rise to publication of articles authored by clinic students.¹²⁴

Twelve students participate in the clinic each semester (two “blocks” of seven teaching weeks for a total of 14 weeks), receiving significant academic credit for their participation. Students are interviewed from a pool of applications that usually exceeds the number of available clinic slots.¹²⁵ The clinic principally focuses on cases and projects which are assigned to students after a short orientation to the rules of the clinic and introduction to clinic forms and procedures. Typical protocols for clinic operation include a learning contract for the students, as well as standard retainer and confidentiality agreements for clients. The clinic has a small office within the law faculty with three computers and file space, and students are expected to log 8 hours per week in the clinic office. Clients are mostly seen in their own offices. The clinic group holds occasional plenary sessions each semester, some of which are standard, such as a session on the ethical obligations of student-attorney participation in the clinic. For purposes of international practice, the students are provided with a copy of the ethical rules of the International Bar Association.¹²⁶ Another standard session is one on how to write a legal memorandum, a subject that is not taught as part of the standard undergraduate law program. Occasional guest speakers, experts or practitioners, also speak to the clinic students. The clinic charges fees for its work, as it has done since its inception, in part as a means to offset the costs of clinic operations. A typical fee for a case is in the area of 1,500€ with fees as high as 3,000€ and occasional pro bono work for NGO clients.

The Utrecht Clinic on Conflict, Human Rights and International Justice. A new clinic was established in the fall of 2009 at the University of Utrecht’s Faculty of Law, Economics and

¹²⁴ See, e.g., Renata Boryslawska, Luna Martinez Lopez & Vanja Skoric, *Identifying the Actors Responsible for Human Rights Violations Committed against Staff Members of International Organizations: An Impossible Quest for Justice?*, 1 Hum. Rts & Int’l Legal Discourse 381 (2007).

¹²⁵ The clinic has experimented with accepting additional students, once enrolling 18, but has limited the number since then due to overextension of faculty supervision time.

¹²⁶ The short and straightforward provisions of the IBA International Code of Ethics are available for download at http://www.ibanet.org/Publications/publications_IBA_guides_and_free_material.aspx (last visited on Mar. 23, 2010). The Council of Bars and Law Societies of Europe (CCBE) also publishes a set of ethical norms, available at http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/2006_code_enpdf1_1228293527.pdf (last visited on Mar. 23, 2010).

Governance. After some preliminary explorations into the viability of such a clinic starting in 2004,¹²⁷ the dean and faculty indicated receptivity to a proposal for a clinical program to be focused in the area of international law. Two professors, one from international criminal law and one from international human rights, coordinated a proposal to open a Clinic on Conflict, Human Rights and International Justice based in the faculty of law but working with international justice entities in The Hague and other locations, particularly in the Inter-American Court of Human Rights, in San Jose, Costa Rica. The original plan proved overly ambitious and resulted in a scaling back of the project to begin operations in September 2009 with projects at the Inter-American Court, the International Criminal Court (ICC) and the Special Court for Sierra Leone. All of these projects were negotiated with various units of the tribunals to allow students to conduct research and write advisory memoranda on issues pending before the tribunals. Examples included work with the prosecution and victims' units in the ICC.

Structure of the clinic involved overall operational coordination by the two organizing professors, who developed contacts with the participating tribunals and made the final decisions as to which projects would be undertaken by the clinic. Research teams were composed of a supervising faculty member from among the doctoral candidates at the law faculty, while student teams of six would be selected for each project with total enrollment of 18. Student interest was quite high, and the decision was made to limit participation to either students at the LLM level or exchange bachelor students, in part to avoid difficulties in credit awards for domestic undergraduate students seeking credit towards a degree qualifying them for local practice, which generally require uniquely Dutch law topics. The ambitious clinic program would provide participating students with extensive credit and give them the option to enroll for one semester or two. In addition to case-work, students met with supervisors on a regular basis and with institutional, Hague-based clients at least once. A common curriculum was designed to address student preparation in both skills and procedures of the tribunal units with which they would be working. Classes were taught by both staff of the tribunals and the author under the direction of the clinic directors.¹²⁸ I conducted

¹²⁷ The author conducted discussions and a workshop on clinical legal education in December of 2006 with interested faculty, deans and several doctoral students.

¹²⁸ Utrecht Law School Clinical Programme on Conflict, Human Rights Int'l Justice, Common Curriculum For The Academic Year 2009-2010 (unpublished document on file with the author). See also Héctor Olásolo, *Legal Clinics in Continental Western Europe: The Approach of the Utrecht Legal Clinic on Conflict, Human Rights and International Justice*, (forthcoming in ASIL:

a series of workshops, almost exclusively with supervising doctoral students, over the fall semester of 2009.¹²⁹ Work on new projects, all of which was conducted on a confidential basis, began in earnest during the late fall and early winter semesters of 2009-10. While the author was available as an advisor on matters of structure and management of clinic operations, the clinic was unique, designed consistent with pedagogical and service needs of the international justice community in Utrecht, The Hague and the Netherlands.

CONCLUSION:

COMBATING CONSERVATISM IN LEGAL EDUCATION WITH PRACTICAL TRAINING AND A VISION OF JUSTICE?

Perhaps the most striking observation about Dutch clinical legal education is just how limited it is and how recently the most significant innovations have occurred. Even the most “traditional” clinics in Holland – the multiple *Rechtswinkels* and the Maastricht Legal Clinic – were begun in the last twenty years, and the two international clinics at Amsterdam and Utrecht are a decade old and brand new, respectively. One must note, as well, that the domestic public interest sector is atrophied and underdeveloped, with few entities engaged in socially conscious lawyering to advance lower and middle class legal issues through litigation. At the same time, the Netherlands is known worldwide as an international law power-house, the Mecca of international tribunals and institutions, beginning with the International Court of Justice, founded contemporaneously with the UN, and ending most recently with the settling in of the recently-established Special Tribunal for Lebanon just down the street in The Hague. How is it that these two phenomena exist side by side? Is Dutch legal culture conservative, visionary, or both?

The simplest answer is grounded in differences between the Dutch tradition of legal education and contemporary Dutch foreign policy. Dutch legal education must be placed in the profoundly conservative tradition of continental Europe, where the German and French scholarly traditions of legal science, taught from a theoretical perspective, have dominated the continent for centuries. Long ago, continental legal scholars determined that law was best situated in the dispassionate and allegedly neutral study away from gusting political winds. As pure science, law was a discipline to be

PROCEEDINGS OF THE ANNUAL MEETING 2010). The clinic’s website is <http://www.uu.nl/en/informationfor/internationalstudents/intlaw/studyprogramme/practicalexperience/ClinicalProgramme/Pages/default.aspx>, (last visited on May 14, 2010).

¹²⁹ Richard J. Wilson, *Syllabus, Supervisors’ Workshops*, Clinic on Conflict, Human Rights and International Justice, Fall 2009 (unpublished document on file with the author).

carried out in libraries with close study and interpretation of legal codes by legal scholars who devote their professional lives to such work, insulated from emotion and politics; this was pure science at work. Moreover, this theoretical and scholastic tradition has contributed to the absence of close examination of practice-related ethics and values as a structured part of academic preparation for the profession. While such issues are said to be best left in the hands of the bar, whose function it is to carry out the practical training of trainee or apprentice lawyers, all too often that training does little more than teach dry ethical precepts and law office management rather than a close examination of the role of the lawyer as potential agent for social change.

There is, as well, a strong and vibrant program of legal aid, with widespread participation by the private bar, and fees for legal aid are reasonable and relatively un-bureaucratic. That legal aid program performs two cultural functions. First, it, along with extensive private legal aid insurance programs, provides extensive coverage of civil and criminal legal issues for not only the poor but a significant portion of the population of the Netherlands. It is a key component of the rule of law and the Dutch welfare state. That, together with a general trust of courts and judges, creates a relatively stable community that may not seek to resolve legal and social issues through the courts. Recent events may change this equation, such as rising immigrant populations, greater diversity and less cultural homogeneity. These events, exacerbated by government appeals to national security and concerns couched as control of terrorist elements following high-profile news events like the assassinations of Theo van Gogh and Pim Fortuyn, create less trust and greater suspicion within the Dutch community. Second, the legal aid program provides a safety valve for social and cultural concerns that is often filled by clinical programs set up in large measure to narrow the gap in legal services for the poor, particularly in less affluent countries. It is not a coincidence that the most recent clinical programs have an international rather than local focus. Perhaps there is a feeling that legal aid has the local front covered.

There is, nonetheless, good reason to create new clinical programs within the traditional law school curriculum. First, the professoriate, at its best, knows and understands educational and learning theory, and can apply those theories to teach students the skills, ethics and values of practice as well as doctrinal theory. As the medical profession has shown for the past century, clinical training is every bit as necessary and complex as theoretical training and should be an educational project situated at the core of legal education, not an afterthought within professional training that itself continues to be more theoretical than practical.