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LAW**

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Practical Training in Law in the Netherlands: Big Law Model or Clinical Model, and the Call of Public Interest Law

Richard J. Wilson*

Introduction

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 and prostitution are well-known; Amsterdam’s coffee houses are still a strong tourist draw. Although lesser known, Dutch government views on issues such as euthanasia, prisons, and the welfare state also contribute to this vision; the Dutch legal aid system 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 through the traditional combination of doctrinal classes followed by a formal period of apprenticeship, often called practical training, before admission to practice law. It is argued here that neither law school nor practical training in the Netherlands, as currently conceived, adequately prepare practicing lawyers with the problem-solving skills, and perhaps more importantly, with the ethics and the values that all lawyers need for effective interaction with their clients and communities as professionals. To borrow a phrase from the well-known MacCrate Report of the American Bar Association, published in 1992, all lawyers should be committed to the values of ‘promoting justice, fairness, and morality in one’s own daily practice,’ as well as enhancing ‘the capacity of law and legal institutions to do justice.’¹ This article will begin with a brief and broad sketch, from an outsider’s perspective, of public interest law, as that term is understood in the United States. Public interest law represents, in many ways, the con-

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1 American Bar Association, Section of Legal Education and Admissions to the Bar, *Legal Education and Professional Development – An Educational Continuum*, 1992, pp. 140-141. The report is colloquially called the ‘MacCrate Report’ in honor of the Chair of the committee that drafted it, Robert MacCrate.

crete manifestation of the legal profession's commitment to justice. Though small as a part of the bar as a whole, public interest law acts in a wide variety of practice areas to protect important shared public interests, such as the legal rights of the poor, minorities, consumers, the environment, women and children, gays and the disabled. This wide array of public interest options is then contrasted with the surprisingly limited domestic public interest law culture in the Netherlands, and indeed throughout much of Western Europe. This part ends with some suggestions as to why the indigenous public interest movement is so tentative in the Netherlands and Europe more generally.

A second part introduces an overview of the Dutch legal profession, and examines the first of two models now in operation in the Netherlands to prepare lawyers for practice. Part two will examine what it is that Dutch lawyers currently do in law practice, and the growing role, within the relatively small bar of the Netherlands, of the giant multi-national law firms, often referred to as 'Big Law.' These immense firms largely originate in the United States but have expanded aggressively into Europe, with some based in the Netherlands itself. Big Law has recently designed and financed the Law Firm School, the first of two practical training models examined here. This model emerges within the profession, a privately funded initiative that has been woven into the structure of the traditional practical training run by the local bar association in each district of the Netherlands. This traditional apprenticeship stage of legal education follows the classroom education stage, both domestically and throughout the civil law tradition of continental Western Europe, and will be described in some detail in this section. The Law Firm School, funded by the private sector, operates alongside the professional, publically supported traditional apprenticeship organized by the Dutch bar as a whole. The Law Firm School, I will argue, changes the focus of that apprenticeship from public stewardship to a private business model.

The third part provides an alternative to Big Law's model, focused within law faculties themselves. It will first provide a look at traditional legal education in the classroom phase, a phase that is as profoundly conservative in the otherwise liberal Netherlands as it is throughout the rest of Continental Western Europe. An alternative mode of practical training, however, is available in the law school context: clinical legal education. When properly structured, clinical legal education is part of the law school's curriculum, organized and taught by professional educators. That model, more familiar to American legal education, is gaining a foothold in Dutch law schools in several programs that are largely unknown, either inside or outside of the Netherlands. It will then describe, in some detail, four different models of clinical legal education, including the traditional and informal *rechtswinkels*, or law shops, as well as three other programs within the law faculties of the universities of Maastricht, Amsterdam and Utrecht. This model, it is suggested, hues more closely to one which has as its fundamental goal not only the training of law students in skills, but also in the ethics and values of the profession.

A brief conclusion will offer some concluding thoughts on the need for a continued focus on the social and professional role of lawyers in society as part of formal legal training. In the United States, clinical legal education is considered a core component of public interest practice, an element that is indispensable for developing student concern not only for profits, but for justice, fairness and equality in society. The legal profession in the Netherlands faces momentous decisions as to which direction it will proceed with practical training: the Big Law model or the clinical legal education model.

1. Public interest law in the United States, the Netherlands and the civil law tradition of Europe

1.1. Public interest law in the U.S.

Public interest law has a long and rich history in the United States. The term itself first appears in the late 1960s in the United States. While subject to many different interpretations over the years, the earliest definitions are probably the best. In 1970, a group of Yale University law students used the term to mean simply 'lawyers who represent the underrepresented groups and interests in society.'² These students identified three areas of law in which the public interest lawyer worked: 'aiding the poor; representing political and cultural dissidents and new radical movements; [and] furthering substantive but neglected

2 Comment, *The New Public Interest Lawyers*, 1970 *Yale Law Journal*, pp. 1069-1152, p. 1071, n. 3.

interests common to all classes and races, such as environmental quality and consumer protection.³ Charles Halpern, an Ivy League-educated lawyer, is credited with founding the first public interest law firm in the U.S., the Center for Law and Social Policy (CLASP). He wrote in 1974 that public interest law provides legal services to ‘those who are disadvantaged or whose interests are so diffuse that they are outside the marketplace for legal services.’ Public interest lawyers, he wrote, ‘define their role more broadly than the poverty lawyers.’ These lawyers focus on all people ‘excluded from the decision-making process,’ but concerned with ‘environmental degradation, with product safety, with consumer protection,’ and with ‘that domain where corporate power shapes governmental power, where decisions affecting large numbers of citizens are often quietly made.’⁴

A paradigmatic example of that era’s work in public interest law was the publication of Ralph Nader’s book, *Unsafe at Any Speed*, a critique of the U.S. auto industry’s resistance to the inclusion of new innovations in safety in U.S.-made cars, such as seat belts and air pollution control devices.⁵ Public interest law grew as an essential aspect of U.S. law practice, and it now represents a wide array of organizations such as the American Civil Liberties Union, the National Association for the Advancement of Colored People (NAACP) Legal Defense Fund, and the Natural Resources Defense Council. By the mid-1980s, public interest law had grown to nearly 160 groups employing a total of nearly 1,000 lawyers, and working in such core areas as consumer law, civil liberties, the environment, media access and freedoms, minorities and the poor, gays, prisoners, and other issues.⁶

Today, public interest law continues to thrive in the United States, and has spread far beyond its original roots. A 2004 survey of public interest law in the U.S. identified ‘slightly more than one thousand public interest organizations (including legal aid organizations) with an average of thirteen lawyers per group, for an estimated total of 13,715 attorneys in the field – approximately 1.3% of the total bar.’⁷ Some argue that it has spread into the wider world through such concepts as rule of law, law and development, and human rights, processes which have ‘globalized’ public interest practices.⁸

The contingency of the term ‘public interest,’ however, is evident in the fact that while the original public interest movement arose from the social change movements of the 1960s, and was identified with left or progressive causes, public interest law has been adopted, some say coopted, by the right. Conservative public interest organizations are now almost as numerous as those on the left.⁹ This indeterminate definition leads some to argue that the concept of the public interest is ‘a notoriously slippery concept, which does little or no analytic work.’ These critics substitute the term ‘cause lawyering,’ which is meant to suggest a commitment to ‘using legal skills to pursue ends and ideals that transcend client service – be those ideals social, cultural, political, economic or, indeed, legal.’ The umbrella of cause lawyering, however, still calls to ‘such disparate pursuits as human rights, environmental, civil liberties, and critical lawyering.’¹⁰ These and other terms, together referred to here under the traditional terminology of public interest law, are meant to convey a role by lawyers and specialized law firms in using law as a vehicle for social change, and in using the courts as a locus for such change through impact litigation. Again, the paradigmatic case of such carefully designed impact litigation is that of *Brown v. Board of Education*,¹¹ decided by the United States Supreme Court in 1954, striking down the previous precedent that approved racially segregated public education as ‘separate but equal.’¹² Public interest law, in short, is lawyering with conscience.

3 Ibid., p. 1072.

4 C. Halpern, ‘Public Interest Law: Its Past and Future’, 1974 *Judicature*, no. 3, pp. 118-127, p. 119-120.

5 R. Nader, *Unsafe at Any Speed: The Designed-In Dangers of the American Automobile*, 1965.

6 N. Aron, *Liberty and Justice for All: Public Interest Law in the 1980s and Beyond*, 1989, pp. 25-39.

7 S. Cummings, ‘The Future of Public Interest Law’, 2011 *U. Ark. Little Rock L. Rev.*, pp. 1-16, p. 2.

8 S. Cummings & L. Trubek, ‘Globalizing Public Interest Law’, 2008 *UCLA Journal of International Law and Foreign Affairs*, pp. 1-53.

9 See e.g. A. Southworth, ‘Conservative Lawyers and the Contest Over the Meaning of “Public Interest Law”’, 2005 *UCLA Law Review*, pp. 1223-1277; T. Foden, ‘The Battle for Public Interest Law: Exploring the Orwellian Nature of the Freedom Based Public Interest Movement’, 2005 *Connecticut Public Interest Law Journal*, pp. 210-233; V. Greiman & A. Chan, ‘OPIA’s Guide to Conservative/Libertarian Public Interest Law’, 2005 *Harvard Law School Bernard Koteen Office of Public Interest Advising*.

10 S. Scheingold & A. Sarat, *Something to Believe In: Politics, Professionalism, and Cause Lawyering*, 2004. Scheingold and Sarat have themselves edited or authored numerous books on the subject of cause lawyering.

11 347 U.S. 483 (1954).

12 An excellent article on the trajectory of the *Brown* case is J. Greenberg, ‘Litigation for Social Change: Methods, Limits and Role in Democracy’, 1974 *Record of the Association of the Bar of the City of New York*, pp. 320-375. See also, Richard Kluger, *Simple Justice: The History*

1.2. *The absence of public interest law in the Netherlands, and throughout Western Europe*

The space for what is called public interest practice in the United States 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 has said 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.’¹³

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.’¹⁴ This is not a uniquely Dutch position; such views can be found throughout the civil law tradition.¹⁵

Second, one searches in vain for scholarly writing, at least in English, which addresses public interest strategies in Dutch courts. The literature is scant.¹⁶ 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.¹⁷ 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, replicated in the Netherlands, are narrow, strict rules on standing and limitations on collective or class actions. Finally, scholars note that, unlike the United States Supreme Court, which reviews both state and federal issues for compliance with the U.S. Constitution, the courts in the Netherlands are forbidden, under the Constitution of the Netherlands itself, from review for constitutionality.¹⁸

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.¹⁹

of Brown v. Board of Education and Black America’s Struggle for Equality, 2004.

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

14 G. Vonk & A. Tollenaar, *The Public Interest and the Welfare State: A Legal Approach*, 2008, University of Groningen, Faculty of Law Working Paper, 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).

15 V. Langer, ‘Public Interest in Civil Law, Socialist Law, and Common Law Systems: The Role of the Public Prosecutor’, 1988 *American Journal of Comparative Law* 36, no. 2, p. 279; L. McAllister, ‘Revisiting a “Promising Institution”: Public Interest Litigation in the Civil Law World’, 2008 *Georgia State University Law Review* 24, no. 3, p. 693 (discussing the role of the Brazilian *Ministério Público*, the state prosecutorial agency charged with enforcement of public interests in civil cases). Another scholar, writing on Central and Eastern Europe, notes that ‘the term ‘public interest law’ is not commonly used’ in the region, although it is a common concept in regional legislation. E. Rekosh, ‘Who Defines the Public Interest? Public Interest Law Strategies in Central and Eastern Europe’, July 2005 *Public Interest Law Initiative Papers*, no. 1.

16 I found only two articles on topics related to public interest lawyering, both dealing with *international* enforcement issues in the environmental area. See H. Tolsma et al., ‘The Rise and Fall of Access to Justice in the Netherlands’, 2009 *Journal of Environmental Law* 21, no. 2, pp. 309-321 (dealing with the closing off of judicial avenues for environmental groups to enforce compliance with international environmental treaties in the Netherlands); N. Jägers & M. van der Heijden, ‘Corporate Human Rights Violations: The Feasibility of Civil Recourse in the Netherlands’, 2008 *Brooklyn Journal of International Law* 33, no. 3, pp. 833-870 (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).

17 Jägers & Van der Heijden, *supra* note 16, pp. 861-862.

18 See e.g. G. van der Schyff, ‘Constitutional Review by the Judiciary in the Netherlands: A Bridge Too Far?’, 2010 *German Law Review*, no. 2, pp. 275-290.

19 *Coalition for the International Criminal Court*, <<http://www.iccnw.org/?mod=home>> (last visited 13 August 2010); *Victim’s Rights Working Group*, <<http://www.vrwg.org/>> (last visited 13 August 2010).

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.²⁰ Further evidence of the conceptual limitations of public interest law, not only in the Netherlands but throughout Europe, lies in a collection of essays for a conference held in New York City in 1991. The conference was sponsored by the NAACP Legal Defense Fund, and was designed to be global in reach, with invited participants from throughout the world. While representatives were present from Latin America, Australia, Asia and Africa, not a single organization appeared from continental Europe; only England provided a report from the Society of Black Lawyers of England and Wales.²¹

Yet another reason for the lack of domestic or local public interest law focus lies with legal education itself, as this article argues. The deep formalist tradition of legal education, as described below, contributes to the absence of a culture of local public interest commitment on the part of young graduates of Dutch law schools. There is an absence of focus on the creation of a public conscience by lawyers, fostered and encouraged by profoundly traditional, doctrinal, and generally socially isolated law curricula, not only in the Netherlands but throughout Western Europe. One South African scholar, writing on the phenomenon of public interest law in that country, 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.'²² One organization devoted to the expansion of public interest lawyering in Central and Eastern Europe concludes that public interest law can be found in three central arenas: as access to justice, as law reform, and as political empowerment.²³ Where that cultural attitude is not cultivated as a formal aspect of legal training, as is largely true in the Netherlands, it is hard to inculcate later.

2. The Dutch legal profession and practical training in law: what Dutch lawyers do, how practical training prepares them, and Big Law's Law Firm School

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 are simply not worthy subjects of academic scholarship, or at least have not been studied or written about 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 cultures around the world; the 'lawyer' we know in the United States may be called something entirely different elsewhere – 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.²⁴ In addition to these roles, one Dutch academic suggests there are no less than eight categories within the legal profession in the

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

21 T. Hutchins & J. Klaaren, *Public Interest Around the World: Report of a Symposium Held at Columbia University in May, 1991 With Descriptions of Participating Legal Organizations From Twenty Countries*, 1992.

22 V. Jaichand, 'Public Interest Strategies for Advancing Human Rights in Domestic Systems of Law', 2004 *Sur – International Journal on Human Rights* 1, no. 1, p. 128 (discussing use of public interest law strategies in the courts of South Africa) (emphasis in original). See also, J. Klaaren et al., Public Interest Litigation in South Africa: Special Issue Introduction, 2011 *South African Journal on Human Rights* 27, pp. 1-7.

23 E. Rekosh et al. (eds.), *Public Interest Law Initiative, Pursuing the Public Interest: A Handbook for Legal Professionals and Activists*, 2001, p. 5; see also E. Rekosh, 'Constructing Public Interest Law: Transnational Collaboration and Exchange in Central and Eastern Europe', 2008 *UCLA Journal of International Law and Foreign Affairs* 13, no. 1, pp. 55-95.

24 K. Schuyt, 'The Rise of Lawyers in the Dutch Welfare State', in R. Abel & P. Lewis (eds.), *Lawyers in Society: The Civil Law World, Volume Two*, 1988, p. 201.

Netherlands: advocate, judge, public prosecutor, civil servant, in-house counsel, tax consultant, notary and academic.²⁵

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 ‘close to 16,000’ according to the chief operating officer of the Dutch Bar, Prof. Dr. R.C.H. van Otterlo.²⁶ This compares with some 146,000 advocates in next-door Germany, a vastly greater percentage, despite its larger population.²⁷ 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.²⁸ 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 2000.²⁹ 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.³⁰

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 2006.³¹ Another authority notes that more than 65% of all law school enrollees today are female, and women 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 numbers³² and that women are not generally numerous among partners in large, traditional law firms.

2.1. 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.’³³ 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

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

26 Interview with Rob van Otterlo, former COO, Dutch Bar, in The Hague, 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], p. 64, Table 6.1.

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

28 A.T. Voss, ‘Methods of Training Young Advocates in the Netherlands’, 1986 *Journal of Professional Legal Education* 4, no. 1, p. 7. But see J. Doek, ‘Legal Education and Training in Europe: The Netherlands’, 1995 *International Journal of the Legal Profession* 2, no.1, p. 25 (noting decline in law school enrollments between 1987 and 1993 due to ‘demographic developments’).

29 E. Blankenburg, ‘Dutch Legal Culture: Persisting or Waning?’, in J. Chorus et al. (eds.), *Introduction to Dutch Law*, 2006, p. 21, Table 3.

30 R. Ruiz, ‘U.S. Sees Surge at Graduate and Law Programs’, *International Herald Tribune*, 11 January 2010, p. 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).

31 Blankenburg, *supra* note 29, p. 22.

32 Van Otterlo interview, *supra* note 26.

33 Doek, *supra* note 28, p. 26.

industry work, while 4% pursue academic careers.³⁴ 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,³⁵ and another suggests the rate may be as low as 20%, as students seek quick and easier routes into the labor market.³⁶

There are three noteworthy aspects to these career choices, all related to the particulars of the Dutch experience. 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 virtually all judicial assignments begin immediately after law school and are seen as the pinnacle with regards to career choice. About half of all Dutch judges enter the career after extended training, while the remainder comes into the career after significant law practice in the public or private sector.³⁷ Second, and of even 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 in the Netherlands 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. A 2007 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.³⁸ 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.³⁹ Loyens & Loeff is the only Dutch firm listed in the *American Lawyer* magazine's Global 100 law firms, with headquarters in Amsterdam and offices in 12 countries. It was ranked 57 as to number of advocates, with 781 in 2010. It ranks 86 in gross revenues, at \$391,000,000 in 2010.⁴⁰ 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.⁴¹ Although not included in the global list of the *American Lawyer*, the CMS group of affiliates has more than 2,400 lawyers on staff and works in 54 offices in 28 jurisdictions.⁴²

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.⁴³ 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 1,400 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

34 Bosch-Boesjes, *supra* note 25.

35 Van Otterlo interview, *supra* note 26.

36 Interview with Leonard Böhmer, in Utrecht, the Netherlands (17 December 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.

37 G.R. de Groot, 'Legal Education and the Legal Profession', in J. Chorus et al. (eds.), *Introduction to Dutch Law*, 2006, pp. 63-68, p. 66.

38 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 H. Genn, *Judging Civil Justice*, 2010, p. 146, Figure 4.1.

39 Nederlandse Orde Van Advocaten [Dutch Bar Association], '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 21 September 2009).

40 The 2011 Global 100: Most Lawyers; The 2011 Global 100: Most Revenue, *American Lawyer*, 28 September, 2011.

41 Böhmer interview, *supra* note 36.

42 CMS Derks Star Busmann, <http://www.cms-dsb.com/aboutus/cms/facts_and_figures2/pages/default.asp> (last visited 10 March 2010).

43 Böhmer and Van Otterlo interviews, *supra* at notes 36 and 26, respectively.

for these new employees.⁴⁴ 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.’⁴⁵

Another new phenomenon affecting Dutch advocates, and particularly the market for legal services, 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.⁴⁶ 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.⁴⁷ Another study suggests that similar services are offered by trade unions and other membership organizations.⁴⁸ These low-cost alternative legal services are most likely to affect smaller firms, not the large, multi-national firms that make up Big Law, discussed below.

2.2. *The apprenticeship or practical training phase of legal education: 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.⁴⁹ 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 nonetheless helpful for understanding and analysis of that phase.

The apprentice in the Dutch bar system of practical training, often called a ‘trainee advocate,’ is considered to be provisionally admitted to practice during the period of apprenticeship after law school study, thus permitting the trainee to enter appearances in court in his or her own name.⁵⁰ 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, or licensed lawyer, 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.’⁵¹ 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 advocates at the university.’⁵² 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 a university law school faculty.⁵³

44 Ibid.

45 Van Otterlo interview, *supra* note 26.

46 Böhmer interview, *supra* note 36.

47 Interview by the author with Peter van den Biggelaar, Director of the national legal aid program, 17 December 17 2009.

48 Blankenburg, *supra* note 29, p. 24.

49 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 20 September 2009).

50 Voss, *supra* note 28; R.C.H. van Otterlo, ‘From Lawyer to Solicitor: Professional Legal Training and Continued Professional Legal Training, a Road to Professional Competence’, at <http://www.advocatenorde.nl/english/education/lawyer_to_sollicitor.asp> (last visited 28 September 2009) (using the term ‘solicitor’ for an advocate admitted to practice law).

51 Van Otterlo, *ibid*.

52 Voss, *supra* note 28, p. 7.

53 Interviews by the author with René Boes, General Manager, Juridisch PAO, Utrecht, 16 November and 17 December 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).

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 bar-designed classroom 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.⁵⁴ 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.⁵⁵ Methods used in the course are largely by lecture, but there are also discussions, videos, demonstrations and occasional role plays.⁵⁶ The Amsterdam bar's training requirements have been amended to require that the trainee submit 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.⁵⁷

In 1986, the bar articulated several new and laudable goals for apprenticeship training. They included simple transfer of knowledge, as in the doctrinal courses, but also included putting one's skills into action through simulations 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.'⁵⁸ 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.⁵⁹ 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.'⁶⁰ 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 reforms was weakened in the Netherlands by being narrowed in overall time of legal study within the academy. 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.⁶¹

2.3. A new dimension to traditional practical training: Big Law's new embedded 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 in 2009 by 14 big firms with offices in Amsterdam or Rotterdam.⁶² It was conceived as

54 Van Otterlo, *supra* note 50.

55 Böhmer interview, *supra* note 36. Böhmer, 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.

56 Voss, *supra* note 28, pp. 8-9; Van Otterlo, *supra* note 50.

57 Böhmer interview, *supra* note 36.

58 Voss, *supra* note 28, p. 10.

59 Van Otterlo, *supra* note 50.

60 *Ibid.*

61 Van Otterlo interview, *supra* note 26.

62 The participating firms are Allen & Overy, Baker & McKenzie, Boekel de Nerée, DLA Piper, Freshfields Bruckhaus Deringer, Houthoff

an adjunct to the Bar's intensive training course, embedded within it as part of the ongoing nine-month curriculum discussed above. Before moving to practical innovations in law school curricula, let us examine this new course of study and its implications for bar training.

These 14 law firms are prime examples of a phenomenon that is affecting the legal profession throughout the world, sometimes described as 'Big Law.' All but four of the 14 are listed in the *American Lawyer* magazine's list of the Global 100 firms for 2010, based on number of lawyers.⁶³ Big Law refers to the enormous, multi-national law firms – firms that have globalized in every sense of the word – and the economic power they exert in every country in which they operate. These law firms manage the legal aspects of gigantic corporate mergers and acquisitions; they litigate and arbitrate before domestic and international bodies for stakes involving billions of dollars. Big Law is not new; the relentless growth and globalization of law firms has been under study for at least two decades.⁶⁴ There is some strong evidence, in fact, that Big Law's days are numbered, due to the recent economic downturn.⁶⁵ It is not the purpose of this article, nor is it possible in this limited space, to provide an extended analysis of Big Law. It is enough to situate Big Law as a significant player in the ongoing narrative of lawyer training, both in the United States and in the Netherlands.

One aspect of lawyer training has been the necessity of providing extensive socialization into firm culture. Leonard Böhmer, 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.'⁶⁶ 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.'⁶⁷ Among the training benefits of joining Linklaters is access to the Law Firm School.

LFS is coordinated by a continuing legal education program in Utrecht and had been through three cycles of training young firm associates with the participating firms by the end of 2009. 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.⁶⁸ Associates from the 14 participating firms have exclusive access to the LFS, but must take the course alongside the other required courses for bar admission, and must pass both sets of exams at the end of the nine-month training.

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.⁶⁹ 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 are subject to a written exam while others are judged by performance. For the first cycle, 98 trainees from the firms participated, and the pass rate was just over 80%, a result that was

Buruma, Linklaters, Lovells, Loyens & Loeff, NautaDutilh, Norton Rose, Simmons & Simmons, and Stibbe en Van Doorne. Law Firm School Brochure (unpublished document on file with author).

63 The 2011 Global 100: Most Lawyers, *American Lawyer*, 28 September 2011. The four firms not in the Global 100 by size are Boekel de Nerée, Houthoff Buruma, NautaDutilh, and Stibbe en Van Doorne.

64 M. Galanter & T. Palay, *Tournament of Lawyers: The Transformation of the Big Law Firm*, 1991.

65 L. Ribstein, 'The Death of Big Law', 2010 *Wisconsin Law Review*, no. 3, pp. 749-815; N. Dilloff, 'The Changing Cultures and Economics of Large Firm Practice and their Impact on Legal Education', 2011 *Maryland Law Review* 70, no. 2, pp. 341-363.

66 Böhmer interview, supra note 36.

67 Linklaters Netherlands, 'Become One of the Best Legal Minds', at <<http://www.linklatersgraduates.nl/join/training/default.aspx>> (last visited 12 March 2010).

68 Boes interviews, supra note 53.

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

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.⁷⁰

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.⁷¹

3. Formal legal education in the Netherlands: 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 and as described above, 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 that offered in 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's and master's law study pursuant to the Bologna reform process, discussed below. Secondary education in the Netherlands itself begins to focus on either trade or university preparation. 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 Netherlands⁷² as compared with 43 in neighboring Germany; all but one of these law schools is state-funded.⁷³ 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, which distributes all applicants among the law faculties of the nation.⁷⁴ Legal education is relatively inexpensive, even when compared with public law schools in the U.S. Although tuition fees at Dutch law schools now run around €10,000 per year, relatively generous government subsidies for university study reduce costs to around €2000 per year.⁷⁵ This open and relatively inexpensive admissions process makes legal education an attractive career option. There is no formal ranking of law schools.⁷⁶ Critics complain that it takes selection out of the hands of those most

70 Boes interviews, *supra* note 53.

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

72 See, e.g., De Groot, *supra* note 37, p. 63. 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.

73 *Ibid.*, p. 63.

74 *Ibid.*

75 Interviews with Tom Zwart, Leo Zwaak and Brianne McGonigle, 10 and 12 December 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 was a doctoral candidate there who has now completed her studies.

76 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. University of Groningen, Ranking Dutch Law Faculties, at <<http://www>

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.

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.

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.⁷⁷

In order to gain what is called the *Effectus Civilis*, or 'civil effect' 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.⁷⁸ 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.⁷⁹

Law school professors are chosen via a specialized track following the German and French traditions of academic and scholarly achievement. One is supposed to have achieved the doctoral level to enter into the teaching field, although that rule often is honored in the breach; most doctoral candidates act as teaching assistants, effectively making them pre-degreed teachers.⁸⁰ 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*).⁸¹ 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.⁸² 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.

3.1. Innovations of the Bologna process

The structure of legal education has changed somewhat 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

rug.nl/rechten/faculteit/ranking?lang=en (last visited 12 March 2010).

77 De Groot, *supra* note 37, p. 64.

78 *Ibid.*

79 J. 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/Philadelphia, on file with author).

80 De Groot, *supra*, note 37, p. 65.

81 See generally R. de Groot, 'Recruitment of Minds: Selecting Professors in the Netherlands', 1993 *American Journal of Comparative Law* 41, no. 3, p. 443.

82 De Groot, *supra* note 37, at pp. 65-66.

for admission, transfer, graduation and measurement of achievement within the university.⁸³ 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.⁸⁴ Government stipends for university study allowed the student to extend the study period for up to five years.⁸⁵ 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 or two-year specialized master's program prior to entry into the trainee phase.⁸⁶ The net effect, then, was not to change the number of years of study, but the degrees awarded.

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 'togamaster's,' a master's program focused on preparation for law practice, or to elect a specialized substantive area of study for the master's phase. However, Professor Rob van Otterlo, the former Dutch bar official, believes that the shortened process of undergraduate study 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.⁸⁷

3.2. 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 doctrine, 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 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.⁸⁸ 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. Before proceeding any further, then, definitions should be clarified.

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/professor, 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 the social justice or public interest causes identified at the outset of this article. 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, and not always consistent with the elements iden-

83 See generally L. Terry, 'The Bologna Process and Its Impact in Europe: It's So Much More than Degree Changes', 2008 *Vanderbilt Journal of Transnational Law* 41, no. 1, pp. 128-129.

84 Böhmer interview, *supra* note 36, as of his graduation in 1991.

85 Doek, *supra* note 28, p. 26.

86 Zwart et al. interview, *supra* note 75.

87 Van Otterlo interview, *supra* note 26.

88 See R. Wilson, 'Western Europe: Last Holdout in the Worldwide Acceptance of Clinical Legal Education', 2009 *German Law Journal* 10, no. 7, pp. 823-846.

tified in the previous paragraph. Four Dutch clinical models will be discussed: (1) the *rechtswinkel*, or law shop, which gave rise to government-funded legal aid but which continues to operate throughout the Netherlands; (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 domestic in scope; the third is domestic and international, and the fourth is solely international.

3.2.1. *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 solve 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.⁸⁹ 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 officials' care and treatment of an inmate who committed suicide inside the prison.⁹⁰

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.⁹¹ 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 coopt legal aid control.⁹² 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 to remain outside of the law school curriculum.⁹³ 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.'⁹⁴

Today, the law shops do continue to operate, and at least six law schools – Amsterdam, the 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

89 K. Schuyt et al., 'Access to the Legal System and Legal Services Research', 1977 *European Yearbook of Law and Sociology*, p. 99.

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

91 K. Schuyt, 'The Rise of Lawyers in the Dutch Welfare State', in R. Abel & P. Lewis (eds.), *Lawyers in Society: The Civil Law World, Volume 2*, 1988, p. 221.

92 R. Abel, 'Law Without Politics: Legal Aid Under Advanced Capitalism', 1985 *UCLA Law Review* 32, no. 3, p. 530 (on state cooption of successful volunteer legal aid programs); N. Hulls, 'From Pro Deo Practice to Subsidized Welfare State Provision: Twenty-Five Years of Providing Legal Services to the Poor in the Netherlands', 1994 *Maryland Journal of Contemporary Legal Issues* 5, no. 2, p. 345 (law shops 'no longer play a vital role in the public debate').

93 Hulls, *ibid.*, pp. 345-346.

94 M. 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), 1998 *Rechtshulp*, p. 10.

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.⁹⁵

*3.2.2. The Maastricht Legal Clinic*⁹⁶

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 law clinic, often in the togamaster's 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.

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

96 Information in this section comes from personal observation, and from interviews with Dorothé Garé, Clinic Advocate at the Maastricht Legal Clinic office, and with Fokke Fernhout, Director of the Maastricht Legal Clinic, both on December 15, 2009. 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.

Evaluation of student casework 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 generally permits 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.

3.2.3. *The Amsterdam International Law Clinic*

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.⁹⁷ 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 administration, he was able to get the clinic operational as part of his academic coursework.

The clinic runs today in much the same way as 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.⁹⁸ These often extensive studies are designed to be comprehensive and balanced,

97 Information in this section comes from interviews with Heje Kjos and André Nollkaemper, by telephone, on 30 September 2009, and in person at the University of Amsterdam Law School, 21 October 2009.

98 Exemplary reports of the clinic are posted and available online at <<http://www.jur.uva.nl/ailec/object.cfm/objectid=DAB99ACD-19B3-4DF6-975BC275A03C2DDB>> (last visited 23 March 2010).

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 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.⁹⁹

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.¹⁰⁰ 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.¹⁰¹ 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.

3.2.4. 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 Governance. After some preliminary explorations into the viability of such a clinic starting in 2004,¹⁰² 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 José, 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 involves overall operational coordination by the two organizing professors, who have developed contacts with the participating tribunals and make the final decisions as to which projects will be undertaken by the clinic. Research teams are composed of a supervising faculty member from among the doctoral candidates at the law faculty, while student teams of six are selected for each project with total enrollment of 18. Student interest was quite high when the clinic opened, 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.

99 See, e.g., R. Boryslawska et al., 'Identifying the Actors Responsible for Human Rights Violations Committed against Staff Members of International Organizations: An Impossible Quest for Justice?', 2007 *Human Rights and International Legal Discourse*, p. 381.

100 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.

101 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_materials.aspx> (last visited 23 March 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 23 March 2010).

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

The ambitious clinic program provides participating students with extensive credit and give them the option to enroll for one semester or two. In addition to casework, students meet with supervisors on a regular basis and with institutional, The Hague-based clients at least once. A common curriculum addresses student preparation in both skills and procedures of the tribunal units with which they would be working. Classes are taught by both staff of the tribunals and the author under the direction of the clinic directors.¹⁰³ I conducted a series of workshops, almost exclusively with supervising doctoral students, over the fall semester of 2009.¹⁰⁴ 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 is unique, designed consistent with pedagogical and service needs of the international justice community in Utrecht, The Hague and the Netherlands.

4. Conclusion: combating values neutrality in legal education and Big Law, with clinical legal education and a vision of justice?

The formality of legal education, with its emphasis on doctrine and theory at the expense of preparation for practice, has led to a double-barreled assault on the legal profession from both clients and the general public. On the one hand, the new corporate lawyer is ill-equipped to handle the deal or to work with the complex economic issues posed by multi-national practice. On the other, *all* law students who are products of formal legal education suffer from a lack of formation in the ethics and values of the legal profession in practice. Exposure to public interest practice in a law school clinic is one way in which new lawyers can both be prepared for practice and committed to serving justice as well as profits.

Big Law struggles to maintain its preeminent economic position within the bar while struggling with the reality that its youngest lawyers, fresh out of law school, know nothing about the practice of law. The Law Firm School has provided a partial answer in the Netherlands. In the U.S., big firms continue to offer extensive, structured apprenticeship programs during the first years of law practice for their newest associates.¹⁰⁵ In difficult economic times, however, firms are finding that clients are more and more reluctant to have new associates work on their legal matters, which results in billings for hours during which learning is going on.¹⁰⁶ The training in question, however, has little to do with professional values and the lawyer's role in society. Instead, it is about the bottom line. The inclusion of a private law component in what has traditionally been practical training devoted to service to the community by the national bar should give pause to Dutch academics and practitioners alike.

Clinical legal education is strongly associated with the public interest law movement in the United States, as it is within the limited sphere of such clinics within the Netherlands. In discussions about future directions for public interest law, clinical legal education is identified as a prominent player.¹⁰⁷ One important new study notes that clinical legal education has made inroads not only in the common law world, but throughout Latin America, Asia, Africa, and especially in Central and Eastern Europe.¹⁰⁸ Curiously, clinical legal education lags behind only in Western Europe.

103 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, H. Olásolo, 'Legal Clinics in Continental Western Europe: The Approach of the Utrecht Legal Clinic on Conflict, Human Rights and International Justice', 2010, *ASIL: Proceedings of the 104th Annual Meeting*, pp. 98-101. The clinic's website is <<http://www.uu.nl/en/informationfor/internationalstudents/intlaw/studyprogramme/practicalexperience/ClinicalProgramme/Pages/default.aspx>>, (last visited 14 May 2010).

104 R. Wilson, Syllabus, 'Supervisors' Workshops, Clinic on Conflict, Human Rights and International Justice', Fall 2009 (unpublished document on file with the author).

105 B. Garth & J. Sterling, 'Exploring Inequality in the Corporate Law Firm Apprenticeship: Doing the Time, Finding the Love', 2009 *Georgetown Journal of Legal Ethics* 22, no. 4, pp. 1361-1394; K. Sloan, 'Exhibit A – Apprenticeship: Big Law Edition', *The American Lawyer*, 30 September 2010.

106 A. Jones & J. Palazzolo, 'Law Journal: What's a First-Year Lawyer Worth? – Not Much, Say a Growing Number of Corporate Clients', *Wall Street Journal*, 17 October 2011, p. B1; D. Segal, 'What They Don't Teach Law Students: Lawyering', *New York Times*, 20 November 2011, p. A1.

107 S. Cummings, 'The Future of Public Interest Law', 2011 *U. Ark. Little Rock L. Rev.*, pp. 355-375 (identifying clinics as 'another important (and under-explored) site of public interest practice.' *Ibid.*, p. 366).

108 F. Bloch (ed.), *The Global Clinical Movement: Educating Lawyers for Social Justice*, 2011.

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. Even if public interest law does not itself catch on and thrive within the Netherlands, clinics have intrinsic value as a training model. The purpose of a law school clinic is primarily as a learning environment for development of problem-solving skills, clinical judgment and conscience; it can teach students to practice law with their hearts as well as their minds.

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