

Between Rights Talk and Bible Speak: The Implementation of Equal Treatment Legislation in Orthodox Reformed Communities in The Netherlands

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ABSTRACT

This article discusses the responses to a number of recent court cases concerning the equal treatment of women and homosexuals amongst Dutch orthodox reformed in the semi-public sphere (e.g. political parties, schools). In doing so, this article applies and refines legal anthropological theories on the realization of rights in a context of cultural and religious diversity. It also specifically addresses the responses to court cases launched “from the outside” in the context of a western country with a tradition of code law. These cases have an adverse effect on discussions of equal treatment within the communities concerned.

I. INTRODUCTION

In 2005, a group of Dutch human rights nongovernmental organizations (NGOs) appeared in front of the civil court to contest the right of the SGP

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(Staatkundig Gereformeerde Partij, Reformed Political Party), an orthodox reformed political party, to bar women from party membership and from holding political office. The NGOs believed that the Dutch government, in financing this political party, violated its obligations under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).¹ One of the orthodox women present during the court case later reflected upon the NGO-involvement as follows: "I really felt discriminated by those ladies who felt that they had to defend our rights as SGP-women. They cast us these pitying looks, as though we were Muslim fundamentalists walking ten meters behind their husbands. Honestly, we can fend for ourselves, and if we wouldn't agree we would vote differently."²

In the summer of 2009 the same religious group came under discussion in relation to the dismissal of a homosexual teacher from a Christian school.³ Once the teacher had decided that he would like to live together with his boyfriend, he and the school (which, like all schools in the Netherlands, is publicly funded) came to an agreement and communicated this to the parents. The letter was leaked to the press, which led to public outrage and questions in parliament. In response to these questions, and in a rare transgression of the Dutch understanding of the separation between state and church, the Minister of Education suggested that the Center for Culture and Leisure (COC), the country's main gay rights NGO and the only one to have the Economic and Social Council (ECOSOC) consultative status, may want to consider taking the case to the Equal Treatment Commission (ETC). The COC took up the challenge and filed an official complaint, even though the teacher concerned indicated that he was opposed to such a court case.⁴

Both cases are examples of the implementation of international human rights law via court cases brought forward by actors outside of the orthodox reformed community through court cases. Taking a socio-legal vantage point, this article maps the responses to these cases within the highly atypical orthodox reformed community in the Netherlands. This article bases its analysis upon forty extensive interviews with orthodox reformed politicians, NGOs, church representatives, ordinary people, a media-analysis, and a survey filled in by nearly 6,000 respondents.⁵ This article applies and

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1. Convention on the Elimination of All Forms of Discrimination Against Women, *adopted* 18 Dec. 1979, G.A. Res. 34/180, U.N. GAOR, 34th Sess., U.N. Doc. A/34/46 (1980), 1249 U.N.T.S. 13 (*entered into force* 3 Sept. 1981) [hereinafter CEDAW].
 2. Interview with Mrs. Klijn, Reformed woman, in Terneuzen (20 July 2009).
 3. *Leraar Emst Neemt Afstand van COC [Emst Teacher Distances Himself from the COC]*, REFORMATORISCH DAGBLAD, 20 May 2009, available at http://www.refdag.nl/nieuws/binnenland/leraar_emst_neemt_afstand_van_coc_1_332896.
 4. *Id.*
 5. In total, 142 articles relevant to the topic in leading newspapers within the orthodox-protestant community, the *Reformatisch Dagblad* (Reformed Daily) and the *Nederlands Dagblad* (Dutch Daily) were analyzed and scored. Participatory observation and interviews with around forty representatives of the orthodox-reformed community resulted

refines theories on the vernacularization and localization of human rights within a context of legal pluralism in a code-law country. After discussing recent theories on the localization of human rights within a context of legal pluralism, this article introduces the orthodox reformed, which form about 1.5 percent of the Dutch population.⁶ Subsequently, this article discusses the way in which NGOs sought to “realize rights” by means of a variety of court cases, and to the way in which these cases played out within the communities concerned.

II. HUMAN RIGHTS BROUGHT HOME

How do human rights take on meaning in a context of religious diversity and—in this case—in a longstanding democracy with Roman-Dutch legal roots? In considering this question the research draws on a number of bodies of theory.

First, there is the nascent field of human rights sociology that investigates the social meaning of rights within a particular context, as well as the dynamics by which human rights, often in largely unequal power relations, are brought home.⁷ In tracking human rights between the global and the local, socio-legal scholars have straddled materialist and social constructivist approaches in pointing at the place of both institutions and patterns of communication in understanding the way in which rights talk potentially comes to play a role within a given domestic setting.⁸ Here, particular attention is

in a mass of qualitative information. The research focused both on the national and the local level—in this case, Middelburg and Katwijk, two municipalities with a large orthodox-protestant community. Finally, a large survey was held amongst the research population, with 5,898 respondents from the communities concerned who answered the questionnaire. These results were largely representative of the population concerned in terms of denomination, sex, age, and spread across the Netherlands (throughout the so-called “Bible belt”) [hereinafter *Author’s Original Research*].

6. GELOVEN IN HET PUBLIEKE DOMEIN: VERKENNINGEN VAN EEN DUBBELE TRANSFORMATIE [RELIGION IN THE PUBLIC DOMAIN: RESEARCH ON A DOUBLE TRANSFORMATION] 100 (Wim B.H.J. van der Donk & A.P. Donkers, eds., 2006).
7. For a genealogy of the sociology and the anthropology of rights, respectively, see Margaret R. Somers & Christopher N.J. Roberts, *Toward a New Sociology of Rights: A Genealogy of “Buried Bodies” of Citizenship and Human Rights*, 4 ANN. REV. L. SOC. SCI. 385 (2008); Mark Goodale, *Toward a Critical Anthropology of Human Rights*, 47 CURRENT ANTHROPOLOGY (2006). Even if the sociology and the anthropology of rights seem to be developing and positioning themselves as separate disciplines, the concerns appear rather similar. Both fields have also recently seen a marked increase in the attention for human rights. One of the earliest works signaling anthropology’s myopia concerning the importance of rights and attempting to remedy this was HUMAN RIGHTS, CULTURE & CONTEXT: ANTHROPOLOGICAL PERSPECTIVES (Richard A. Wilson ed., 1997).
8. See THE PRACTICE OF HUMAN RIGHTS: TRACKING LAW BETWEEN THE GLOBAL AND THE LOCAL (Mark Goodale & Sally Engle Merry eds., 2007).

given to the way in which networks of local and international NGOs can set in motion the “boomerang” of human rights implementation, joining unequal forces in bringing about a “human rights spiral.”⁹

For all their efforts to address the “deafening silence about rights” sociologists and anthropologists still have to fully theorize a number of issues in rights implementation and internalization. For one, there is the difference between rights implementation by means of structural and policy reforms, as opposed to rights litigation.¹⁰ The potential of rights litigation, as well as the disadvantages of framing social claims within the highly individualistic language of rights, have been discussed in classic works of legal sociology.¹¹ Clearly, rights talk can function as “politics by other means,” but such an approach also has its limitations.¹² What remains to be fully theorized on the basis of empirical research is the extent to which the response to rights implementation in a particular context is shaped by the way in which rights talk enters the scene: through the royal way of legislative and policy changes, legitimized by parliament, or via the backdoor of the judiciary.

The politics of enforcement of particular rights also merits more attention. Human rights are obviously not a monolithic mass of norms. There is a human rights jacket to be found for virtually every social claim, be it of a political, social, economic, or cultural nature. Similarly, every discussion on the realization of rights can be understood as being about the tension between particular rights and their prioritization. For instance, the cases described below essentially concern a clash between the right to equal treatment and the freedoms of association, religion, and education—all of which are extensively protected within the International Bill of Rights and an array of international and regional human rights treaties. It is the politics of rights prioritization, shaped by unequal power differentials, discursive practices, NGO activity, and receptivity towards a particular right in a given domestic context that merits more attention.¹³

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9. Cf. *THE POWER OF HUMAN RIGHTS: INTERNATIONAL NORMS AND DOMESTIC CHANGE* (Thomas Risse, Stephen C. Ropp, & Kathryn Sikkink eds., 1999), but also MARGARET E. KECK & KATHRYN SIKKINK, *ACTIVISTS BEYOND BORDERS: ADVOCACY NETWORKS IN INTERNATIONAL POLITICS* (1998); Ellen Lutz & Kathryn Sikkink, *The Justice Cascade: The Evolution and Impact of Foreign Human Rights Trials in Latin-America*, 2 *CHI. J. INT'L L.* (2001).
 10. For an analysis of the increase in strategic litigation by human rights NGOs see JEFF HANDMAKER, *ADVOCATING FOR ACCOUNTABILITY: CIVIC-STATE INTERACTIONS TO PROTECT REFUGEES IN SOUTH AFRICA* (2009).
 11. See generally STUART A. SCHEINGOLD, *THE POLITICS OF RIGHTS: LAWYERS, PUBLIC POLICY AND POLITICAL CHANGE* (1974); MARY A. GLENDON, *RIGHTS TALK: THE IMPOVERISHMENT OF POLITICAL DISCOURSE* (1991). One could argue that one of the weak points in Glendon's analysis lies in her conceptualization of rights as individual rights, and her neglect of social and economic rights, which do address wider social needs.
 12. The term is taken from the title of RICHARD ABEL, *POLITICS BY OTHER MEANS: LAW IN THE STRUGGLE AGAINST APARTHEID, 1980–1994* (1995).
 13. Here some inspiration could be drawn from the literature on the implementation of EU legislation, see, e.g., Tanja Börzel, *Pace-Setting, Foot-Dragging, and Fence-Sitting: Member State Responses to Europeanization*, 40 *J. COMMON MKT. STUD.* 193–214 (2002).

A final relative lacuna lies in the singular focus in the sociology and anthropology of rights upon either developing countries or, more recently, the Anglo-Saxon countries with a common law background. For all the differences between the countries in Asia, Africa, and Latin-America that recently have yielded fascinating studies on rights implementation, there are a number of characteristics that bind them: they often concern weak states, or states that have recently made the transition from authoritarianism to democracy with particular consequences for the position of civil society and the hopes read into rights talk, in which customary law or indigenous rights discourse is juxtaposed towards the formal state law.¹⁴

Another relatively sturdy body of research on rights talk and its social consequences concerns the Anglo-Saxon countries with their particular legacy of judge-made law and an activist judiciary. Building upon Scheingold's *The Politics of Rights*, numerous studies have commented upon the regulative and communicative capacities of rights talk in the United States.¹⁵ Over recent years, the implementation of the Human Rights Act in the United Kingdom and the underlying desire to bring human rights home has given rise to a number of socio-legal studies emphasizing, amongst others, the perils in the perception of rights talk as alien, as enforced in Europe.¹⁶

The implementation of human rights within systems of code law, which often take a monist approach towards human rights implementation and treat human rights as a part of the domestic legal order once treaties have been ratified and publicized, has received less attention. Halliday and Schmit provide a rare focus on these countries, and hypothesize that "[i]t may be that mature domestic systems have a strong overall capacity for internationalisation of international norms—especially . . . because these norms were first exported by these states to the nascent international order—but that in practice we find ambivalence or antagonism over human rights in mature states."¹⁷ Banakar, looking into the implementation of equal treatment legislation in Sweden, stresses how legal culture and legal consciousness play a role in determining which rights acquire more social meaning than others.¹⁸

14. See also GLOBALIZATION AND HUMAN RIGHTS (Alison Brysk ed., 2002); THE PRACTICE OF HUMAN RIGHTS, *supra* note 8; CULTURAL TRANSFORMATION AND HUMAN RIGHTS IN AFRICA (Abdullahi A. An-Na'im ed., 2002); BEYOND RIGHTS TALK AND CULTURE TALK: COMPARATIVE ESSAYS ON THE POLITICS OF RIGHTS AND CULTURE (Mahmood Mamdani ed., 2000); BALAKRISHNAN RAJAGOPAL, INTERNATIONAL LAW FROM BELOW: DEVELOPMENT, SOCIAL MOVEMENTS AND THIRD WORLD RESISTANCE (2003).

15. See SCHEINGOLD, *supra* note 11; IDENTITIES, POLITICS, AND RIGHTS (Austin Sarat & Thomas R. Kearns eds., 1997) takes a more constitutive approach; see also HOW DOES LAW MATTER? (Bryant G. Garth & Austin Sarat eds., 1998); CHARLES R. EPP, THE RIGHTS REVOLUTION: LAWYERS, ACTIVISTS, AND SUPREME COURTS IN COMPARATIVE PERSPECTIVE (1998).

16. See HUMAN RIGHTS BROUGHT HOME: SOCIO-LEGAL PERSPECTIVES ON HUMAN RIGHTS IN THE NATIONAL CONTEXT (Simon Halliday & Patrick D. Schmidt eds., 2004).

17. *Id.* at 5.

18. Reza Banakar, *When Do Rights Matter? A Case Study of the Right to Equal Treatment in Sweden*, in HUMAN RIGHTS BROUGHT HOME, *supra* note 16, at 165.

Mertus comes to similar findings in discussing the domestic impact of the widely acclaimed Danish Human Rights Institute and describes how rights talk had to be repacked within the more familiar discourse of equality and diversity in order to be effective.¹⁹ Clearly, even in mature democracies, human “rights are not gifts: they are won through concerted collective action arising from both a vibrant civil society and public subsidy.”²⁰ Also, just like elsewhere in the world, “the impact of international standards is likely to be uneven and sporadic,” with the institutional make-up, legal consciousness, and civil society all playing a role in establishing which rights come to matter more than others.²¹

III. LEGAL PLURALISM AND RIGHTS REALIZATION

In assessing the response to this particular form of rights realization by NGOs via the courts, to emphasize equality within the strongly homogeneous orthodox reformed community in the Netherlands, it is useful to draw from the theoretical toolkit developed by legal sociology in general and global legal pluralism in particular.

Theoretically speaking, what could implementation of equal treatment legislation do? Here, one has to tread very carefully. The relationship between legal standards and legal consciousness, between prescription, attitudes, and actions, is far from clear.²² Law may be able to serve as an instrument of social change, but these effects are never linear or evident. This is all the more so when it concerns communicative legislation geared towards changing legal consciousness, as is the case with equal treatment legislation.²³ Law has a constitutive force; it gives meaning to social situations, creates identities, and can have direct or indirect, desired or undesired effects that merit scrutiny, even if they can never be isolated as such.²⁴

19. JULIE A. MERTUS, *HUMAN RIGHTS MATTERS: LOCAL POLITICS AND NATIONAL HUMAN RIGHTS INSTITUTIONS* (2009).

20. EPP, *supra* note 15, at 197.

21. *HUMAN RIGHTS BROUGHT HOME*, *supra* note 16, at 5.

22. See STEVEN VAGO, *LAW AND SOCIETY* (1981); ROGER COTTERRELL, *THE SOCIOLOGY OF LAW: AN INTRODUCTION* (2d ed. 1992); ROGER COTTERRELL, *LAW, CULTURE AND SOCIETY: LEGAL IDEAS IN THE MIRROR OF SOCIAL THEORY* (2006).

23. Marc Hertogh, *What's in a Handshake? Legal Equality and Legal Consciousness in the Netherlands*, 18 *SOC. & LEGAL STUD.* 221 (2009); Bart van Klink, *Effectiviteit van Gelijke-behandelingswetgeving: van Sociale Werking naar Symboolwerking* [Effectivity of Equal Treatment Legislation: from Social to Symbolic Effects] 215–230 (2000).

24. DAVID M. ENGEL, *How Does Law Matter in the Constitution of Legal Consciousness?*, in *HOW DOES LAW MATTER*, *supra* note 15, at 109; JOHN GRIFFITHS, *DE SOCIALE WERKING VAN HET RECHT: EEN KENNISMAKING MET DE RECHTSSOCIOLOGIE EN DE RECHTSANTROPOLOGIE* [THE SOCIAL WORKING OF THE LAW: AN INTRODUCTION TO THE SOCIOLOGY AND ANTHROPOLOGY OF LAW] (Nijmegen, Ars Aequi Libri, 3d ed. 1996).

Legal pluralism is best characterized by its commitment towards understanding the relationship between religious and cultural communities with normative frameworks that diverge from the wider social matrix, as well as its ambivalence towards the essentialism that creeps in with these terms and juxtapositions.²⁵ Over the years, the emphasis has been put on the mutually constitutive nature of legal orders and the vital importance of globalization in processes of reasserting and redefining the local and the traditional.²⁶ Nevertheless, the concern remains the same: the way in which law and other norms come to play in a given local setting, shaping both social struggles and the modes of resistance.

In a seminal work on the localization of human rights in the field of domestic violence, Merry points at the importance of the vernacularization of rights, as well as at the role of translators in this process.²⁷ Rights talk stands a larger chance of acquiring social meaning once it is translated into the “vernacular,” and comes to resonate with local understandings.²⁸ Similarly, translators, like local NGOs or community leaders, play a pivotal role in translating local understandings to the wider world and introducing rights talk in such a manner that it does realize its potential of challenging “existing social relations and power structures.”²⁹

Theoretically, as well as highly schematically, it is against this background that a number of individual and community responses to the implementation of a particular human right can be distinguished (See Table 1.1). One would be a *rigidified isolation*. In this case this would mean that a norm derived from the Bible is adhered to even more strongly, and that the community opts to increasingly withdraw from the public sphere. In an alternative response, labeled *preaching* in the context of this research, alternatively, the community (or the individual) sticks to the norm in question, but opts to convince the wider public of the stance taken. In the two opposite scenarios, the community norm is somehow brought in line with the norms underlying the right in question. This either takes place in *dialogue* with wider society, or in a process of *internal wrestling*.

25. The quotation comes from *locus classicus* of Sally F. Moore, *Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study*, 7 L. & SOC'Y REV. 719 (1973). Snapshots in the genealogy of the term legal pluralism: John Griffiths, *What is Legal Pluralism?*, 24 J. LEGAL PLUR. & UNOFFICIAL L. 1 (1986); Sally Engle Merry, *Anthropology, Law, and Transnational Processes*, 21 ANN. REV. ANTHROPOLOGY 357–79 (1992); Ralf Michaels, *Global Legal Pluralism*, 5 ANN. REV. OF L. & SOC. SCI. 243 (2009).

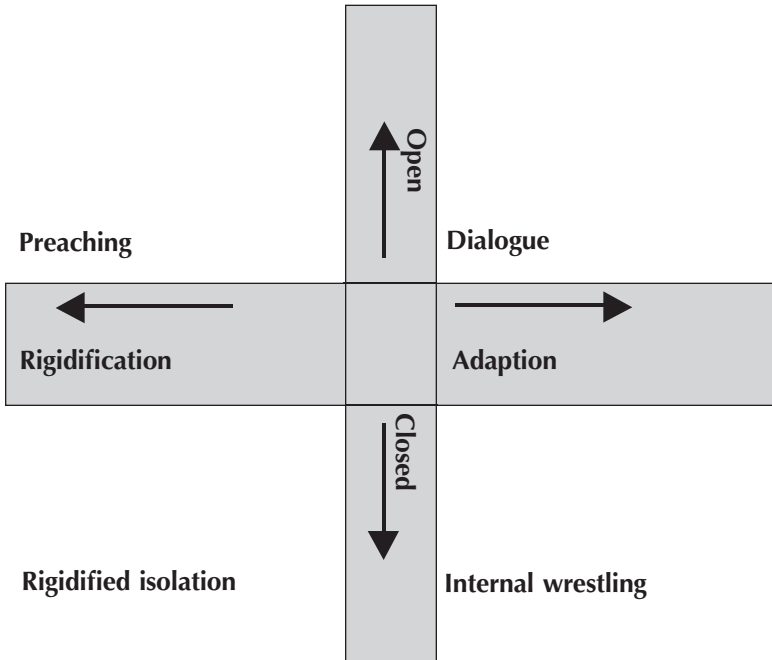
26. Merry, *supra* note 25, at 358.

27. SALLY ENGLE MERRY, HUMAN RIGHTS AND GENDER VIOLENCE: TRANSLATING INTERNATIONAL LAW INTO LOCAL JUSTICE (2006), at 193–194.

28. *Id.* at 216.

29. *Id.* at 184.

Table I.1



Human rights sociology and anthropology offer a few pointers on what factors could contribute to the type of responses. Factors such as the vernacularization of rights talk, the existence of locally grounded organizations and institutions acting as translators, the importance attached to the community norm, the degree to which the community norm is already under discussion, the tone of the discussion on rights realization, the legitimacy of the institutions associated with rights implementation, and the existence of sanctions in cases of non-adherence could all play a role.³⁰

30. On the importance of *vernacularization* see Abdullah A. An-Na'im & Jeffrey Hammond, *Cultural Transformation and Human Rights in African Societies*, in *CULTURAL TRANSFORMATION AND HUMAN RIGHTS IN AFRICA* 13–37 (Abdullah A. An-Na'im ed., 2002). The potential role of translators has been emphasized in *HUMAN RIGHTS AND GENDER VIOLENCE*, *supra* note 27. On the tone of the discussion see Goodale, *supra* note 7; on legitimacy in realizing rights see KEMAL DERYİŞ, *A BETTER GLOBALIZATION: LEGITIMACY, GOVERNANCE, AND REFORM* (2005); Barbara Oomen, *Justice Mechanisms and the Question of Legitimacy: The Example of Rwanda's Multi-layered Justice Mechanisms*, in *BUILDING A FUTURE ON PEACE AND JUSTICE: STUDIES ON TRANSITIONAL JUSTICE, PEACE AND DEVELOPMENT: THE NUREMBERG DECLARATION ON PEACE AND JUSTICE* 210 (Kai Ambos, Judith Large & Marieke Wierda eds., 2009). On the importance of precisely enunciated *sanctions*, see VAGO, *supra* note 22, at 327.

After presenting some brief background on the orthodox reformed, their particular place within Dutch society, and the court cases concerned, this article will assess the responses to the cases within the communities concerned, as well as the factors that contributed towards them.

IV. THE ORTHODOX REFORMED

The approximately 250,000 (among an overall population of 16 million) orthodox reformed in the Netherlands straddle a variety of orthodox protestant denominations which, for all their differences, share a number of characteristics which legitimizes the usage of the contentious term “community” in referring to the people who visit these churches: the strict adherence to the Bible in the seventeenth century translation, the segregation from the wider social matrix in the Netherlands, the way in which the reformed conceive of themselves as by-passers of Earth, and the consequences drawn from this insight.³¹

Fundamentalist in the most literal sense of the world—and often derisively dubbed “Taliban on clogs”—the orthodox reformed base their lives squarely and solely upon the Bible, according to its State Translation of 1637 commissioned by the Dordt Synod of 1618–1619.³² “To us, the Bible is true, from cover to cover,” as one respondent stated empathically.³³ The emphasis lies on an existential experience of faith.³⁴ In living on the basis of the Bible, the orthodox reformed draw from Three Principles of Unity: The Netherlands Declaration of Faith, the Heidelberg Catechism, and the Canons of Dordt. Both the position on women holding political office and the rejection of gay rights are derived directly from these readings.³⁵ The orthodox reformed attend church twice each Sunday wearing neat and

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31. See ANDRIES KNEVEL, ALLEMAAL GEREFORMEERDEN: IN GESPREK MET TIEN GEREFORMEERDE VOORMANNEN [ALL REFORMED: DISCUSSION WITH TEN REFORMED LEADERS] (2009). The four main orthodox reformed churches are the Old Reformed Church, the Restored Reformed Church, the Reformed Church, and the Reformed Church in the Netherlands. In addition, some bevindelijken (orthodox reformed) are found in the Christian Reformed Churches. The newly-founded Protestantse Kerk Van Nederland (PKN; a cooperation of Dutch Protestant Churches) contains the largest group of reformed Christians, but only a small percentage of this group is orthodox. *Id.*
 32. G. Beverdam, *Emotioneel SGP-debat over aanvaarden ‘neutrale staat’* [Emotional SGP-debate on acceptance of the neutral state], NEDERLANDS DAGBLAD, 8 Nov. 2008.
 33. Interview with George van Heukelom, SGP Politician Zeeland, in Middelburg (30 June 2009).
 34. Or “bevinding.”
 35. Please note the departure from the views held by Dutch reformed (approximately 2.5 million) on these issues in general: the more left-wing Dutch reformed churches were amongst the first worldwide to endorse gay marriages.

often dark clothing; girls and women wear skirts and hats.³⁶ Marriage is an especially important part of life.³⁷ Families are often large and tight-knit, and most of the women are housewives.³⁸ The news is derived from the Reformed Daily and increasingly special reformed websites, and watching television is frowned upon.³⁹ The majority of the orthodox reformed vote for the SGP, the oldest Dutch political party in existence, which occupies two out of the 150 seats in parliament.

One of the reasons for the relative homogeneity of the group lies in the Dutch institutional history of pillarization.⁴⁰ In this particular manner of structuring society, several ideologies are placed next to, but apart from, each other. In early twentieth century Dutch society, Protestant, Catholic, Socialist, and perhaps Liberal pillars formed the distinct foundation of political life. Each pillar had its own schools, newspapers, and labor unions, which allowed members of each pillar to lead their lives in virtual segregation. While the 1960s secularization also led to depillarization, it could well be argued that the orthodox reformed still live in one of the pillars that characterized political life in the sixties. For one, they occupy a distinct space in the Netherlands: within the Bible belt that runs from the southwestern tip of the country to the central east many villages are predominantly orthodox, effectively closing down on Sundays.⁴¹ Apart from the churches, the special state-funded orthodox protestant schools play a special role in the socialization into the orthodox reformed mode of thought.⁴² "All you can hope is that their education and upbringing strengthens their faith in such a manner that they stick to it in confrontation with those holding other views."⁴³

As a final defining feature, the way in which the orthodox reformed position themselves in society is shaped by the belief that they are not only citizens of this world, but primarily of the Land of Promise. Whilst the former citizenship is temporary, the latter is not: life on Earth is but a journey to their eternal home. The reformed argue that they are "in this world, but not of this world."⁴⁴ This straddling of earthly and heavenly life creates a distance

36. *Author's Original Research, supra* note 5.

37. *Id.*

38. *Id.*

39. *Id.*

40. See AREND LIJPHART, *THE POLITICS OF ACCOMMODATION: PLURALISM AND DEMOCRACY IN THE NETHERLANDS* (1968).

41. *Author's Original Research, supra* note 5.

42. The particular Dutch arrangement of funding all religious schools on equal footing with public schools and extreme reticence in infringing upon the freedom of education derives from the historic agreement reached by the religious and the liberal parties at the beginning of the twentieth century, by which this particular freedom of education was exchanged for universal suffrage. It is enshrined in the Constitution of the Netherlands, *GRONDWET VOOR HET KONINKRIJK DER NEDERLANDEN*, art. 23.

43. Ondine van Vleuten, *Portret: Familie Jobse, Gereformeerde Gemeenten [Portrait Jobse family, Reformed Community]*, PZC, 18 Sept. 2008.

44. Based on *John* 17:15–19 and *James* 4:4.

between orthodox reformed and the rest of society and results in either active or passive engagement within it: preaching or isolation.⁴⁵ Changes in society often dictate which of these scenarios prevails.

In recent years, social changes have increased a sense of isolation amongst the orthodox reformed. In spite of their own understanding of being alien to this world, this group of people often feels discriminated against, marginalized, misunderstood, and restricted in their freedoms.⁴⁶ There is a general sense that the debate on Christianity in society at large has become increasingly discriminatory. To this particular group, the Dutch notion of tolerance has become rather one-sided: "It is bitter to conclude that those people in the Netherlands who considers themselves to be so tolerant become so intolerant towards others," says one respondent, while another notes that "our society has become egocentric and anti-GOD. Everyone can say what he or she wants but it is not accepted if you adopt the Bible as a central guideline."⁴⁷ Amongst the respondents, 53 percent *strongly agrees* with the statement that there is less tolerance towards the Christian way of life, whilst 34 percent *agrees*.

The explanation for this sense of marginalization lies in a number of tidal waves that have swept through Dutch society, both in the past decades and in more recent years. For one, there is secularization: whereas the orthodox protestant position on the place of women and homosexuality was relatively mainstream half a century ago, the Netherlands have undergone one of the strongest currents of secularization in the whole of Europe, leaving only a minority of the Dutch to visit church regularly or to be familiar with the contents of the Bible.⁴⁸ This has been combined with a relatively strong emancipation of both women and homosexuals.⁴⁹ For instance, where it concerns acceptance of homosexuality the Dutch rank amongst the most tolerant people in Europe; a legal consciousness translated into legislation

45. A combination often occurs. See GIJSBERT VAN DEN BRINK & ELCO VAN BURG, *STRIJDBAAR OF LIJZAAAM: DE POSITIE VAN CHRISTENEN IN HET PUBLIEKE DOMEIN* 330–359 (2006).

46. W.B.H.J. VAN DER DONK, *GELOVEN IN HET PUBLIEKE DOMEIN: VERKENNINGEN VAN EEN DUBBELE TRANSFORMATIE* (2006); *Author's Original Research, supra* note 5.

47. *Author's Original Research, supra* note 5. Anonymous respondent in the open answers within the survey. *Id.*

48. VAN DER DONK, *supra* note 46.

49. The "relative" here lies in the recent increase in discrimination of homosexuals, the continued discrimination of women in the workplace, and the degree of domestic violence. DANISH INSTITUTE FOR HUMAN RIGHTS, *THE SOCIAL SITUATION CONCERNING HOMOPHOBIA AND DISCRIMINATION ON GROUNDS OF SEXUAL ORIENTATION IN BELGIUM* 4 (Mar. 2009), available at http://www.fra.europa.eu/fraWebsite/attachments/FRA-hdgso-part2-NR_BE.pdf; EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS (FRA), *HOMOPHOBIA AND DISCRIMINATION ON GROUNDS OF SEXUAL ORIENTATION AND GENDER IDENTITY IN THE EU MEMBER STATES: PART II: THE SOCIAL SITUATION* at 7, 29 (2009), Universal Periodic Review of the Netherlands, U.N. Doc. A/HRC/WG.6/1/NLD/1, adopted 7 March 2008.

on, amongst others, gay marriages.⁵⁰ A more recent, but just as drastic shift contributing to the sense of isolation lies in the consequences of the *end of multiculturalism*.⁵¹ The repercussions of the 9/11 attacks and the subsequent murders upon the right-wing politician Pim Fortuyn in 2002 by a fundamentalist environmentalist, and Theo van Gogh in 2005 by a young Muslim, created an atmosphere conducive to a rapid change in policies emphasizing assimilationist citizenship instead of the tolerance towards difference that long characterized Dutch citizenship policies. Whilst explicitly directed towards the immigrant population,⁵² the orthodox reformed felt the repercussions of this increased emphasis on accepting "Dutch" values like equal treatment: "accepting homosexuality has become a marker of western society as opposed to the Islam. If you want to be in favour of Dutch identity and of western values you have to be in favour of homosexuality."⁵³ As always, globalization also plays a role, for instance in explaining the emphasis on international human rights in general. The Netherlands ranks amongst the champions of rights realization worldwide, having turned human rights into the cornerstones of its foreign policy.⁵⁴ Within the human rights strategy, LGBT (Lesbian, Gay, Bisexual & Transgender) rights occupy a central position, with Dutch ambassadors worldwide paying particular attention to the rights of homosexuals, and the Netherlands on the forefront of the adoption of a UN declaration on the decriminalization of homosexual acts in 2008.⁵⁵ The critique on the position of women within the SGP, voiced in CEDAW sessions and during the 2008 Universal Periodic Review (UPR), was perceived as an embarrassment by various foreign affairs officials and an impediment to the country's ability to defend human rights worldwide.⁵⁶ As the SGP

50. *Id.*

51. JAMES C. KENNEDY, *BUILDING NEW BABYLON: CULTURAL CHANGE IN THE NETHERLANDS DURING THE 1960S* (1995) has argued that the way in which large-scale societal transformation comes in shocks instead of in increments is characteristic of Dutch society. *Id.*

52. For incisive discussions of the rapid rise of discourses of autochthony and belonging see IAN BURUMA, *MURDER IN AMSTERDAM: THE DEATH OF THEO VAN GOGH AND THE LIMITS OF TOLERANCE* (2006); PETER GESCHIERE, *THE PERILS OF BELONGING: AUTOCHONOMY, CITIZENSHIP, AND EXCLUSION IN AFRICA AND EUROPE* (2009). The consequences of Dutch immigration policies have been set out in THOMAS SPIJKERBOER, *ZEKER WETEN: INBURGERING EN DE FUNDAMENTEN VAN HET NEDERLANDSE POLITIEKE BESTEL [KNOWING FOR SURE: CITIZENSHIP TESTS AND THE FOUNDATIONS OF THE DUTCH POLITICAL SYSTEM]* (2007).

53. Telephone Interview with Ina Veldhuizen, Chair CHJC (Christian Gay Rights NGO), in Middelburg (23 June 2009), conducted by N. Rijke.

54. DUTCH MINISTRY OF FOREIGN AFFAIRS, *HUMAN DIGNITY FOR ALL: A HUMAN RIGHTS STRATEGY FOR FOREIGN POLICY* (2007), available at <http://www.minbuza.nl/dsresource/objectid=buzabeheer:53627&type=org>.

55. Declaration on Sexual Orientation, and Gender Identity, presented 18 Dec. 2008; See Neil Macfarquhar, *In a First, Gay Rights are Pressed at the U.N.*, N.Y. TIMES, 18 Dec. 2008.

56. Universal Periodic Review, CEDAW/C/2001/II/3/Add.7, at 219. (on file with author).

parliamentary leader stated cynically, “we are a blemish to be removed in order for the Netherlands to keep up its international standing.”⁵⁷

V. THE COURT CASES

Even if the vehemence of the implementation of equality legislation can only be understood in reference to the large-scale changes in Dutch society set out above, the roots of the laws themselves can, at least partly, be traced back to international human rights law. Article 1 of the Dutch Constitution, the Equality clause, was incorporated in 1983 with the Dutch accession to CEDAW, and other international human rights treaties. The Dutch Equal Treatment Commission was set up—at least partly—in response to a condition laid down in a European Union (EU) Equal Treatment Directive.⁵⁸ The discussion on the extent to which state-funded schools of religious denomination are allowed to discriminate on the grounds of sexual orientation is shaped by the same directive. The following cases concerning discrimination in orthodox protestant communities—concerning women and homosexuals—will briefly be discussed.

A. Women’s Political Participation

Concerning the position of women, the SGP stance has been the subject of a number of court cases that have yet to be decided. The SGP bar on women participating in politics has deep historical roots; one of the main reasons for the founding of the party in 1918 lies in the protest against the fact that the main reformed party of the day, the ARP (Anti-Revolutionary Party) accepted universal suffrage. In contrast, the SGP turned the strict division of roles between men and women into a core feature of its identity, basing itself on, for instance, 1 Corinthians 14:34, “Let your women keep silence in the churches: for it is not permitted to them to speak; but they are commanded to be under obedience as also said the law.”⁵⁹ The exact implication of this verse, as well as other biblical phrases on political participation by women, has been heatedly debated in the party since its inception.

57. Interview with B. van der Vlies, leader of the SGP fraction in parliament, at The Hague (15 June 2009).

58. *Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity in the EU Member States, Part II: The Social Situation*, E.U. Agency for Fundamental Rights (FRA) (2009).

59. 1 *Corinthians* 14:34.

Up to the 1980s, the central issue was whether women should have voting rights at all. In practice, women voted SGP right from the start, with many party leaders arguing that this was necessary in order to achieve the party's objectives (which included founding a theocracy). This issue became problematic upon the adoption of the equality clause in the Dutch Constitution in 1983 and the country's accession to CEDAW.⁶⁰ The discussion was finalized by adding a phrase to the SGP foundational document in 1989 stating that "[i]deas on women's suffrage, which result from the revolutionary emancipatory movement, go against the calling of the women. This applies to taking up political positions, both representative and more organizational. A woman can, on the basis of her own conscience, decide if she can vote in taking into account the place given to her by the Lord."⁶¹

This phrase still barred women from political membership in the party, and from taking up political positions, a position clearly in tension with CEDAW, Article 7:

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies.⁶²

By the end of the 1990s, a number of Dutch human rights NGOs drew the CEDAW Committee's attention to this discrimination of a particular group of Dutch women, which resulted in criticism on reticence of the Dutch government in this matter.⁶³

While there had been a number of failed attempts by SGP-women to address the party's discriminatory practices, it was a group of ten human rights NGOs in a rare case of human rights litigation that brought the matter to court around 2000. In the initial torts case, the NGOs demanded that in the interest of all Dutch women the Netherlands take action against the SGP.⁶⁴ The lower court agreed with the women, giving more weight to

60. See Parliamentary Debates (11 Feb. 1993) and *Kamerstukken I* [Parliamentary Papers], 18 950, no. 72a (1990–1991); *Goedkeuring van het Verdrag inzake de uitbanning van alle vormen van discriminatie tegen vrouwen* (Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women) (on file with author).

61. STAATKUNDIG GEREFORMEERDE PARTIJ, TOELICHTING OP HET PROGRAM VAN BEGINSLEN VAN DE STAATKUNDIG GEREFORMEERDE PARTIJ (2003), available at <http://www.sgp.nl/Media/download/5257/Toelichting%20Pr.v.B.pdf>.

62. CEDAW, *supra* note 1, art. 7.

63. *Commentary on the Second and Third Periodic Report of the Netherlands on the Implementation of the Convention on the Elimination of All Forms of Discrimination against Women*, Nederlands Juristen Comité voor de Mensenrechten [Dutch Section of the International Commission of Jurists] (28 Dec. 2000).

64. Rechtbank's-Gravenhage [The Hague District Court], NJ 2005/474 (7 Sept. 2005), available at www.rechtspraak.nl.

Article 7 of CEDAW and to the principle of non-discrimination, than to the freedom of association or the freedom of religion. One of the measures to be taken, the court added, could be putting a stop to the state subsidy to the party.⁶⁵ The state did withhold subsidy in 2005, a fact that instigated the SGP to change its statutes to allow for women's membership.⁶⁶

Nevertheless, the prohibition of standing for office remained and led to two appellate cases with vastly different outcomes. The SGP lodged an administrative appeal against the withholding of state subsidy with the Council of State, which in 2007 ruled in favor of the party.⁶⁷ In weighing the fundamental rights at stake, the administrative court argued that the right to political participation, even by a party which holds ideas that strongly diverge from majority standpoints, is more important than the violation of the principle of non-discrimination. The subsidy-decision was, therefore, overturned.

In a rather confusing conjunction, the civil court of appeal ruled in the same month, stating that the Dutch state should take measures against the SGP. In allowing the SGP to continue its discriminatory practices, the court stated, the state committed a wrong against the women represented by the NGOs. The civil court also clearly saw a tension between different rights, but argued that in this case, the right to equality was violated in its essence, and the freedom of religion is only in one of its outer shells.⁶⁸

The highest remedy in the Netherlands was exhausted in April 2010, when the Supreme Court ruled on the matter.⁶⁹ It stated that the interested parties did have *ius standi*, even if the women directly concerned might be opposed to the litigation. It also largely followed the civil court's ruling, stating that Article 7 of CEDAW has direct application and thus obliges the government to take effective measures for the realization of passive voting rights of the women concerned. In balancing the fundamental rights at stake, the Supreme Court held that the prohibition of discrimination weighs more than the religious freedoms and the freedom of association concerned. The ruling was front-page news in the Netherlands, vehemently debated in and outside of the reformed community, and dubbed '*The Dutch Brown v. Board of Education*.'⁷⁰ In October 2010, the SGP announced that it would put the

65. *Id.*

66. Gerard Vroegindeweij, *Overzicht rechtsgang tegen SGP* [Overview judicial procedure against SGP], REFORMATORISCH DAGBLAD, 9 Apr. 2010.

67. Afdeling Bestuursrechtspraak van de Raad van State [Administrative Division of the Council of State], LJN: BB9493, 200609224/1 (5 Dec. 2007), available at www.rechtspraak.nl.

68. Hof's-Gravenhage, NJ 2008/133 (20 Dec. 2007), available at www.rechtspraak.nl.

69. Hoge Raad, LJN: BK4549, 08/01394, (09 Apr. 2010), available at www.rechtspraak.nl.

70. Post by G. Boogaart, SGP-uitspraak is de Nederlandse Brown v. Board of Education [SGP-ruling is the Dutch Brown v. Board of Education](21 Apr. 2010), available at <http://www.publiekrechtropolitiek.nl>.

matter to the European Court of Human Rights.⁷¹ One of the reasons given was the difference between the highest administrative ruling—in which pluralism and the right to political participation prevailed—and the decision in the civil case, which emphasized non-discrimination over the other fundamental rights. The legal discussion will thus be continued in Strasbourg.

B. The Homosexual Teacher

Another legal discussion that affects the reformed community concerns the barring of homosexual teachers from teaching in reformed schools. This debate was held following the agreement reached between a homosexual teacher and the school leadership in *Emst*, which led to the threat of an Equal Treatment case by the COC.⁷² Theoretically, however, the case of “the homosexual teacher” has been emblematic since the adoption of the Dutch Equal Treatment Act in 1993. It was brought up as an example in parliamentary discussions on this legislation. During these discussions religious parties demanded a balance between the equal treatment legislation and the freedoms of religion and education. This materialized via the inclusion of what has become known as the “single-fact-construction,” the *enkele-feit constructie*. In Article 5(2)c of the Equal Treatment Act (ETA) this legal construct protects the freedom of religious schools to set requirements “concerning the fulfillment of a particular function that, given the aim of the institution, are necessary for the realization of its foundation.” These requirements, however, may not amount to discrimination on the basis of the *single fact* (emphasis added) of political affiliation, race, sex, nationality, heterosexual or homosexual orientation, or marital status.⁷³

While the SGP leadership still considers the adoption of the ETA (in the same year as legislation on euthanasia) amongst its darkest hours, it hardly led to a clamping down on religious schools and their recruitment procedures in the first fifteen years of its existence.⁷⁴ The Commission on Equal Treatment, which cannot issue binding rulings, did however rule on

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71. SGP naar Europees Hof [SGP to European Court](14 Oct. 2010), available at www.sgp.nl.
 72. Because of the protests, the COC decided not to pursue the case: *COC laat zaak ‘Emst’ toch rusten* [COC leaves the ‘Emst’ case after all], NEDERLANDS DAGBLAD, 29 Dec. 2009, available at <http://www.nd.nl/artikelen/2009/december/29/COC-laat-zaak-Emst-toch-rusten>.
 73. Equal Treatment Act (Algemene Wet Gelijke Behandeling, AWGB), art. 2 § 5(2)c (Neth.), available at www.hsph.harvard.edu/population/womenrights/netherlands.women.94.doc.
 74. Interview with B. van der Vlies, leader of the SGP fraction in the Second Chamber, at The Hague (15 June 2009).

the topic a number of times. In 1999, the Commission on Equal Treatment (CET) heard a case of a homosexual who had not even been invited for a job interview and ruled that this amounted to discrimination on the basis of the single fact of sexual orientation.⁷⁵ In 2007, a newspaper article on an Evangelical School stating that “you will not find homosexual teachers here” caused the Amsterdam anti-discrimination bureau to take the issue to the CET which recommended that the school adapt its policies.

The May 2009 Emst case received a great deal of attention from the press and was vehemently discussed in parliament. It led the Cabinet to promise a review of the ETA in the light of the EU directive, and without derogating upon both the principle of non-discrimination and the freedom of religion and education enshrined in Article 5(2)c.⁷⁶ In 2010, a bill seeking to strike the confusing provisions on the prohibition of discrimination on the basis of the *single fact* of sexual orientation was put to parliament.⁷⁷ It also came at a time in which the issue of homosexuality was slowly coming to be discussed within the orthodox reformed community, largely as a result of the efforts of a number of Reformed gay rights NGOs, which in turn received support from the government.⁷⁸ The organizations, namely Refoanders (Refodifferent), Contrario, and Different have done a great deal to open up the discussion on homosexuality, for instance via Internet forums. Whereas the topic was deemed to be a “total taboo” within these circles, leading to widespread psychological distress and a heightened number of suicides, church leaders and social welfare institutions have begun to discuss the implications of being an orthodox Christian with homosexual feelings. From the mainstream gay rights perspective, however, there is a major catch: while homosexual feelings are increasingly accepted, the homosexual *practice* (praxis) is rejected on biblical grounds. “As a Christian, my identity is based on my relationship with the Lord; my homosexual feelings only come second,” as one NGO-leader states.⁷⁹

This position is similar to the one adopted by the Association for Reformed Education (VGS). In a policy document formulated after intense consultations with teachers, social workers, lawyers, theologians, and “those concerned” the association stated that:

75. Commission on Equal Treatment, OORDEEL [Verdict] 99–38 (29 Apr. 1999), available at <http://www.cgb.nl/oordeel/1999-38>.

76. Equal Treatment Act, *supra* note 73.

77. *Bill of 7 September 2010 Seeking to Amend the Equal Treatment Act*, KST77908, 32476, nr. 2, Second Chamber (7 Sept. 2010)(on file with author).

78. The government adopted a policy, “Being gay is normal” (gewoon homo zijn), in 2008 with a particular emphasis on the acceptance of homosexuality amongst ethnic and religious minorities: Ministerie van Onderwijs, Cultuur en Wetenschappen, *Gewoon Homo Zijn* (2008).

79. Interview with J. Quist, chair of the Refoanders, in Middelburg (23 June 2009).

The Bible teaches us that homosexuality is not compatible with sexuality as meant by the Lord, and should be considered a form of brokenness. This does not mean that there is no place in our schools for staff or pupils with a homosexual orientation: we ask of people to commit to both Biblical teachings and life. The nature and the orientation of people can never be reason for differentiation. We all have a sinful nature, be it of hetero—or homosexual orientation. . . . This makes it the school's duty to through the grace of the Lord combat sinful desires and with the Lord's help opt for a life without a homosexual relationship.⁸⁰

While this position leads to the "concern" of the responsible minister and a letter to all the schools concerned, it did reflect legal consciousness amongst the orthodox reformed.⁸¹ Out of the respondents, a mere 4 percent fully accepts homosexuality, a virtual opposite of the perceptions within Dutch society at large;⁸² 26 percent does accept homosexual feelings, but rejects relationships, while 67 percent generally indicates to have difficulties with homosexuality. "I reject homosexual praxis. But I do treat gay people respectfully—I will approach them in a friendly and understanding manner based upon my biblical belief." "I must point out an important misconception to the Dutch population. Rejecting homosexuality is not something thought of by human beings. We believe in the Lord, and if he rejects this, than how can we accept it?"⁸³

VI. RESPONSES TO THE COURT CASES: A VIEW FROM WITHIN

In mapping responses to the court cases, it is important to include both the way in which the cases were perceived within the orthodox reformed community and the actual responses ascribed to them. The following sections will briefly look at the way in which the emphasis on equal treatment in the courtroom and governmental policies played into and fuelled discussions within the communities concerned.

A. Political Representation of Women: Not that Crucial of an Issue

The SGP cases were followed closely in the media by most respondents, with 71 percent discussing them with their families.⁸⁴ The majority of the people

80. Vereniging voor Gereformeerd Schoolonderwijs (VGS), *Visienota (Homo)seksualiteit* [Policy Paper on Homosexuality] (2007), available at http://www.vgs.nl/beheer/upload/Visienota_homoseksualiteit_EINDVERSIE_JUNI_2008.pdf, (translation by the author).

81. Letter from the Minister of Education, Culture, and Sciences to all school boards, *Handreiking Homodiscriminatie* [Notes on Discrimination of Homosexuals] (27 Apr. 2009), available at http://www.tolerantescholen.net/doc/publicaties_anderen/OCW%20090427%20besturen%20VO.pdf.

82. *Author's Original Research*, *supra* note 5.

83. *Id.* Anonymous answer in the survey questionnaire. *Id.*

84. *Id.*

interviewed disagreed both with the contents of the cases and with the fact that they were lodged at all.⁸⁵ Amongst the SGP-voters 36 percent would like women to occupy political positions, whereas 64 percent is opposed to increased political participation.⁸⁶ Strikingly, there is hardly any difference between men and women, with the women stating, for instance, “I really do not understand these NGOs. They are interfering with something that’s a bridge too far for them. As a woman I am free to vote what I want, am I not? Isn’t that emancipation?”⁸⁷

It is important to not only note the differences between SGP voters, but also between electoral districts. For instance, while the district of Middelburg was in favor of women holding office, the neighboring Arnhem was vehemently opposed to it. In the fishing village of Katwijk party members were generally more liberal, with one elderman explaining: “We really have a people’s church here with a more open mindset. After all, women have been in charge here all along, as all the men were out at sea.”⁸⁸ As early as 1983 women were allowed to become party members in The Hague electoral district and later on in Schoonhoven and Groningen as well. One member of the The Hague electoral district, Riet Grabijn-Van Putten, played an important role in instigating the discussion within the party. In the 1980s, she threatened to take the party to court if she would not receive voting rights for a party assembly.⁸⁹ Her motivation was the following: “I will forego my membership of the SGP if anyone can prove to me that the Bible prohibits party membership for women. Any other arguments are irrelevant to me.”⁹⁰ In 2001 Mrs. Grabijn brought her case to the ETC, which declared the case inadmissible since this fell outside the scope of its mandate.⁹¹ While approached by the NGO-coalition on numerous occasions, she did not want to become a party in the cases that did make it to court.⁹²

It is striking that most respondents do not consider this issue to be of a highly principled nature, but rather consider it a matter of identity and subject to change in the future. In the words of parliamentary leader Van der Vlies: “I will keep resisting passive voting rights until the party changes

85. *Id.*

86. *Id.*

87. This is largely in line with earlier research, and shows a more conservative view. Research conducted with SGP-youngsters found 70 percent in favor of political representation by women: *SGP-Jeugd Niet Altijd eens met de Partijlijn [SGP Youngsters Do Not Always Agree with Party Line]*, REFORMATORISCH DAGBLAD, 9 May 2003, available at http://www.sgpj.nl/Page/sp837/ml1/from_sp_id=783/nctru/system_id=2951/so_id=1173/Index.html.

88. Interview with Wim van Duijn, Elderman SGP Katwijk, in Katwijk (6 July 2009).

89. RIET GRABIJN-VAN PUTTEN, *Ik Wil Het Gewoon Vertellen* (1996).

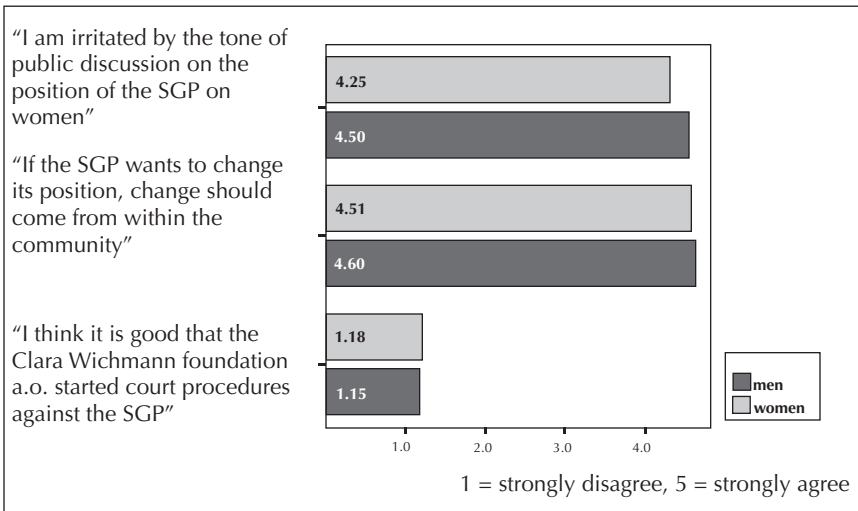
90. Martin van Amerongen, *Riet Grabijn-van Putten*, DE GROENE AMSTERDAMMER, 10 July 1996, available at <http://www.groene.nl/1996/28/riet-grabijn-van-putten>.

91. RIET GRABIJN-VAN PUTTEN, *supra* note 89.

92. Amerongen, *supra* note 90.

its opinion."⁹³ Party chairman Kolijn leaves the same room for change in stating, "[t]his is an fundamental issue since it is based on the order of creation, but the Bible is not completely clear on this, and that is why it is best to leave it to people's conscience. Although it is an essential issue for our party and can only be changed with a two-third majority, it is not one of our foundational principles."⁹⁴ Even if the issue itself is not considered to be fundamental, there is a great deal of irritation with the tone of the discussion. This transpires from the following graphs:

Responses to statements concerning women's political participation



SGP voters felt that the discussion is an internal matter that merely needs time: "Never disturb a hatching chicken."⁹⁵

In turning to the responses to the cases within the communities it is important to restate the caveat made before, that it is virtually impossible to isolate the effects of the court cases from those resulting from the wider trends like secularization and emancipation. Nevertheless, a number of responses can be related directly to the court cases.

For one, there was the decision taken in 2006 to open up party membership to women, taken directly after the state—heading to the decision in the district court—had announced to stop the €800,000 yearly subsidy

93. IKON, *Spraakmakende Zaken* (22 Aug. 2006), as quoted by Henk Post, *IN STRIJD MET DE ROEPING DER VROUW. DE STAATKUNDIG GEREFORMEERDE PARTIJ EN HET VROUWENKIESRECHT* at 243 (2009).

94. Interview with Wim Kolijn, *Voorzitter SGP*, in Terneuzen (20 July 2009).

95. Interview with Th. Klok, *Secretary of the SGP*, in Katwijk (21 July 2009).

to the SGP. While the stop on the subsidy was overturned on appeal, party membership has remained open to women. However, over the past years only 158 women have made use of this possibility, 0.6 percent of the total membership.⁹⁶ In addition, the court cases clearly led to intensification of the discussion on the topic within the community. One observer noted: "The effect has been that we started thinking more about what our position is based on: the Bible, tradition or culture."⁹⁷ Party leader Van der Vlies states that "Because of the stop of funding, this process has been accelerated, since it is crucial to come to a decision quickly. Court cases and rulings have intensified this, but they have worked counterproductively as well. The discussion did become less careful."⁹⁸

A final effect, at the individual level, lies with those orthodox reformed people who indicate that they have revised their opinion on these issues over the past years. Their views are set out in Table 1.3 below:

Table 1.3

		<i>Number</i>	<i>Percentage</i>
Did your position on passive voting rights for women change in the last five years?	Yes, women should occupy more political positions.	194	10.7 percent
	Yes, women should occupy less political positions.	116	6.4 percent
	No, I've always felt that women should occupy political positions.	633	35.0 percent
	No, I've always felt that women should not occupy political positions.	868	47.9 percent

In assessing the factors that impact rights realization and particular social responses, it is interesting to assess which institutions those 15 percent of the respondents who report a change in position is ascribed.

96. Gerard Vroegindeweij, *SGP Heeft 0.6 Procent Vrouwen als Lid [SGP Has 0.6 Percent Female Membership]*, REFORMATORISCH DAGBLAD, 20 June 2009.

97. Interview with Krijn Hamelink, CU Fractie gemeenteraad, in Middelburg (14 July 2009).

98. Interview with B. van der Vlies, *supra* note 57.

Table I.4

	Has your stance on women in politics changed in the past five years?			
	Yes, women should occupy more political positions.		Yes, I have come to feel more that women should not be allowed to occupy political positions.	
	Number	Share	Number	Share
Position changed because of general societal discussion	187	61.7 percent	116	38.3 percent
Position changed because of discussion in the Christian newspapers	241	77.0 percent	72	23.0 percent
Position changed because of court cases	6	6.3 percent	90	93.8 percent
Position changed because of discussions in church	188	75.2 percent	62	24.8 percent
Position changed because of discussions with people around me	320	70.2 percent	136	29.8 percent
Other	52	51.5 percent	49	48.5 percent

What is striking here is that those orthodox reformed who came to adopt a more liberal stance ascribe this to the Christian newspapers, discussions in church, and discussions with people close to them. The qualitative interviews brought insight in the extent to which this largely took place on the basis of biblical arguments. As a teacher from the Reformed Wartburg High School states, "Women occupying public positions in the Old Testament, like Mirjam, Hulda, Queen Esther and Deborah were never held back."⁹⁹ Also, the fact that churches of the same denomination in the US did allow women to run for office were reasons for a change of mind.

Conversely, if people attribute an effect to the court cases, this lies in the field of rigidification. Out of the limited group of respondents that attributes change in position to the court cases, 94 percent is more negative on women's voting rights, making statements, such as "the SGP was a little too conservative for me in the past, but these case have made me reconsider

99. *Bijbels gezien niets tegen op vrouwen in de politiek* [Nothing against women in politics from a biblical point of view], NEDERLANDS DAGBLAD, 24 Sept. 2005.

my position."¹⁰⁰ This *rigidification* of the discussion transpires from the media analysis as well.¹⁰¹

The final indirect and undesired social effect lies in the increased sense of marginalization described above. As the SGP leader in parliament put it in his yearly address, "The ultimate question that we put to the society, is whether our pluriform society allows space for those minorities that hold convictions that deviate from the common norm."¹⁰²

B. Homosexuality: Tentative Openings

In considering recent discussions on homosexuality amongst orthodox reformed, the same irritation at "outside interference in internal matters" transpires as in the case of the SGP women. For instance, 68 percent of those interviewed perceives the tone of the debate on homosexuality in religious schools to be disrespectful.¹⁰³ "The tone of the discussion is extremely disrespectful, and seems to move towards total equality. I get the impression that certain cultures simply have to go, and certain attitudes towards homosexuality have to be enforced."¹⁰⁴

Nevertheless, the court cases in combination with government policies and NGO activity have yielded a number of responses. For one, the openness on these issues within orthodox reformed communities has strongly increased: not only does 26 percent of the respondents indicate that they have come to accept homosexual feelings more over the past five years, a staggering 73 percent indicates seeing more acceptance of homosexual feelings around them than five years ago.¹⁰⁵ "In the past weeks the Reformed Church in the village organized four sessions on homosexuality with a representative from Different; this would have been unthinkable a few years ago."¹⁰⁶ "What we do with people with homosexual feelings is try to support them within the Church, because they have such a difficult time."¹⁰⁷ Out of the orthodox reformed, which now speak out on homosexuality, the Refoanders chairs estimates that one third stays "within the Church"—struggling with the feelings and keeping the practice at bay, whilst two thirds joins a more liberal church or stops going to church altogether. In looking at the factors

100. *Author's Original Research, supra* note 5.

101. *Id.*

102. B.J. van der Vlies, *Vernieuwde Kracht: Partijrede*, (25 Mar. 2006).

103. *Author's Original Research, supra* note 5.

104. *Id.* Anonymous response in the survey questionnaire. *Id.*

105. *Id.*

106. Interview of the Focus Group Discussion of Reformed Women, in Gravenpolder (22 July 2009).

107. *Id.* Anonymous response in the survey questionnaire. *Id.*

to which people attribute the shift in legal consciousness on these issues, a picture similar to the one painted before emerges.

C. Have Your Viewpoints on Homosexuality Changed Over the Past Five Years?

Table I.5

Reason for change in position	Yes, I've come to accept both homosexual feelings and the homosexual practice more than before.		Yes, I've come to accept homosexual feelings more than before, but I continue to have difficulties with the practice.	
	Number	Share	Number	Share
The general societal discussion	14	3.3 percent	409	96.7 percent
The discussion in the Christian newspapers	8	1.4 percent	571	98.6 percent
The discussion within the churches	10	1.9 percent	511	98.1 percent
Discussions with people around me	26	2.8 percent	898	97.2 percent
Other	7	3.7 percent	180	96.3 percent
Government policies	3	7.9 percent	35	92.1 percent
The work of Christian NGOs	6	3.4 percent	170	96.6 percent

Again, the main reason for increased (partial) acceptance of homosexuality lies with the institutions close by, family members and friends who turn out to be gay, and the discussions in church and in the Christian newspapers.¹⁰⁸ Full acceptance seems much more difficult; many respondents indicate how the Bible, for instance, Leviticus 20:13, is very explicit in its denunciation of homosexuality.¹⁰⁹

108. *Id.*

109. *Id.*

The court cases seem to have an adverse effect. As one politician put it:

We need time to evaluate, to let all this sink in. Why force this upon us? Give minorities some time to follow, who knows what things will be like two generations from now. What we have these days is a secular dictatorship that demands all groups to open up completely. This is really a bad thing: either everything will fall apart or we will end up with an isolated Amish type of culture: this is the split I see occurring.¹¹⁰

An NGO leader also pointed at the perils of the COC's "politics by other means," "[t]his organization posits itself as a defendant of the position of a teacher with the reformed schools. I fear that the effect will be adverse, because the COC has a very bad name in these circles. Before you know it people will entrench themselves theologically once again."¹¹¹

VII. CONCLUSION

On the one hand, this study affirms some of the staple statements in the anthropology of rights: the fact that orthodox reformed are more willing to adopt a dialogical position towards equal treatment legislation once arguments are framed in the vernacular of the Bible is amongst them. So is the crucial role of "local" NGOs, absent in the discussion on women's rights but very present in the debate on homosexuality, thus allows for a very careful discussion of these themes within the Biblical frame of reference. Similarly, those orthodox reformed who changed their position on the matters discussed attributed this to the institutions close to them: friends and family, the Christian newspapers, and the churches.

On the other hand, this case study points at some of the perils in implementing rights via court cases, particularly if these do not have support within the community concerned. Here the majority of the Protestants who adopted a more conservative viewpoint on the position of women attributed this to the court cases "lodged from the outside." Community members working carefully towards acceptance of homosexual feelings also feared that the cases would damage the openings created.

Finally, this study allows for a few tentative conclusions on rights implementation within civil law countries. It could well be that adopting rights talk as "politics by other means" runs into particular problems within these countries, with their emphasis on code law and legislative change. Also, the

110. Interview with C. Dekker, Middelburg City Council, in Middelburg (30 June 2009).

111. Interview with Veldhuizen, *supra* note 53.

way in which foreign policies in the field of human rights play into local struggles offer a reason to apply the insights of global legal pluralism across the whole globe. Rights talk, it appears, often works best when couched in bible speak.