

# TEACHING AND RESEARCH IN COMPARATIVE LAW IN THE NETHERLANDS \*

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## 1. INTRODUCTION

### 1.1 Scope of this report

Whenever the use of comparative law is discussed, the question arises as to whether the phrase encompasses the use of foreign law.<sup>1</sup> In this report comparative law will be taken in a broad sense, to include foreign law. For practical reasons subjects which are not confined to the boundaries of a single system – such as European law, international law and the law of international organisations – will not be covered in this report.<sup>2</sup> For the same reasons no attention will be paid to those branches of legal science, which do not primarily deal with positive law, such as jurisprudence, legal methodology, sociology of the law and criminology.

### 1.2 Comparative law and law reform

In this report only the contribution of comparative law to teaching and research is discussed. However, one should bear in mind that comparative law may also be used – directly or indirectly – to reform the law. Comparative law may make a direct contribution to law reform through the use of comparative data in the explanatory memoranda in bills submitted to Parliament<sup>3</sup> and in case law.<sup>4</sup> In-

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1. Cf., G. Winterton, 'Comparative law teaching', 23 *American journal of comparative law* pp. 69-70 (1975); J.H. Merryman in *Law in the USA in social and technological revolution*, Brussels, 1974, pp. 81, 82; Stevens, 'Comparative and foreign law in American law schools', 50 *Columbia law review* (1950); M. Rheinstein, 'Teaching comparative law', 5 *University of Chicago law review* pp. 615, 616 (1938) (A German translation of the Rheinstein article has appeared in his *Einführung in die Rechtsvergleichung*, Munich, 1974, p. 21 ff.) See also, A. Tunc, 'Notion et objectifs d'une revue de droit comparé', *Revue internationale de droit comparé* 1975, pp. 47, 48: 'Il semble bien aller de soi que la revue (internationale de droit comparé) ne publiera pas seulement des comparaisons de droit, mais aussi des études de droit national étranger (ou de droit européen, assimilable ici, sous des réserves évidentes, à un droit national), qui donneront à chaque lecteur les éléments d'une comparaison à laquelle il pourra procéder lui-même'. V. Knapp, *Mélanges Malmström*, Stockholm, 1972, pp. 132, 140, argues that for those who consider comparative law a mere *research method* it cannot include the study of foreign legal systems.

2. Although the teaching of these courses may serve some of the possible aims of the teaching of comparative (private, administrative, etc.) law thereby providing students with a less provincial outlook for instance. This is apparent in the Tilburg requirement, discussed below in par. 2.2., that every law student should elect one of a number of courses with an international outlook.

3. There seems to be no systematic approach to comparative law in governmental Bills. On the one extreme there is for instance the *Ontwerp voor een nieuw burgerlijk wetboek* (draft new civil code), the explanatory memorandum to which often reads like a comparative law treatise, witness for instance the first sentence regarding book 6: "Unlike the present civil code and the German, Italian and Greek codes, the draft has devoted a special book to the general parts of the law of obligations, while the legally regulated specific contracts have been grouped in a different book. One finds the same system in the Swiss and the Egyptian codes and in the French *avant-projet*". On the other extreme there are bills which do not contain any reference to foreign law at all, even if – as was the case with the bill on door-to-door-sales – the issue has been discussed recently in many of the surrounding countries. It seems that the Ministry of Justice has by far the best record in providing references to foreign law in its bills. The highest comparative law-ratio is obtained when Royal commissions with outside participation (university teachers) have prepared the bill.

4. A 1943 *Hoge Raad* decision – HR 21 May 1943 *Nederlandse Jurisprudentie* 1943 No. 455, cf., I. Kisch, *Statutory construction in a new key/'harmonizing interpretation'*, in XXth century com-

directly law reform will also benefit from the teaching and research of comparative law: lawyers trained in comparative law will have a better insight into their own system and will have a common base for legal communication with lawyers in other countries.<sup>5</sup> Research which is based on comparative law will provide the groundwork for legislative and judicial reform.

## 2. THE PLACE OF COMPARATIVE LAW IN THE CURRICULA OF THE LAW FACULTIES

### 2.1 The prerequisites: knowledge of foreign languages

A prerequisite for the study of a foreign legal system and thus for the possibility of making valid comparisons, is a reading knowledge of the language of the country with the said system. Translations may make up for deficiencies in this respect only in certain basic courses; for the advanced study of a foreign legal system one should be able to read the sources oneself. For countries such as The Netherlands, which belong to a small language group, this means that a passive knowledge of languages other than Dutch is necessary. Traditionally, Dutch jurists have been in the fortunate position of having obtained such a knowledge of Latin (and Greek, which for legal purposes is hardly useful), English, French and German. A grammar school (*gymnasium*) diploma with examinations in all of these languages used to be a prerequisite for the study of law. This made possible the study of some of the major legal systems of Europe: of those of England and Scotland,

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parative and conflicts law/legal essays in honor of Hessel E. Yntema, Leyden, 1961, pp. 262, 263. — which held that in tort a victim may claim compensation for such detriments as are not of a financial character, is still discussed in Dutch literature because it was explicitly based on, among other things, the positive answer to this question in the legislation and case law of the neighbouring countries. This decision has proven to be a *rara avis*. Ever since, references to foreign law usually are not made, even if it is quite clear that inspiration was drawn from foreign law.

5. Previous generations of continental lawyers had Roman law as a common base for legal communication. The present retreat of Roman law as the basic course of first-year law studies may be partly compensated by the teaching of comparative law. Nothing new of course: cf., R. von Jhering, *Geist des römischen Rechts auf den verschiedenen Stufen seiner Entwicklung* I, second edition 14 ff: 'The formal unity of legal science as it formerly existed through the commonalty of one and the same Code in use throughout the greater part of Europe, and that working together by legal science in the most diverse countries on the same subject matter and the same tasks is gone forever, along with the formal community of law. Legal science has been degraded to provincial jurisprudence, and the boundaries of legal science coincide with political boundaries. How humiliating and unworthy such form for a science! But it is for science alone to transcend these boundaries and to preserve for the future its old character of transnationality in the new form given by comparative jurisprudence. This will carry different methods, a broader outlook, a judgement more mature, and a greater freedom in the treatment of materials, and therefore the apparent loss will be turned effectively to its advantage by raising science to higher levels of scholarly pursuit' (This English translation is given by K. Zweigert and K. Siehr, 'Jhering's influence on the development of comparative legal method', 10 *American journal of comparative law* pp. 215, 218 (1971). A French translation may be found in the *Livre du centenaire de la Société de législation comparée*, Paris, 1969, II, pp. 267, 292). Cf., in the same vein H.L. Drucker, *Begrip en dogma in rechtswetenschap*, inaugural address Leyden, Haarlem, 1889, pp. 3-4: 'Door het Romeinsche Recht, dat overal min of meer de historische basis vormt, staan wij voorts op een gemeenschappelijken bodem met de juristen der overige beschaafde volken; het gevaar vermeden, dat onze wetenschap, meer misschien dan eenige andere, bedreigt: beperking van den horizon tot de enge grenzen van een land'.

of France and Belgium, of Germany, Austria and Switzerland; also of the legal systems of other English or French-speaking nations of the world, notably of the United States, of actual or former Commonwealth countries and of Israel. Knowledge of Latin also made it not too difficult to study Italian and Spanish law. The only major European legal systems which remained inaccessible to most Dutch students were Scandinavian law and East European and Soviet law.

However, the times they are a-changin'. Instead of four languages, many law students at present master only one or two foreign languages, mainly English and German (in all fairness it should be added that they have a far greater working knowledge of these languages than former generations of students used to have) and have a 'sleeping' knowledge of the other languages mentioned or none at all. How has this change come about? First, the prerequisite of a classical education (*gymnasium*) for the study of law was dropped some years ago. At first, a supplementary Latin examination was compulsory for non-*gymnasium* students, but after some years this was dropped as well. Thus it is quite possible that Dutch law students now have little or no knowledge of Latin; in Leyden more than half of the student body lacks a classical education. Secondly, the whole school system has been changed by what is known in The Netherlands as the mammoth law (*mammoetwet*). Under this law the number of examinable subjects for the school diploma was restricted and the system of compulsory education of English, French and German up to the last grade was dropped in favour of elective courses. High school students are now taught these languages during the first two years of high school and then drop a language — usually French, sometimes German, English hardly ever — in order to restrict their examinable subjects. This has posed problems for law teachers because it is now possible that in any one student class 95% of the students have a working knowledge of English, 75% of German and 30% of French.<sup>6</sup>

The possible answers of the law faculties to these changes in the entrance qualifications and in the high school curricula were limited. In trying to cope with the problem, caused by the dropping of Latin as a *conditio-sine-qua-non*, the faculties now provide students with Dutch translations of the Latin texts which are in use. As to the problem of modern languages the faculties have adopted a stronger attitude: although no longer a formal prerequisite, a working knowledge of the three languages mentioned is still presupposed.

## 2.2 Special courses

Law studies in The Netherlands consist of two parts: a two-year programme leading to the *kandidaats-examen*, followed by a two-and-a-half to three-year programme leading to the *doktoraalexamen*. In the latter programme all law faculties offer special courses in the field of comparative law. These courses are usually

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6. The foreign-language problem has been further increased by the influx of law students from Surinam and the Netherlands Antilles, who often have learnt English and Spanish and no French or German.

elective. They may cover such subjects as African native law, English contract law, comparative criminal law or Soviet constitutional law. A list of courses offered by Dutch law faculties in this field in the 1976/77 academic year is given in Appendix I. But special courses in comparative law are not always elective. In Utrecht the course in comparative private law is compulsory for civil law and commercial law students. Tilburg has a mixed system: one of the three elective courses must necessarily be an 'international' course – either private international law, law of the international organisations, public international law, international tax law, English private and criminal law, international criminal law or comparative criminal law. This system is based on the theory that every law student should deal with at least one different legal system and a foreign language. The Tilburg system may soon become compulsory for Dutch law faculties. In a draft bill of a section of the *Academische Raad* it is proposed that at least one elective course should be chosen out of the following: public international law, law of international organisations, European law, private international law, comparative law, . . . (ontwerp Academisch Statuut Article 10 under (f)).

The courses may be taught in several ways. The traditional approach would be to teach part of a foreign legal system, while comparing it with its Dutch counterpart. English contract law is often taught in this way. The Leyden course in comparative private law however has a different approach. In a general introduction course the institutions of the major systems to be studied are taught. In another, specialised course the topical method is used: for instance, the concept of strict liability will be taught, under respectively Roman, Dutch, French, Belgian, Swiss, German, English, Chinese and Soviet law. Similarly, the Leyden course in comparative constitutional law will first provide a brief introduction to the laws of such countries as the United States, Canada, the United Kingdom, France and the German Federal Republic and then proceed with the study of, for example, civil rights.<sup>7</sup> The number of students in such elective courses is usually rather limited, hardly ever exceeding 25. The topical method is also used in other law faculties, such as Tilburg.

Comparative law courses in The Netherlands have long suffered from the absence of adequate Dutch-language handbooks. Therefore foreign-language books such as the famous publications of David<sup>8</sup> or Zweigert-Kötz<sup>9</sup> have long been used. In 1975, however, a Dutch-language introduction to comparative private law by Sauveplanne was published.<sup>10</sup> Before 1975 only certain areas or branches

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7. The Leyden approach was challenged by M.C. Burkens in his report to the 1975 meeting of the Netherlands comparative law association on methodology of comparative constitutional law, in which he advocated a far more political science-oriented approach.

8. R. David, *Les grands systèmes de droit contemporains*, fifth edition, Paris, 1973 (also used in the English translation by Brierly or the German translation by Grasmann).

9. K. Zweigert and G. Kötz, *Einführung in die Rechtsvergleichung auf dem Gebiete des Privatrechts*, Tübingen, 1969-1971 (2 volumes).

10. J.G. Sauveplanne, *Rechtsstelsels in vogelvlucht/Een inleiding tot de privaatrechtsvergelijking*, Deventer, 1975.

of the law had been covered by Dutch-language introductory publications such as Uniken Venema's introduction to the Common Law<sup>11</sup> and Kranenburg's now outdated introduction to comparative constitutional law.<sup>12</sup>

In the other elective courses which do not specifically deal with comparative law, it is quite common for some foreign legal system to be used briefly for comparison. In several faculties such as those of Tilburg and Utrecht credits are also given for passing comparative law examinations at such institutes as the Faculté internationale pour l'enseignement du droit comparé of Strasbourg, the Université internationale de sciences comparées of Luxembourg and the City of London Polytechnic Summer School. Most faculties organise regular student excursions abroad, often to England or to the seats of the European Communities, but sometimes also to countries such as the Soviet Union and Sweden. Some faculties have institutionalised the links with sister faculties abroad. Thus Leyden and Ghent (Belgium) have an exchange agreement, which, apart from the exchange of teachers provides for yearly student excursions. Tilburg is at present considering the possibility of cooperation with Cambridge University in England.

### 2.3 Comparative law in general courses

The general courses of Dutch law study deal mainly or even only with domestic law. This is one of the consequences of the fact that the *doktoralexamen* serves as a bar examination. Therefore, in the main curriculum the five 'D.C.'s' (domestic civil law, domestic civil procedure, domestic commercial law, domestic criminal law, domestic criminal procedure) and domestic public law are compulsory courses. This means that not the general principles of criminal law are taught, but rather domestic Dutch criminal law; not the common (civil) code of legal systems<sup>13</sup>, but Dutch law of offer and acceptance. Thus, Dutch law faculties may be compared to what are called the local law schools in the United States. What use is made of foreign and comparative sources may differ from course to course, from teacher to teacher, from year to year. Nevertheless, on the basis of compulsory reading lists for the examination, of the references to foreign law in the textbooks used, and of personal experience, some conclusions may be tentatively arrived at.

Comparative law seems to have the strongest impact on the teaching of constitutional law, where even in the basic courses such subjects as the *trias politica* and its implementation in various countries, or such differences as those between federal and unitary states, or between a parliamentary system and a presidential regime, will be taught in a comparative way.<sup>14</sup> In the field of commercial law,

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11. C.AE. Uniken Venema, *Van common law en civil law*, Zwolle, 1971.

12. R. Kranenburg, *Inleiding in de vergelijkende staatsrechtswetenschap*, second edition, Haarlem, 1955.

13. Cf., the theories of R.B. Schlesinger on a common core of legal systems.

14. See, Neumayer, *Rabels Zeitschrift*, 1968, pp. 405, 408, n. 10: 'Ist es nicht eigentlich so, dass der Staatsrechtler von Natur aus zur Vergleichung neigt, während beim Privatrechtler hierfür besonderes Spezialistentum erwartet wird?'

little attention is usually paid to comparative law in the compulsory courses. Of course, one should bear in mind that parts of commercial law — such as the law of negotiable instruments, the law of general average, the law relating to the international sale of goods, the Hague Rules — and parts of the law relating to companies etc. are in fact internationally unified or harmonised, whether it be through formal treaty, standard form contract or EC-directives. More serious is the fact that comparative law has impregnated only to a very small extent the compulsory courses of civil law — with the exception of private international law —, civil procedure, and criminal law. Even the references to foreign and comparative law in the textbooks are very limited in number.<sup>15</sup> Fewer still are the foreign materials to be studied. In Leyden the basic course in civil law at present makes use of only one foreign text; in the more advanced courses foreign legal materials have only recently come to be used in a systematic way.

Who is to blame for this lack of usage of the existing prerequisites? Of course, students may partly be blamed for this failure. They often balk when confronted with a foreign-language text. Their own law review *Ars Aequi* is mainly devoted to domestic law.<sup>16</sup> But the main blame should be put on the law teachers, who too easily use these student demands as a pretext for ignoring comparative law altogether.

## 2.4 Post-graduate courses

Dutch law faculties and research institutes increasingly offer post-graduate courses in order to keep lawyers informed of new developments in theory or practice, the emphasis being usually on the latter. Rarely do such courses offer anything in the field of comparative law, although it should be noted that some faculties are now beginning to offer legal language courses, especially in German law (Erasmus University of Rotterdam; Groningen). Apart from several courses in European law and public international law — excluded from the scope of this paper — the only regular courses in comparative law are those on private international law offered during the summer term by the Hague Academy of International Law in the Peace Palace and the course in American law, which has been organised for the same period by the law faculties of Amsterdam, Columbia and Leyden Universities since 1963.

Whereas it is uncommon for Dutch students to receive part of their undergraduate legal education abroad — generally it is hard to obtain credits for foreign examinations, which anyway cannot replace the compulsory courses<sup>17</sup> — it is not uncommon for them to go abroad for some time after graduation. The United

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15. See, n. 21, below.

16. *Ars Aequi* regularly offers prizes to the best answers to legal questions, which are published about once every other month. Recently a legal question involving comparative law was published. Not a single answer was received — see, 26 *Ars Aequi*, pp. 282, 283 (1977).

17. 'It is perhaps not the job of the lawyer to break new ground. His work is rather to follow the explorers and make ordered colonisation of the conquered territory possible. Are our law faculties



Kingdom and the United States traditionally are favourite destinations, but there is also an increasing interest in post-graduate studies in France and in the German Federal Republic.

## 2.5 Teaching Dutch law to foreign students

Let us now take a brief glance in the opposite direction: the contribution of Dutch law to law school curricula abroad. As far as can be ascertained, the use of Dutch legal materials abroad is very rare and is limited to specific cases. This may be attributed on the one hand to difficulties occasioned by the Dutch language, on the other hand to the lack of missionary zeal on the part of the Dutch comparatist lawyers and especially of the Dutch government. Two exceptions should however be noted. First, there is Belgium, in which, in Dutch speaking law faculties, the use of Dutch legal materials is not uncommon. Secondly, there are those countries whose legal system is based in whole or in part on the Dutch model: the former colonies of the Netherlands Indies (Indonesia) and Dutch Guyana (Surinam), and the Netherlands Antilles, which are the last remaining part of the Dutch Empire. In these countries Dutch law still occupies an important part in the law school curricula, although this part will probably dwindle the longer they are independent. Moreover, Dutch law is more of historical than of comparative interest to students of these countries.

Before Surinam and the Netherlands Antilles established their own law schools, students from these countries used to come to The Netherlands for their law studies. Although they now have their own faculties, they still come and special programmes have been designed for them. A special programme has also been designed for South African students who come to The Netherlands to study Roman Dutch law, which is still (part of) the law of their country. Indonesian law teachers occasionally visit The Netherlands for a term, but no special programme has been devised for them. The numbers of law students from other countries are very limited: usually they are either foreigners who have settled in this country or exchange students.<sup>18</sup>

Dutch law will occasionally also be taught in international courses in comparative law, such as the courses offered by the International faculty of comparative

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sufficiently aware of this? I should like to think so. But, for the time being, I am rather inclined to approve the final comment made by Professor Carreau: "Lack of adequate co-ordination between European law faculties keeps students in their countries of origin, at least for the elementary cycle . . . Is this not a shocking anachronism after 25 years of so much effort – some of it successful – to bring about increasing unity in Europe?" H. Brugmans, *Prospects for law in contemporary society*, in: Council of Europe, *Proceedings of the third European conference of law faculties* 17-19 April 1974 on 'The adaptation of the study of law to modern society', Strasbourg, 1974.

18. As to the influence of Dutch legal education in the seventeenth century, cf., R. Feenstra and C.J.D. Waal, *Seventeenth-century Leyden law professors and their influence on the development of the civil law*, Amsterdam, 1975.



law of Strasbourg<sup>19</sup> and the International university for comparative sciences of Luxembourg.<sup>20</sup>

### 3. THE CONTRIBUTION OF COMPARATIVE LAW TO RESEARCH

#### 3.1 General observations

Although, as we have seen above, little use is made by the law faculties of the existing possibilities of introducing foreign and comparative legal material into the law school curriculum, these possibilities are highly appreciated by individual researchers. Indeed, it has become quite uncommon for a thesis, a report to a law society, an important article in a law review *not* to contain references to the legal systems of the countries surrounding The Netherlands, even though such references do not always merit the distinction of the qualification as comparative law (and indeed sometimes only serve as unnecessary embellishments). It may be argued that, for many subjects, a thesis which does not contain at least such references is hardly acceptable to a law faculty. This frequent use of comparative law in research is the more interesting, when one bears in mind that the skills to do so are hardly developed in the ordinary curriculum.

Unfortunately a reverse trend must also be noted. Handbooks and loose-leaf publications intended for use by practitioners today contain as few references to foreign law as possible. Thus it is the policy of the editors of the loose-leaf books on private law published by Kluwer not to include references to foreign law. Even in the renowned treatises, such as the Asser series, there is this tendency.<sup>21</sup>

#### 3.2 Comparative law institutes and libraries

At one time law faculties throughout the country expanded so rapidly that they outgrew their premises. Scores of law institutes were then founded and among these there were some dealing more or less specifically with comparative law. Three representative examples are the *Centrum voor buitenlands recht en internationaal privaatrecht* in Amsterdam, the *Molengraaff instituut voor privaatrecht* in Utrecht and the *Documentatiebureau voor Oosteuropes recht* in Leyden.

(a) the *Centrum voor buitenlands recht en internationaal privaatrecht* (foreign and private international law centre) of the University of Amsterdam was estab-

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19. Cf., J.N. Hazard, 'Ten years of international teaching of comparative law/The Strasbourg experiment', 19 *American Journal of comparative law* p. 253 ff. (1971).

20. Cf., K.H. Neumayer, 'Betrachtungen zum rechtsvergleichenden Unterricht auf internationaler Grundlage', 32 *Rabels Zeitschrift*, pp. 405-437 (1968).

21. The Asser-de Ruijter treatise on the law of persons contains but 20 references to foreign law of which 14 to French, 3 to German and 3 to Swedish law. The relatively many references to French law reflect the historical French roots of Dutch legislation in this field. The Pitlo-series is even more disappointing. After glancing through the first 200 pages of Pitlo's *Zakenrecht* without finding a single reference to foreign law, this author gave up.

lished after the Second World War. The main emphasis of the institute is on private international law. However, it was at this institute that the initiative was taken to start a comparative law association (to be discussed below). The institute has a comparative private law library which is no larger than the holdings of law faculties that are not subdivided in institutes. There is no specialisation in a specific legal system.

(b) the *Molengraaff instituut voor privaatrecht* of Utrecht University is a specialist institute in private law in a broad sense. It has very large holdings in comparative law — indeed, in this respect it ranks first in The Netherlands together with the Peace Palace. There is no specialisation in a specific legal system.

(c) the *Documentatiebureau voor Oosteuropes recht* (documentation office for East European law) of Leyden University was established in 1953. It is the only institute in The Netherlands which covers these systems of law. Occasionally advice is given to the Dutch courts on questions regarding East European law. New developments in this respect used to be announced in *Rechtsgeleerd magazijn Themis*, a rather highbrow law review with a limited circulation. Beginning in 1975, such announcements are now made in the new Review of socialist law. The documentation office also publishes a series of monographs entitled Law in Eastern Europe.

There is no specialisation in a specific field of the law. The institute staff consists of four lawyers and two secretaries. There is no inter-university institute for comparative law in general, such as the Belgian *Institut de droit comparé*. The inter-university T.M.C. Asser Institute for international law in The Hague deals only with private international law, public international law and European law.<sup>22</sup> Thus every law faculty tries to assemble a good comparative law library and there is little coordination. In the light of the still growing number of publications and of limited funds plans have been made to develop a better coordination between the law libraries under the supervision of the Leyden law faculty, the Royal library and the Peace Palace. At present the Royal library in The Hague already serves as a clearing house for demands for books and law reviews.

The *Internationaal juridisch instituut* in The Hague may to a certain extent be considered as the Dutch equivalent of the German *Max Planck Institut für ausländisches und internationales Recht* in Hamburg, although it has a staff of only three lawyers and performs a more practice-orientated function. It was established in 1918 to provide information on international and foreign law. Initially, the institute only provided documentation: references to acts, case law and literature. At present legal opinions, particularly on private international law and foreign municipal law, are given to those who consult the institute: mainly practising lawyers and notaries public, but also courts and business lawyers. More than 70% of the legal opinions delivered concern family law, law of persons, law of succes-

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22. This is of course done on a comparative basis. Cf., T.M.C. Asser Instituut 1965-1975/Aangeboden ter gelegenheid van het tienjarig bestaan van het T.M.C. Asser Instituut aan het bestuur, de wetenschappelijke raad en de deelnemende instellingen, The Hague, 1975.

sion and nationality law. The opinions are paid for by the clients but these payments do not completely cover the exploitation costs of the institute, which are partly covered by the income from property owned by the institute.

### 3.3 Comparative law associations

In 1869 the French *Société de législation comparée* was founded. Nearly a century later, in 1968, the *Nederlandse vereniging voor rechtsvergelijking* was founded, upon the initiative of I. Kisch, H.U. Jessurun d'Oliveira and Z. Szirmai. The famous apocryphical quotation from Heinrich Heine, "In Holland everything always happens fifty years later", in this instance was only half the truth. What exactly were the reasons for this late foundation of a comparative law association, in a country which abounds with law societies, will not be discussed here.

The founding fathers of the society decided to hold yearly meetings, where one or more papers on various subjects would be discussed, to publish a monography on Dutch law in a foreign language and to publish a series of comparative studies. The establishment of a comparative law review was also to be considered. So far yearly meetings have indeed been held; a survey of the reports delivered is to be found in Appendix III. The first two volumes of the comparative law series have been published<sup>23</sup> and the English-language monograph on Dutch law is under press. A comparative law review has not been established. The *Nederlandse vereniging voor rechtsvergelijking* acts as the organisation committee for the Dutch reports to the congresses of the *Académie internationale de droit comparé*. It has been through this association that for the first time the Dutch national reports to the academy congresses have now been published.

A comparative law society of longer standing, but with a fixed membership, is the *Vereniging voor de vergelijkende bestudering van het recht van België en Nederland* (Dutch-Belgian comparative law association, or: Benewithoutflux society).<sup>24</sup> The reports for this association are published.

More informal are the bilateral contacts with the German Federal Republic. Annual meetings of Dutch and German jurists have been held since 1948 when Langemeijer and others took the initiative to restore relations between the two countries. The meetings are held alternatively in both countries.

In the German Federal Republic meetings were held recently in Würzburg (1975), Bonn (1973), Trier (1971) and Aachen (1969); in The Netherlands in Groningen

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23. J.G. Sauveplanne (ed.), *Security over corporeal movables*, Studies in comparative law no. 1, Leyden, 1974, with contributions by A.L. Diamond (England and Wales), W.A. Wilson (Scotland), M.G. Shanker (USA), S. Ziegler (Canada), G. Brière de l'Isle (France); B. Carpino (Italy); J.G. Sauveplanne (The Netherlands), U. Drobnig (Germany), P. Tercier (Switzerland), B. Helander (Sweden), D. Roebuck (Asia); T. Koopmans (ed.), *Constitutional protection of equality*, Studies in comparative law no. 2, Leyden, 1975, with contributions by L. Lusky and M. Botein (USA), E. McWhinney (Canada), E. Klein (Federal Republic of Germany), J.C. Venezia (France), Chr. Osakwe (USSR) and T. Koopmans (comparative analysis and evaluation).

24. Cf., J.M. Polak, 'Twintig jaar Belgisch-Nederlandse samenwerking op het gebied van het recht', *Rechtskundig weekblad* 1967/68, pp. 673-680.

(1976), Leyden/Noordwijk (1974), Maastricht (1972), Vlissingen/Middelburg (1970). In both countries there is a working committee. The Dutch working committee was for many years presided over by the *procureur-generaal* at the *Hoge Raad* G.E. Lange-meijer, but in 1975 he was succeeded by W.L. Haardt, at present Justice in the *Hoge Raad*. Drerup is the actual chairman of the German working committee, the chair of which was for a long time occupied by H. Westermann. Accounts of the annual meetings are published in the *Nederlands juristenblad*.

Contacts with French-language jurists take place within the (French) *Association Henri Capitant*, the meetings of which are regularly attended by Dutch lawyers. Secretary of the Dutch group in the *Association Capitant* is F.J.A. van der Velden, lecturer in comparative law at Utrecht University.

Of course the law societies mentioned above are not the only ones associated with comparative law. Most of the domestic law societies are also interested in comparative law, especially when law reform is being considered. In the reports delivered to the yearly meetings of the *Nederlandse Juristenvereniging* (a society which was formed in 1870 after the model of the *Deutscher Juristentag*) considerable attention is usually given to comparative law. In other law societies this may be less pronounced, but the assumption that comparative law is the sole domain of the comparative law societies would be totally wrong.

### 3.4 Comparative law reviews and other publications

One consequence of the very late foundation of a comparative law society has been that as yet no specific comparative law review, such as the *Revue internationale de droit comparé*, the *Zeitschrift für Rechtsvergleichung*, the *American Journal of Comparative Law* or the *Boletín Mexicano de derecho comparado*, is published in The Netherlands. Nor is there a law review devoted to a combination of comparative law and private international law, such as *Rabels Zeitschrift für ausländisches und internationales Privatrecht*, or to comparative law and international law, such as the *International and comparative law quarterly* and the *Revue de droit international et de droit comparé*.<sup>25</sup>

Two types of comparative law reviews are conceivable: a review which intends to inform the lawyers of the country of publication of developments in other legal systems and a review which is an international forum.<sup>26</sup> It may be argued that in The Netherlands there is less need for a comparative law review in the first sense than elsewhere. Firstly, because Dutch jurists are very well able to read comparative law reviews published in other countries. Secondly, and more importantly, because some of the existing law reviews devote considerable attention to foreign and comparative law. Indeed, it has been submitted that every law

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25. Such a law review did exist in the last century. The *Rechtsgeleerd magazijn*, subtitled 'tijdschrift voor binnen- en buitenlandsche rechtsstudie' (review for domestic and foreign legal research) originally devoted much attention to foreign legal publications, foreign case law and foreign legislation, but gradually this interest withered away until recently one of the last remnants of the comparative law approach, the summary of Soviet law, was relinquished.

26. Cf., I. Szabo, *Revue internationale de droit comparé* 1975, p. 79.

review must necessarily acquire a comparative scope, as serious study without a comparative basis has become unthinkable.<sup>27</sup> Of the three law reviews with the largest circulation, the *Nederlands juristenblad* in particular regularly contains comparative law articles. Also, it regularly announces the publication of foreign books (mainly German)<sup>28</sup> and it provides references to articles in the major law reviews in Western Europe and the United States. However, there are no such references to foreign legislation or to foreign case law. Nor are there systematic bibliographies on comparative law such as the ones compiled by Szladits (which, together with other foreign bibliographies such as the *Index to legal periodicals*, the *Index to foreign legal periodicals* and the *Karlsruher juristische Bibliographie*, are consulted by Dutch jurists).

While there are serious gaps in the information of Dutch jurists as regards comparative law, which are only partly filled by foreign legal bibliographies, law reviews and newsletters, the lack of an international forum – the second type of comparative law review mentioned above – is felt even more seriously. This brings us to the other lane of the twoway traffic which comparative law should serve: the information on Dutch law to foreign jurists.

### 3.5 The contribution of Dutch law to foreign research

In his inaugural address delivered at Leyden University in 1963, D.C. Fokkema lamented the lack of knowledge of Dutch law among foreign jurists.<sup>29</sup> For this deficiency the foreign jurists, in general being unable to read the Dutch language, were not to blame. Rather, it should be attributed to a lack of zeal on the part of Dutch jurists, Dutch publishers and the Dutch government. To remedy this lack of knowledge, Fokkema proposed (i) publication of loose-leaf collections of laws in foreign languages, (ii) foreign-language summaries of Dutch law review articles, (iii) a foreign language introduction to Dutch law. Twelve years later, only the latter of his proposals is on the verge of becoming implemented.<sup>30</sup> Dutch laws or bills have only been translated into foreign languages on a piecemeal basis, some international loose-leaf collections published in the German Federal Republic also contain translations of – often outdated! – Dutch laws and, no foreign-language summaries are to be found in Dutch law reviews.

Apart from the Fokkema proposals, one may point out the lack of a foreign-language law review or yearbook which contains translations or adaptations of the

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27. Cf., O. Kahn-Freund o.c. (n. 9 above).

28. The 1974 volume for instance contained 117 announcements of Dutch publications, 43 of German-language publications, and 10, 8 and 5 of English-, French- and other language publications.

29. D.C. Fokkema, *Begrensd gerechtigheid*, inaugural address Leyden, Leyden, 1963, p. 15.

30. A 500-page English-language introduction to Dutch law, edited by D.C. Fokkema, J.M.J. Chorus, E.H. Hondius and E.Ch. Lisser is now under press. Earlier introductions in English to Dutch law include: T. Koopmans (The Netherlands) in: V. Knapp (ed.), *International encyclopedia of comparative law*, I. National reports, Tübingen/The Hague/Paris 1972, N-11/N-28; P. Graulich, P. Guilitte, J.F. Glastra van Loon and L.E. van Holk, *Guide to foreign legal materials/Belgium-Luxembourg-Netherlands*, Parker school of foreign and comparative law, New York, 1968.

major law review articles published in the Dutch language (cf., the excellent *Scandinavian Studies in Law*).<sup>31</sup> Another Scandinavian example which the Dutch government would do well to follow, is the publication of English-language summaries in the reports and bills that are submitted to the Dutch parliament — only some Royal commission reports do at present contain such summaries. Still another initiative, this one an imitation of similar East European publications<sup>32</sup>, would be the publication of a foreign-language review of Dutch legislative activities.

But it is not only the Dutch government which should be blamed for this lack of missionary zeal. The Dutch record of participation in international comparative congresses and seminars — other than for recreational purposes<sup>33</sup> — is also poor, compared to, for instance, Belgium and the United States. The Americans contributed 34 national reports to the IXth International congress of comparative law in Teheran 1974, the Dutch but . . . 6.<sup>34</sup> However, there have been some positive achievements. Some of the major monographs which have been published in The Netherlands have been translated.<sup>35</sup> Occasionally, doctoral theses are specifically written in a foreign language.<sup>36</sup> Theses always contain a summary in at least one foreign language. There are some branches of the law where more information is given to foreign jurists, e.g., in private and public international law. English-language surveys of Dutch literature, judicial decisions and state practice in the latter field, and of treaties or other international agreements to which The Netherlands are a party, are published in the *Netherlands yearbook of international law*, which, since 1970, has been issued under the auspices of the above mentioned Asser institute. Articles in the English language on private and public international law and surveys of cases on conflicts law are published regularly in the *Netherlands international law review*, which was founded in 1953. Recent foreign-language law reviews published in The Netherlands are the *Review of socialist law*, mentioned above under 3.2, the *Common market law review*, and the quarterly *Air law*, the first number of which was published in September

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31. The Netherlands Comparative Law Association is at present considering the publication of such a yearbook for The Netherlands.

32. Of all East European countries only Albania and the Soviet Union do *not* publish such reviews.

33. To be fair, the participation in international congresses for recreational purposes is not a strictly Dutch phenomenon as may be proved by the following quotation: 'Noch sind die meisten derjenigen, die sich so gern in bilateralen und internationalen Juristenvereinigungen betätigen, mehr an akademischem Tourismus als an wirklicher rechtsvergleichender Forschung interessiert . . . '.

W. Wengler, in: M. Rotondi (ed.), *Inchieste di diritto comparato*, p. 2. *Buts et méthodes du droit comparé*, Padua/New York, 1973, pp. 723, 726.

34. The Xth congress, to be held in Budapest in 1978, promises to be better in this regard: so far more than 30 contributions have been promised.

35. Such as Paul Scholten's famous General Part of the Asser-Series.

36. Recent Dutch theses written in a foreign language include F.H.E.W. de Buy, *Das Recht auf die Heimat/Realität oder Fiktion*, thesis Utrecht 1975; S. Ybema, *Constitutionalism and civil liberties*, thesis Leyden 1973 and F.W. Hondius, *The Yugoslav community of nations*, thesis Leyden, The Hague/Paris, 1968. See also, *Dutch theses/A list of titles of theses submitted to Dutch universities*, vol. 1 (1975) —, published by the Netherlands universities foundation for international co-operation, and the *Catalogus van academische geschriften*, published every two years by the Utrecht University library.

1975. Of these reviews only the latter contains municipal Dutch case law and comments.

Apart from these rays of sunshine the picture of the Dutch contribution to foreign research is still rather gloomy. Thus, comparative studies by foreign lawyers usually do not include chapters on Dutch law.<sup>37</sup> When occasionally foreign jurists are able to break through the language barrier and to publish a book or an article on some aspects of Dutch law<sup>38</sup>, this really is a surprise.

#### 4. CONCLUSIONS

The preceding paragraphs may be summarised into the following conclusions:

1. The threat of more provincialism in Dutch legal education, due to the retreat of Roman law as the basic course of the first two years, should be counteracted by inserting more comparative law into the curriculum.
2. The prerequisite for a study of comparative law *viz.*, a more than elementary knowledge of English, French and German, or at least one or two *common* languages — no longer exists in The Netherlands.
3. The number of elective courses in comparative law at Dutch law faculties seems sufficient, possibly with too much emphasis on Anglo-American law and too little on German law.
4. The general courses in Dutch law faculties are domestic in outlook.
5. As a consequence, there is little interest in foreign law students studying at a Dutch law faculty — unless they come from Indonesia, the Netherlands Antilles, South Africa or Surinam.
6. Legal research is hardly conceivable without comparative law. In practice, however, comparative data are sometimes used as windowdressing.
7. Dutch jurists are regularly kept informed of foreign legal research by the general law reviews such as the *Nederlands juristenblad*. However, this information does not extend to foreign legislation or foreign case law.
8. Little if anything is done in a systematical way to make known abroad Dutch legislation, case law or research. In this area, however, there seems to be some prospects for the future.

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37. Thus a Soviet labour law encyclopedia contains articles on many different countries, but none on The Netherlands: *Trudovoe pravo/Ensiklopedičeskij slovar*, third edition, Moscow, 1969.

38. Such surprises usually come from the German Federal Republic. Occasionally English-language jurists are able to pierce the linguistic barrier, cf., for instance, K.S. Skarples, *The legal framework of judicial sentencing policy/A study based on the Dutch and English systems*, Amsterdam, 1972.



## APPENDIX I

*List of special courses in comparative law, offered at Dutch law faculties in the academic year 1976/1977, and their teachers*

American antitrust law	LEYDEN A. van Oven.
American constitutional law	ROTTERDAM* <sup>2</sup> H.Th.J.F. van Maarseveen; G.E.M. van der Tang. LEYDEN C. Flinterman; J.A. Peters.
Anglo-American law	UTRECHT R. Crinckle Roy. AMSTERDAM* <sup>1</sup> H.C.F. Schoordijk (1978); GRONINGEN C.A.E. Uniken Venema.
Chinese law	LEYDEN M.H. van der Valk
Comparative administrative law	GRONINGEN P.J. van Buuren; J.H. van Kreveld
Comparative company law	ROTTERDAM* <sup>2</sup> P. Sanders. NIJMEGEN J.M.M. Maeijer.
Comparative constitutional law	AMSTERDAM* <sup>1</sup> C.A.J.M. Kortmann; L. Prakke. ROTTERDAM* <sup>2</sup> R.J.B. Bergamin; G.E.M. van der Tang; L.H.C. Hulsman; F. Knoopmans. GRONINGEN D.H.M. Meuwissen. LEYDEN C. Flinterman; T. Koopmans.
Comparative copyright law and law of intellectual property	TILBURG H.J.M. Jeukens; A.K. Koekkoek. UTRECHT M.C.B. Burkens.
Comparative criminal law	AMSTERDAM* <sup>1</sup> H. Cohen Jehoram. AMSTERDAM* <sup>1</sup> A. Heijder; Chr. F. Rüter. LEYDEN A.L. Melai. UTRECHT A.A.G. Peters.
Comparative maritime law	LEYDEN H. Schadee.
Comparative (private) law	AMSTERDAM* <sup>1</sup> H.U. Jessurun d'Oliveira. ROTTERDAM* <sup>2</sup> J. Knottenbelt. GRONINGEN G.R. de Groot. LEYDEN D.C. Fokkema. NIJMEGEN V.A.M. Struycken. TILBURG J.E.J.Th. Deelen. UTRECHT J.G. Sauveplanne; A.P.J.M. Timmerman; F.J.A. van der Velden. AMSTERDAM* <sup>3</sup> A.G.J.J. Haandrikman; D. Kokkini-Iatridou; I. van de Veer-Verhagen.
Comparative social economic law	UTRECHT P. VerLoren van Themaat; E.C.A.M. Boot.
Constitutional law of the Netherlands Antilles	UTRECHT D.H.W. Theunis.
Customary (African and Indonesian) law	LEYDEN J.F. Holleman. NIJMEGEN G. van den Steenhoven.
East European law	LEYDEN G.P. van den Berg; F.J.M. Feldbrugge; E.H. de Jong; Th.J. Vondráček.
English private law	ROTTERDAM* <sup>2</sup> J.M. van Dunné; R.W. Holzhauser. LEYDEN N. Blok. TILBURG J.H.M. Willems.
Soviet studies (not especially legal)	ROTTERDAM* <sup>2</sup> F.J.M. Feldbrugge <i>et aliteri</i> . LEYDEN F.J.M. Feldbrugge <i>et aliteri</i> .

\*<sup>1</sup> Amsterdam Municipal University

\*<sup>2</sup> Rotterdam Erasmus University

\*<sup>3</sup> Amsterdam Free University

## APPENDIX II

### *List of comparative law associations, institutes and libraries and their addresses*

- Interuniversitair instituut voor internationaal recht – T.M.C. Asser instituut – Alexanderstraat 20-22, The Hague, tel. (070) 63.09.00.
- Association Henri Capitant, c/o F.J.A. van der Velden, Molengraaff instituut voor privaatrecht, Nieuwe Gracht 60, Utrecht, tel. (030) 31.91.46.
- Centrum voor buitenlands recht en internationaal privaatrecht (Foreign and private international law centre), O.Z. Achterburgwal 217-219, Amsterdam, tel. (020) 525.34.03.
- Documentatiebureau voor Oosteuropes recht (Documentation office for East European law), Hugo de Grootstraat 32, Leiden, tel. (071) 14.96.41.
- Internationaal bureau voor belastingdocumentatie (international tax documentation office), Sarphatistraat 124, Amsterdam, tel. (020) 23.57.23.
- Internationaal juridisch instituut, Oranjestraat 6, The Hague, tel. (070) 46.09.74.
- Molengraaff instituut voor privaatrecht, Nieuwe Gracht 60, Utrecht, tel. (030) 31.91.46.
- Netherlands comparative law association, O.Z. Achterburgwal 217-219, Amsterdam, tel. (020) 525.34.03.
- Peace Palace, Carnegieplein 2, The Hague, tel. (070) 92.44.41.
- Vereniging voor de vergelijkende studie van het recht van België en Nederland (Belgian-Dutch comparative law association), Hollandseweg 1, Wageningen, tel. (08370) 82959.
- Werkcomité Duits-Nederlandse juristendag (working committee for the German-Dutch meetings of jurists), Lange Kerkdam 70, Wassenaar, tel. (01751) 12768.

## APPENDIX III

### *List of comparative reports published for the annual meetings of the Netherlands comparative law association*

1. J.G. Sauveplanne, De bescherming van de derde verkrijger te goeder trouw van roerende lichamelijke zaken. (1968)
2. Verslag van de bespreking van no. 1. (1969) (Proceedings of the 1968 meeting).
3. F.H. van der Burg, Toezeggingen en pseudowetgeving in het administratieve recht; and Ch. P.A. Geppart, De rechtswaarde van niet op de wet steunende bestuurs-handelingen van de belastingadministratie. (1969)
- 3a. Verslag van de bespreking van no. 3. (1971) (Proceedings of the 1969 meeting).
4. J.D. van der Meulen, De belediging van hoofden van bevriende staten. (1970)
5. F.J.W. Löwensteyn, De vennootschap met beperkte aansprakelijkheid. (1970)
6. L. Prakke, Toetsingsrecht. (1971)
7. Z. Szirmai, De bruikbaarheid van het Sowjet burgerlijk recht voor de westerse rechts-vergelijker. (1971)
8. I. Kisch, De rechtsfamilies en haar dynamiek, benevens een Verslag van de bespreking van de nummers 6 en 7. (1972) (Proceedings of the 1971 meeting)
9. W.E. Haak, De beroepsvoetballer. (1972)
10. H.U. Jessurun d'Oliveira, De meerwaarde van rechterlijke uitspraken. (1972)
11. H.J.M. Jeukens, Rechtsvergelijking in de jurisprudentie van het Hof van Justitie van de Europese Gemeenschappen. (1973)
12. M.G. Chester and F.O.W. Vogelaar, Dutch/English Company law, a comparative review. (1973)
13. A.H.J. Swart, Politiek delikt en asiel. (1973)

14. Rapports néerlandais au IXe Congrès International de droit comparé, Téhéran. (1974)
15. H.J.M. Jeukens, Staatsrechtelijke wegen naar onafhankelijkheid. Verslag van de bespreking van de nummers 12 en 13. (1974) (Proceedings of the 1973 meeting)
16. A.M. van de Wiel, Samenleven buiten huwelijk. (1974)
17. J.M. Polak, Rechtsvergelijkende opmerkingen rond de Wet Universitaire Bestuursvorming 1970. (1974)
18. H.J.M. Jeukens, 'Gewest'-vorming. Verslag van de bespreking van de nummers 16 en 17. (1975) (Proceedings of the 1974 meeting)
19. M.C. Burkens, Methodologie van staatsrechtelijke rechtsvergelijking. (1975)
20. J.G. Sauveplanne, De methoden van privaatrechtelijke rechtsvergelijking. (1975)
21. H.J.M. Jeukens, Rede. Verslag van de bespreking van de nummers 19 en 20. (1976) (Proceedings of the 1975 meeting).
22. R.Overeem, De reisovereenkomst. (1976)
23. E.H. Hondius, Konsumentenrecht. (1976)
24. H.U. Jessurun d'Oliveira, Rede. Verslag van de bespreking van de nummers 22 en 23. (1977) (Proceedings of the 1976 meeting). (under press)