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# Judicial Policy-Making in the Netherlands: the Case-by-Case Method

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*The Dutch judiciary is modelled on the French one and places a premium on the separation of powers. One manifestation of this adherence to the strict separation of powers is the prohibition against judicial review. Judges in the ordinary courts, however, have since early in this century given broad interpretations to statutes becoming significant policy-makers in Dutch politics because of the system of coalition governments. Laws are drafted in vague terms, leaving interpretation to the courts, and issues on which there is no possibility of political compromise find resolution only in the judicial forum.*

In 1988 the *Hoge Raad der Nederlanden* (the Dutch Supreme Court) had been in existence for 150 years. The Court took advantage of the occasion to present itself to the Dutch public. The President of the Court, Justice Ras, even gave television interviews, and the Court published two books on its own functioning.<sup>1</sup> This was a new phenomenon, for until then the Court had maintained a low profile. And still, many Dutch people are unaware of the Supreme Court and even most law students do not know the name of the president of the Court.

The low profile of the Court is in sharp contrast to its growing political role in Dutch society. Starting in 1919 with the landmark decision in *Lindenbaum v. Cohen*,<sup>2</sup> the Court departed from the nineteenth century tradition of the judiciary of adhering to the strict application of statutes. During the following decades the Court allowed itself more and more to develop the law by broadly interpreting to codes and statutes. In this process, the Court grew from an insignificant, non-political body to a politically powerful institution in Dutch society.<sup>3</sup> The Dutch parliament allowed this developing influence and at various points even enhanced or encouraged it. Policy-making by Dutch courts, therefore, is as much a function of the Dutch legal system as it is of Dutch political culture. I will discuss each in turn, after having given an overview of the structure of the courts.

## STRUCTURE OF THE COURTS

As in most other civil law countries, the administration of justice in the Netherlands is divided among administrative and ordinary courts, but my discussion is restricted to the ordinary judiciary. The Dutch court system is organised in four layers. The lowest level, the cantonal court (*kantongerecht*) hears petty offences and small claims. In addition, the cantonal court has original jurisdiction for some specific civil cases, regardless of the amount of controversy, among which are cases on tenancy and labour. The trial court (*arrondissementsrechtbank*) hears all other criminal and civil cases and also appeals from decisions of the cantonal courts in its district.<sup>4</sup> Decisions of the trial court, sitting as a court of first instance, are appealable to the court of appeal (*gerechtshof*), where in ordinary appeals, the cases are dealt with *de novo*. The 62 cantonal courts, 19 trial courts, and five courts of appeal are structured hierarchically.

As a rule two stages of appeal are possible in each procedure: after the decision at first instance, appeal to the next higher court is possible, and the second decision is subject to appeal in cassation to the Supreme Court. As in the first appeal, leave to appeal in cassation to the Supreme Court is not required. In an appeal in cassation, however, the facts as determined by the lower courts are not reviewable; the Supreme Court can only decide on issues of law. Since it cannot consider the facts of the case, the Court refers cases to a lower court after reversal, should the facts need further consideration.

Both criminal and civil cases are tried by professional judges, for juries are unknown in the Netherlands. The law requires judges to have graduated from a Dutch law faculty, and candidate judges cannot be appointed unless they have completed six years of judicial training or have had more than six years of experience in a legal profession.<sup>5</sup>

Legal procedure in the Netherlands, as in most civil law countries, follows the inquisitorial model: the judge controls proceedings, the calling and questioning of witnesses, and the like. Cantonal court judges sit alone, and as a rule they try both criminal and civil cases. In the trial courts and the courts of appeal, specialised divisions exist, in which three judges sit *en banc*. Due to the heavy caseload, however, the exception of an *unus iudex* (a single judge) in the trial courts has recently come to be the rule.

The Supreme Court, as for any Dutch court, announces all of its decisions as being unanimous, and judges are obliged to maintain secrecy about their deliberations. As in most other countries, no leave to appeal is necessary, and the Supreme Court has no control over its

docket. One special court procedure should be mentioned here, because much policy-making is done through that procedure, that is, the injunction (*kort geding*). The *kort geding* is a summary proceeding in which the president of the trial court is asked to grant an injunction. Lenient application of the rules limiting access to this procedure has led to many litigants seeking redress in this fashion. Supposedly, a normal court procedure should follow after the president's decision, but that is rarely done. Because the president's decision is a court decision as any other, it can be appealed up to the Supreme Court, thus taking away any incentive to follow a normal procedure.

#### TRADITIONAL MODEL

The Dutch legal system is heavily influenced by the French in various ways. In 1814, after the French occupation, the Netherlands became a constitutional monarchy. The constitution prescribed codification of the law that resulted in the Civil Code of 1838 and the Criminal Code of 1881. The basic idea of extensive codification in the Netherlands – as, for instance, in Germany<sup>6</sup> – was that each and every conceivable subject could be incorporated in a code, and thus the role of the judge was no more than to apply a rule of law to a specific case (*le bouche de la loi*). The body of legislative rules was paramount, and the view of the division of power in the Netherlands was such that any development of the law through precedents was out of the question.<sup>7</sup>

This role of the judiciary in society accorded with Dutch governmental ideology, that is also drawn from the French. According to Montesquieu's *Trias Politica*,<sup>8</sup> the judicial power should be independent of both the executive and legislature. That goal is generally reached in western democracies and elsewhere by a norm of independence by justices during their tenure at the Court, although either or both of the other two powers play a role in appointments. Cliteur argues that the Dutch adopted the French version of *trias politica* ideology.<sup>9</sup> In the American version (see for instance Hamilton),<sup>10</sup> the division of powers led to a system of checks and balances; in the French and Dutch version, the division of power has led to a complete separation.

This ideology of separation of powers prescribes a 'hands-off' strategy, both for the Dutch parliament towards the judiciary and vice versa. This is also reflected in the traditional model of judicial decision-making adopted in the Netherlands. According to the traditional civil law model of judicial decision making, once the facts of the case are subsumed under the applicable legal rule, the decision should almost automatically

emerge. Because dissenting opinions suggest that the codes might be unclear, they are strictly prohibited. As a consequence, violation of the secrecy of deliberations among the judges prior to their decision ('the secrecy of the courts chambers') is not allowed.

The French influence is also noticeable in the institution of cassation.<sup>11</sup> The 1814 constitution already stipulated that the highest court in the country had the power to reverse decisions that were openly in conflict with statutory provisions and did not have the power to judge the facts of the case. The primary function of the Court, then, was to maintain a unified *application*, not unified *interpretation*, of statutes, since interpretation should be left to the legislative power. The Supreme Court can only review questions of law, but not questions of fact. This ideology has also led to a ban on judicial review. The Dutch codes were and are not subject to judicial review or amendment. The Netherlands, in other words, do not have a constitutional court, but not because a constitutional court would be alien to the civil law tradition. Countries like Spain, Portugal, France, Germany and – in a limited form – Belgium have constitutional courts. In the Netherlands an article in the constitution itself declares statutes untouchable,<sup>12</sup> and, therefore, renders judicial review of the constitutionality of statutes impossible. Treaties, however, supersede legislation, and through review of statutes for conformity with treaties, as for instance the Treaty of Rome, a limited form of 'constitutional' review is possible.

Since the beginning of this century, two developments took place that dramatically changed this traditional role of the judiciary in Dutch society. One stems from the courts and the other, from the organisation of Dutch politics.

#### DUTCH POLITICS

Especially during the first half of the twentieth century, Dutch society was strongly divided in so-called *zuilen*, parts of society that are delineated according to religious and political denominations.<sup>13</sup> To ensure a stable society, the governmental system was built on negotiation and compromise among the denominations, rather than antagonism among *zuilen*. This form of 'pacificatory democracy' requires, among other things, a cabinet to appoint both political allies and allies of the opposition to important offices. If a cabinet did not, it could similarly expect the present opposition to fill all important vacancies with their own allies when it came into power. But, more important, appointment of allies of the opposition is an essential part of the compromising structure that ensures a stable government, even with incompatible political and

religious *zuilen*. This produces a tendency to 'de-politicise' political questions.<sup>14</sup>

Seats in the lower house of the Dutch Parliament are usually divided among ten to 15 political parties, none of which ever had or probably will have an absolute majority. Dutch cabinets, therefore, are based on coalitions: a compromise among the denominations. Cabinets are always based on coalitions between the Christian parties (recently unified into the Christian Democratic party (CDA)) on the one hand and either the Socialist party (PvdA) or the Conservative party (VVD) on the other. Sometimes other, smaller parties take part. For instance, the cabinet in power until autumn 1989 was a coalition of VVD and CDA, but was followed by a cabinet supported by CDA and PvdA. The coalition structure of Dutch government makes the process of legislating quite tedious and stimulates compromise, if not ambiguity, in most statutes. The need to compromise fragmented political interests also produces complicated and detailed statutes.<sup>15</sup>

In fact, legislators often refrain from regulating certain issues and chose to leave them to the judiciary. For instance, the development of civil law has almost entirely been left to the Supreme Court. Indeed, after the Second World War a major recodification of the civil law was undertaken. Most of this recodification, however, consisted of incorporating Supreme Court rulings into the new code. But also in criminal law, the Supreme Court gave rulings on subjects like abortion, euthanasia, labour strikes, and the law of evidence without any legislative intervention.

Especially in the last two decades the legislature has left more and more subjects to decision by the courts. Statutes, indeed, often include vague norms that need to be fully defined by judicial decisions, such as contracts have to be executed in 'good faith' and behaviour of the government has to accord with 'principles of decent administration'.<sup>16</sup> These vague concepts are used in statutes partly because legislators today realise that it is impossible to make a specific rule for everything.

### *Ideology of Decision-Making*

Of course, the distinction between law and facts is arbitrary in many cases<sup>17</sup> and nowadays serves, among other things, to limit the number of appeals to the Supreme Court.<sup>18</sup> In the nineteenth century that distinction was firmly accepted by the Supreme Court. Originally, the legislator saw only two roles for the High Court: to maintain unified application of statutes and to supervise the quality of administration of justice. During the last century and a half, the *communis opinio* has grown that the institute of cassation should also serve the development of the law,

but only very recently has development of the law been named the most important function of the Supreme Court. This function of the Supreme Court has expanded to such an extent that the Court sometimes is called 'deputy legislator'.<sup>19</sup>

In that evolution – from applier of statutes to developer of law – the Supreme Court played a major role. The decision in *Lindenbaum v. Cohen* in 1919, mentioned above, was truly the turning point in the history of the Court, and after it, the influence of the Supreme Court grew significantly. With the introduction of the concept of *carefulness* as a criterion for liability in tort, the Supreme Court bridged the gap between the law and an ever changing society more rapidly and often better than the Dutch legislature could do. A study by Hirsch Ballin, in which he compared decisions of the Supreme Court in 1951–52 to decisions in 1970, showed that even in that 20-year period the change from application to interpretation of statutes continued to evolve.<sup>20</sup>

Policy-making by Dutch courts, then, does not emerge from the ideology of the state or a system of check and balances, but rather from two distinct developments in the twentieth century. On the one hand the courts, and especially the Supreme Court, took a freer stance towards statutes and thus were able, under the ideology of separation of powers, to develop law without much legislative intervention. This mechanism works particularly well for civil law development. On the other hand, the political structure prevents parliament from producing clear legislation on many controversial issues. Either questions are not decided at all, leaving the solution to rulings by the courts, or legislation produces compromising statutes. On controversial topics, statutes often either contain many vague norms that need to be interpreted and completed by the courts or contain conflicting norms. In both cases room is left for policy-making by the courts. A few examples may clarify how these mechanisms work.

### *Right to Labour Strike*

Labour unions have long struggled to get legislation granting the right to strike, but to no avail. Thus, decisions in individual cases of strikes were left to the judiciary. It was a fairly open question, since no statutory ban on strikes existed, except for civil servants, including railway employees. In 1960, in its *Panhonlibco* decision,<sup>21</sup> the Supreme Court took a position that was rather unfavourable to the unions. The Supreme Court considered the labour contract as an individual one and thus a strike would mean a breach of contract by the employee; consequently, the labour union was liable under tort for a call to strike. But there were

exceptions, the most notable being the one 'under circumstances of such a nature that, according to current legal considerations, it could be considered unfair to demand employees to continue to work or to do certain kinds of work'.

In the ensuing 25 years the stage set by the Supreme Court was developed further by lower courts. Typically, an employers' union would sue the labour unions in an injunction procedure before the president of the trial court after a strike commenced. Since these cases seldom went to the Supreme Court, no clear, unified rulings developed. But, gradually these decisions changed the tide in a direction more favourable to the labour unions. At the beginning of the 1980s the labour union was not considered liable under tort any more, unless specific circumstances warranted otherwise, as for instance: if the strike clearly violated a statute, created danger or unnecessary harm to third parties, if the strike aimed at creating discrimination, or, most importantly, if the labour union refused to continue to negotiate with the employers.

In 1986 this development was finally sanctioned by the Supreme Court.<sup>22</sup> Recently, the president of the largest labour union remarked that the Supreme Court took care of the right to strike quite well and that he feared that any legislation on the matter would turn back the clock.

### *Abortion*

Another good example of how the Dutch parliament leaves decisions on critical issues to the judiciary is the case of abortion.<sup>23</sup> In 1967 abortion became an issue in parliament, in medical circles, and in feminist organisations. The Socialist Party (PvdA) began the discussion in parliament, but knew it was a politically risky subject. At the same time, the subject became a pressing problem in Dutch society. Liberal legislation in the United Kingdom caused a flow of abortion tourism to England. Simultaneously, the feminist movement supporting liberal abortion – under the motto 'boss over your own belly' (*baas in eigen buik*) – became more popular. Then, a typically Dutch phenomenon occurred, one that would repeat itself later on many other subjects, including euthanasia or the compulsory closure of shops at 6pm. A parliamentary majority favoured a liberal statute, while a minority of Christian parties was able to block introduction of such a liberal statute. This happens because the Christian parties are always members of the government coalition and can negotiate with their coalition partners either to postpone the bill or accept a compromise. In the case of abortion this role



was played by the Catholic Party,<sup>24</sup> strongly supported by the Dutch bishops.

The subject became pressing in the spring of 1971, when around the country abortion clinics started to open. In the same spring, general elections were held and the three participating Christian democratic parties in the new coalition persuaded their partners (the conservative VVD and the now dissolved party DS'70) to accept a typically Christian arrangement of abortion. Abortion would remain punishable under the criminal code, and doctors could only perform abortions under very strict rules, controlled by the government health agency. If this compromise had resulted in a statute, abortion clinics would have had to close, and abortion would have been available to only a very limited number of women.

In 1972 the cabinet fell because of socio-economic problems, and in the election campaigns that followed abortion played a major role. After the elections and three months of negotiations a left-wing/Christian government coalition emerged. It was decided to leave the abortion bill to parliamentary initiative. Both the Christian parties and the others would draft their own bills. In the middle of all this, in 1974, the Catholic Minister of Justice van Agt decided to institute criminal prosecution against one abortion clinic, the Bloemenhove Clinic in Heemstede. In a letter to parliament he announced that criminal prosecution would be instigated against all clinics in which abortions after 12 weeks of pregnancy were performed and thereby transferred parliamentary problems to the area of public prosecution and the judiciary. The doctor of the Bloemenhove Clinic petitioned against the issuing of the subpoena all the way to the Supreme Court – a special procedure possible under Dutch criminal law – arguing that since he was a doctor, any abortion done by him is based on medical grounds, permissible under the various bills in preparation in parliament. In this case, however, the Supreme Court concluded that abortion remained punishable under the criminal code and that the case could be brought before the trial court. In 1978 the prosecutor nevertheless decided to drop the case, together with another one against the same clinic, commenced in 1976. In cases against other clinics public prosecution proceeded as slowly as possible, resulting in dismissal of all but one case in the process. In that last case, the prosecuted doctors were found not guilty on appeal.

Debates in parliament after the 1977 elections resulted in the introduction of a compromise bill by a cabinet in which the Christian parties held a strong majority. Finally, in 1979, a bill was passed by parliament that bore all the marks of compromise. Abortion remained punishable

under the criminal code, but under certain conditions (which proved rather lenient in practice), abortion could take place. The interpretation of these conditions was left to the courts.

### *The Harmonisation Case*

A recent decision of the Supreme Court, in the Harmonisation case,<sup>25</sup> illustrates how far the Supreme Court has come, but also shows where the Supreme Court currently halts its movement toward more policy-making through a form of judicial review of statutes. In the Netherlands, all students receive financial aid from the government, and the precise amount depends partly on the income of the parents. In the last decade, a maximum number of years during which an allowance could be received was set. By a recent Act of Parliament the right was restricted again, this time for students who took up a second university study after completing a first one. A student union and a few individual students sued the state in summary proceedings to obtain an injunction that would forbid the implementation of the Act.

They argued that the years they spent at the university from 1980 onwards, before the Act was even under discussion in parliament, should not be taken into account for determining the period for which an allowance would be granted. That, they said, violated the legitimate expectation that they could finish their studies without financial problems, and, therefore, implementation of the Act would mean an infringement both of unwritten principles of law and of art.43 of the Charter of the Kingdom of The Netherlands (*Het Statuut voor het Koninkrijk der Nederlanden*).

The charter is a statute of the kingdom,<sup>26</sup> but is in fact a treaty between the various parts of the kingdom – the Netherlands, Netherlands Antilles, and Aruba<sup>27</sup> – and is a statute that supersedes the constitution. No formal statutory provision bans judicial review of statutes to the charter, as one does for the review of statutes, for conformity with the constitution. The president of the The Hague court granted the injunction, based on a violation of art.43 of the charter, but in a leap-frog appeal in cassation, the Supreme Court reversed the decision. The Supreme Court denied review of statutes both to unwritten principles of law and to the charter. The Court denied review to the charter solely because ‘there is a *tradition* not to review’ (my emphasis). The review of unwritten principles of law was denied because during the recent debate in parliament on changes in the constitution in 1983 this subject was discussed and such review was expressly rejected.

The Court apparently did the latter reluctantly, because it wrote that it adhered to this line of reasoning, even though ‘the so-called Harmoni-

sation Act . . . violates legitimate expectations of the students concerned and thus violates the principle of certainty of law'. More interestingly, the Court also argued that the need for judicial review of statutes has increased now, because:

several developments – among which the development of our parliamentary system towards monism and the accompanying increase of dominance of the executive power in the realisation of statutes – remove the assumption justifying the ban on judicial review, to wit that parliamentary procedure guaranties a legally sound content of each statute [my translation].

The Court refers to the Dutch custom of building coalition cabinets on a detailed written agreement (the *Regeerackoord*; the government agreement) among the coalition parties. Dutch legislative culture is based on a dualistic relation between parliament and cabinet. A written agreement among the coalition parties considerably limits the possibilities to judge each separate bill for the allies of the cabinet in parliament, without infringing upon the government agreement. This leads to a monistic instead of a dualistic relation between the cabinet and the parliamentary majority, in which the coalition members of parliament are fully tied to decisions of the cabinet. Such an arrangement results in legislative procedures in which bills are run through parliament on political force, with little deliberation or amendment, as in the case of the Harmonisation Act.

Although the decision of the Court does not bear indications of prospective overruling of the ban on judicial review of statutes, the wording of the decision indicates that the Court would have loved to do so. The decision in the Harmonisation case also shows that the Supreme Court is still cautious in interfering with the business of the legislature and maintains the ideology of separation of powers. Nevertheless, the Court rebuked parliament for producing a bad statute, while it maintained a 'hands-off' strategy.

### *Speeding and Black Driving*

Policy-making is not restricted to the Supreme Court, for on two recent issues cantonal court judges opposed policies set by the government. These may illustrate further how the Dutch entertain a separation of powers, rather than maintaining a system of checks and balances.

During the early 1970s energy crisis, a speed limit of 100km/h was set on motorways to conserve energy. Since this speed limit also proved useful in lowering accident rates, the speed limit was not raised in subsequent years. But, so many drivers broke the limit that even the

average speed on motorways exceeded 100km/h. At the end of the 1980s the government decided on a hopefully more believable policy by raising the limit to 120km/h outside urban areas, but also providing that police would maintain more surveillance and prosecution would be more fierce. That did not help, and at the beginning of 1991 the government decided to confiscate the car of any driver who exceeded the speed limit by more than 50km/h. The Association of Cantonal Court judges publicly announced that they considered this measure too harsh and too laden with problems of execution and that they would not support such confiscations by the police.

This also occurred when the government decided to raise the fine for riding public transport without a valid ticket from 25 to 100 guilders to reduce the frequency of that behaviour. Cantonal court judges continued to give fines around 60 guilders as usual, arguing that a higher fine would not be fair in comparison with fines for comparable misdemeanours.

## CONCLUSIONS

Policy-making by Dutch courts is alien to the ideology of the separation of powers adopted in the nineteenth century. That ideology continues to be maintained in form. The Supreme Court, for instance, never cites previous cases, but in practice, the courts do not stick to the ideology of the separation of powers. Development of civil law is left almost entirely to the courts, and other areas are left to rulings by the courts as well. This happens, not because it accords with the state's ideology, but because parliament is unable to write clear statutes or to make statutes at all for certain controversial issues. The Harmonisation case showed that some development towards a system of checks and balances is taking place, but at present the Supreme Court prefers to maintain a 'hands-off' policy as much as possible. One other, and last, reason should be mentioned here to explain why parliament seldom interferes with Supreme Court rulings: the present political role of the Supreme Court is widely supported, both within and outside the legal profession.

## NOTES

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1. *De plaats van de Hoge Raad in het huidige staatsbestel: de veranderingen in de rol van de Hoge Raad als rechtsvormer* (Zwolle: Tjeenk Willink, 1988); and *De Hoge Raad der Nederlanden, 1838-1988: Een Portret* (Zwolle: Tjeenk Willink, 1988).
2. HR 31 Jan. 1919, NJ 161, *WvR* 10365, with note Molengraaff.

3. This development is extensively discussed in Peter J. van Koppen, 'The Dutch Supreme Court and Parliament: Political Decision-making versus Non-Political Appointments,' *Law and Society Review*, Vol.24 (1990), pp. 745-80.
4. In the first half of 1989, it was proposed to merge the cantonal courts, the trial courts and various administrative courts. In the middle of the 1990s the ordinary court system will probably consist of three layers: *arrondissementsrechtbanken*, *gerechtshoven* and the *Hoge Raad*.
5. Most of these latter appointees are attorneys or members of the standing magistracy, but former company attorneys and law professors are also appointed as judges.
6. Kenneth M. Holland, 'The Courts in the Federal Republic of Germany', in Jerry L. Waltman and Kenneth M. Holland (eds.), *The Political Role of Law Courts in Modern Democracies* (London: MacMillan, 1988).
7. P.B. Cliteur, 'Argumenten voor en tegen constitutionele toetsing', *Nederlands Juristenblad*, Vol.64 (1989), p. 1369; Richard J. Cummins, 'The General Principles of Law, Separation of Powers and Theories of Judicial Decision in France', *International and Comparative Law Quarterly*, Vol.35 (1986), p. 595; and Donald P. Kommers, *Judicial Politics in West Germany: A Study of the Federal Constitutional Court* (Beverly Hills: Sage, 1976).
8. C.-L. de Secondat, baron de la Brède et de Montesquieu, *De L'Esprit de Lois* [1748] (Paris: Garnier, 1871).
9. Cliteur, p. 64.
10. Isaac Kramnick (ed.), *The Federalist Papers* (Harmondsworth: Penguin, 1987).
11. J.T. Buys, *De Grondwet: Toelichting en Kritiek, Tweede Deel* (Arnhem/Gouda: Quint, 1884), p. 220; D.J. Veegens, *Cassatie in Burgerlijke Zaken* (Zwolle: Tjeenk Willink, 1989, 3rd ed.; revised by E. Korthals Altes and H.A. Groen), pp. 1-29.
12. The relevant article in the constitution, now art.120 Grondwet, used to read, 'the Acts of parliament are untouchable', but with the constitutional revision of 1983 has been rephrased to 'the judge will not enter into judgment of the constitutionality of acts of parliament.' However, it is generally assumed that the meaning is still the same. See, e.g., P.J.J. van Buuren, 'Onrechtmatige wetgeving', *Handelingen Nederlandse Juristenvereniging*, Vol.142 (1987), p. 54; J.M. Polak, 'Onrechtmatige wetgeving', *ibid*, p. 122.
13. The most important *zuilen* in which society was divided were catholics, protestants, socialists and humanists. An extensive discussion is given by Ernest H. Kossmann, *The Low Countries, 1780-1940* (Oxford: Clarendon Press, 1978), pp. 567-74.
14. See Arend Lijphart, *The Politics of Accommodation: Pluralism and Democracy in the Netherlands* (Berkeley: Univ. of California Press, 1975, 2nd ed.).
15. Atiyah and Summers argue that the sharp two-party political division in Britain and the prevailing strong party discipline make such compromising legislation unnecessary and results in shorter and clearer statutes. P. Atiyah and R. Summers, *Form and Substance in Anglo-American Law* (Oxford: Clarendon Press, 1987).
16. See H.C.F. Schoordijk, 'Hoe vat(te) de Burgerlijke Kamer van de Hoge Raad zijn rechtsvormende taak op?', in *De plaats van de Hoge Raad in het huidige staatsbestel: de veranderingen in de rol van de Hoge Raad als rechtsvormer* (Zwolle: Tjeenk Willink, 1988).
17. Paul Scholten, *Mr. C. Asser's Handleiding tot de Beoefening van het Nederlands Burgerlijk Recht: Algemeen Deel* (Zwolle: Tjeenk Willink, 1974, 3rd ed., rev. by G.J. Scholten).
18. E.H. Hondius, 'Judicial Organization in the Netherlands', in D.C. Fockema, J.M.J. Chorus, E.H. Hondius, and E.Ch. Lisser (eds.), *Introduction to Dutch Law for Foreign Lawyers* (Deventer: Kluwer, 1978), p. 20.
19. M.J.P. Verburgh, 'De ontwikkeling van rechtsvinding in de civiele rechtspraak: Stellingen voor het Wiarda-symposium', *Nederlands Juristenblad*, Vol.52 (1977), p. 507. See also Henk J. Sniijders, 'Hoge Raad, Goede Raad: enige beschouwingen bij de literatuur rond het 150-jarige jubileum van de Hoge Raad', *Nederlands Juristenblad*, Vol.63 (1988), p. 1602; and Tim Koopmans, 'Hogere voorziening naar rechterlijk

- goedvinden', *Nederlands Juristenblad*, Vol.60 (1985), p. 1417.
20. Ernst M.H. Hirsch Ballin, 'Onafhankelijke rechtsvorming: Staatsrechtelijke aantekeningen over de plaats en functie van de Hoge Raad in de Nederlandse rechterorde', in *De plaats van de Hoge Raad in het huidige staatsbestel: de veranderingen in de rol van de Hoge Raad als rechtsvormer* (Zwolle: Tjeenk Willink, 1988).
  21. HR 15 Jan. 1960, *NJ* 1960, 84, with note LEHR.
  22. HR 30 May 1986, *NJ* 1986, 688, with note PAS and HR 7 Nov. 1986, *RvdW* 1986, 183. See also M.G. Rood, 'Over collectieve werknemers actie, of: De HR terug van weggeweest', *Nederlands Juristenblad*, Vol.62 (1987), pp. 301-6.
  23. Most of the following discussion is based on Jan de Bruijn, *Geschiedenis van de abortus in Nederland: Een analyse van opvattingen en discussies 1600-1979* (Amsterdam: Van Gennep, 1979); Matthijs deBlois, 'The Netherlands', in Stanislaw J. Frankowski and George F. Cole, (eds.), *Abortion and Protection of the Human Fetus: Legal Problems in a Cross-cultural Perspective* (Dordrecht: Martinus Nijhoff, 1987); P.F. van der Heijden, 'Juridisch voorspel tot de abortus ontwerpen', *Nederlands Juristenblad*, Vol.53 (1978), pp. 119-21.
  24. The Catholic Party (KVP) later merged with two protestant parties into the present Christian Democratic Party (CDA).
  25. HR 14 April 1989, *NJ* 1989, 469 (*De Staat der Nederlanden v de Landelijke Studenten Vak Bond LSV*) with note MS.
  26. As opposed to a statute of the state, i.e., the part of the kingdom in Europe.
  27. The charter initially, in 1954, formed part of the decolonisation process of the then colonies of Surinam (independent in 1975) and the Netherlands Antilles (the secession of Aruba took place in 1985).