Chapter 12
In the Law We Trust. Some Thoughts on the 'Legislative Gap' in Legal Studies

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Abstract Legislation and the enactment of legislation is of primary importance for the development of the law in modern jurisdictions. The law depends on it—the bulk of the law is created by way of legislation. One would expect that this importance is reflected in legal research and education. But in fact it is not. This contribution looks into the neglect of legislative studies in traditional legal scholarship and the all but absence of it in academic teaching curricula of law. The scant attention for legislation and legislative studies illustrates quite well the character of academic legal curricula in most modern Western jurisdictions; they are more or less judge-centred. The contribution rallies for more scientific-based, open-minded and future-oriented forms of legal research and academic training.

Keywords Legislative knowledge · Legislative training · Legal education · Law curricula

12.1 The Importance of Legislative Knowledge

Knowledge is key to any service or action in our present-day information societies. For the creation and development of law, predominantly enacted via legislation, it is no less than critical. To understand what comes out, one must have—as a legal scholar in the least—one understanding of what goes in. A legislative process is not a black box or a no go area for lawyers. But even though the importance of 'knowledge' (i.e. something more than mere information) within and about legislative processes seems almost self-evident, it is, I believe, still seriously underestimated. Legal scholars and lawyers most of the time are unaware of the dynamics of the most important law-producer around: the legislature. At best they have some notion of the legal procedure but hardly any idea of how legislative processes work, what

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kind of information is exchanged, what kind of interests are at play and what are the main actors and their motives.

Legislation nowadays is a truly complicated and dynamic information process that relies heavily on knowledge (i.e. the understanding of how one can use information to intervene in or affect the real world). Legislation is most of the time the result of a complex decision making process in which various interests and aspects (legal, political, policy-related, financial, economic, etc.) are weighed and balanced. Combining these interests and aspects requires communication, information, and especially a great deal of knowledge that allows relevant information to be used, linked, considered and weighed. Even though legislative processes are very 'knowledge-intensive', legislative projects—in a lot of countries—deal with knowledge management in a relatively casual manner. Experiences gained in former or similar legislative projects are rarely assessed, re-used or systematically recorded.[1] Besides, there is hardly any true 'legislative' evaluation—i.e. academically sound research and analysis on the effects of legislation. When legislation is evaluated in the Netherlands (a country that prides itself for its legislative policy), for instance, it is mostly the success or failure of the policies enshrined in legislation that are being studied, not the effect of legislation (as opposed to other instruments of governance) itself. Evaluation results are as a rule used on a once-only basis for policy adjustments of the project evaluated itself. Re-use of evaluation results for other projects or syntheses of various evaluation studies hardly ever occurs. Systematic and long-term analysis of legislative processes is rare. And, to boot, legislative drafting is predominantly handled by lawyers, who are not academically prepared nor trained to deal with the 'externalities' of law and legislation: generally they lack the language and skill to liaise with and benefit from (insights from) other scientific disciplines.

In most of these parliamentary systems—in and outside Europe—legislation and legislative studies are still a very underdeveloped academic discipline.[2] Whether or not this is the result of the benign neglect for academic 'legislative' research within the legislative process (in which legislation—as a legitimacy bringing decision-wrapping—is treated more or less as a black box), or conservative academic tradition, need not concern us here. It is, however, striking that most of the 'legal' literature on legislation and legislative processes concerns itself with the (constitutional-legal) procedural rules, rather than with the practical skills of drafting, the dynamics of policy-cycles (agenda setting, principle agent approaches to delegation, issues of implementation, etc.), insights in enforcement (the academic insights predominantly coming from the quarters of criminology) and the deployment of political power (how it is amassed and used to intervene—intervention theory, regulatory governance etc.). Everybody will agree that legal skills and

[1] This also holds true for the re-use of policy experiences and evaluation results too. Only under the impetus of the call for 'evidence based' decision making the focus in the evaluation community sharpened on the (re)utilization of evaluation results. See Sanderson (2000, p. 433 ff.) and Leeuw (1995, p. 19 ff.).

[2] Due to what Clark (2012, p. 331) labels the 'Tenacity of the University Education Tradition'.

insights are important for legislation and legislative processes but academic curricula do not really dedicate much attention to legislation, let alone the insights yielded from 'foreign' disciplines like criminology, political science or public administration. Why is that? For this we need to take a deeper look in how we train lawyers.

12.2 Judge-Centred Academic Curricula in Law Schools

To give a conservative estimate; I think that around 90% of all law in the Netherlands, is created by and expressed through legislation. And probably even more than that. The Netherlands are by no means an exception. Figures like these apply for other countries as well. So if law schools in their legal studies programmes want to teach an understanding of law and the formation of law, one would expect that they would apportion a large part of their curriculum to law-creation and formation by means of legislation. This is however, not the case. In fact, in academic law degree programmes in the Netherlands[3] very little attention is actually paid to legislation and legislative drafting. There is a bit and parcel on legislative procedures and types of regulation in classes on constitutional law, sometimes there is even an elective course on legislation, drafting legislation or legislative studies in a master's programme. But that's it. So how come?

One initial explanation for this can be found in tradition. Dutch law degree programmes are, like in other countries I believe, traditionally and predominantly judge-centred (judocentric). Budding legal scholars are taught to think like a judge, or as barrister, legal counsel or public prosecutor, or even like a civil servant who needs to know how the mind of a judge works. If you know how a judge thinks, you can try to influence his or her thinking process—because judges in this concept are considered the real movers and shakers of the law: the primordial source and end of it. And this is exactly what the curricula of law degree programmes in the Netherlands generally do. They teach the basic principles first, guide you on the path to the sources and the structure of the law and then—usually using case law—demonstrate how a judge in the case of a conflict (considered a fact) structures a body of facts, provides a legal qualification (often wrongly referred to as a legal analysis), weighs the interests involved, and then comes to a conclusion: 'finds the law'. Students are taught how judges follow a step-by-step ritual in adjudicating a case, how this is recorded in writing—and how all lawyers should follow suit if they want to have a proper understanding of the law. The problem solving method they are taught does not rest upon the idea of drawing an objective conclusion based on a scientific analysis, but on the general idea of a wise judgment based on what the legal community

[3] University law degrees can be obtained from ten academic institutions in the Netherlands: Erasmus University Rotterdam, the Open University of the Netherlands, Radboud University Nijmegen, Groningen University, Leiden University, Utrecht University, University of Amsterdam, Maastricht University, Tilburg University and VU University Amsterdam.

sees as valid reasoning and what are considered valid, i.e. authoritative arguments. When you think about it, we lawyers are a kind of inward-focussed legitimacy club. A club where your ticket in is a law degree.

This is also partly the cultural explanation for why law degrees in the Netherlands, just like in countless other countries, have such a special character and why certain elements, which at the very least one would expect to find in a proper academic curriculum, yielding a university degree, are completely lacking. For instance, the element of dealing with 'ordinary' people, i.e. people without a law degree—elementary psychology, some basic notions of political science or sociology. Or any form of scientific training, for that matter, that teaches how to distinguish objective statements from subjective statements in and outside the law (this does sometimes occur under the title legal philosophy), let alone understanding how to broadly assess research produced by others, how policy and legislation are established and what your role can be in this, and also public finance etc. Absent. At the same time other elements in law degree programmes are completely over-represented. Most law degree programmes have introductory courses in criminal law, private law and constitutional and administrative law in the first year, and these subjects are re-iterated, fleshed-out and repeated in the latter stages of the bachelor's programme. The basics are time and again elaborated and *deepened*. And in most cases master programmes repeat the same themes and subjects all over again in order to gain a 'fundamental' understanding of the law. The same courses pass the review time and time again. You could almost say that Dutch law degree programmes have a sort of a tantric rhythm: repetition after repetition.

So what is the reason for this? What is this culture based on? If we want to bring about changes in law education—a recurring topic in the Netherlands—then it is necessary to have at least some understanding of the cultural elements behind legal work, law degree programmes and lawyers. We need to understand why it is that in law schools hardly any attention is paid to the way legislation nowadays is used to intervene in markets, how it influences markets and society. What its limits are, what its impact is. Why is that? What is the reason for it? Only if we know that, than we might discuss whether we need to change the curricula. To be frank, I do believe change is needed because the nature of legal work is changing, just like the law itself.

12.3 What Is the Origin of This Judge-Centred Culture?

From first-hand experience, I can tell you that discussing the setup of law curricula is rife with controversy. A call for more attention to scientific approaches of the law, or more attention for the way in law actually is formed, enacted and expressed (rather more by the actions of legislatures than in case law most of the time), rallying for more attention for and broader perspectives in studying the ways in which governments regulate and try to engineer society and markets, rallying for any type of 'innovation' for that matter, invariably meet resistance. This is sometimes

frustrating, but certainly also instructive. It is interesting to know where the resistance comes from. There is pretty much general consensus about the analysis that the law degree programmes in the Netherlands are not up to scratch. For example, it is said they do not entirely meet the requirements of the traditional legal professions, that they attract too little talent and are generally not sufficiently academic.[4] But as far I can see, this has not led to significant changes in legal education.

The elephant in the room here of course is the question: is law a proper academic discipline? Is it science? Arguably not according to some. Law schools and their universities in the US, according to Paul Samuelson, share little more than a postal code.[5] Others, like economist Thornstein Veblen quipped that 'in point of substantial merit the law school belongs in the modern university no more than a school of fencing or dancing.'[6] Surely these are exaggerations, and legal scholarship and academic curricula in law schools have—in the last decades for sure—risen above such gloomy outlooks and dismal state of affairs. But still the fact remains that legal scholarship, from a scientific vantage point, wrestles with an academic burden of proof which it cannot easily meet. Posner has summarized the current state of legal scholarship much to the point in noting:

> What is missing from law are penetrating and rigorous theories, counterintuitive hypothesis that are falsifiable but not falsified (…) precise instrumentation, an exact vocabulary, a clear separation of positive and normative inquiry, quantification of data, credible controlled experiments, rigorous statistical inference, useful technological by-products, dramatic interventions with measurable consequences, and above all and subsuming most of the previous points, objectively assessable – and continually reassessed – hypotheses. In law there is the blueprint or shadow of scientific reasoning, but no edifice.[7]

The scientific state of the discipline of course spills over into the tuition in academic programmes. But the programmes and teachers themselves sometimes act as a push back factor. According to some, the straitjacket of traditional legal reasoning, which has trapped students, lecturers and practicing alumni alike, stands in the way of any form of innovation or change. Together, we traditionally trained lawyers are all rather 'brainwashed' and suffer from a sort of mass-legal-tunnel-vision—no longer responsive to the open view of the world, to the context of the law. As a result, university law degrees fall short on two accounts: academic training *and* professional training. This may sound rather disheartening, but Dutch sociologist Freek Bruinsma hits home when he points out that academic legal studies programmes primarily function as *socialisation processes*.[8] Students are primarily trained to understand other lawyers (rather than members of the general public whom the will be working for). Lawyers are first and foremost trained to think and behave like other lawyers[9]: to understand their future colleagues. They are certainly not brought

[4] See e.g. Stolker (2014, pp. 92–101).

[5] Samuelson (1975, p. 258), as cited by Stolker (2014, p. 94).

[6] Veblen (2000, p. 155), as cited by Stolker (2014, p. 93).

[7] Posner (1990, pp. 431–432).

[8] Bruinsma (2008, pp. 2451–2455).

[9] Marguery (2005, pp. 109–113) clearly explains to what extent in France the *cultural* element also plays a role in law degrees. Essentially, legal scholars there are trained to be able to understand other legal professionals.

up to understand politicians, or colleagues from other walks of academic life that they have to work with during their professional life. Lawyers are taught to understand and trust each other and they are more or less taught to distrust politicians, or other non-lawyers if these elements 'mess' with the law. Lawyers are taught and raised in the belief that the law is the domain and reserve of lawyers—and that the law is only secure in their hands.[10] Hence they do most of the time have no confidence at all (let alone are willing to dedicate long hours of study to it) of law that is handled or the outcome of the work of layman and amateurs like non-lawyer representatives in a parliament deciding on legislation. Legislative processes and politically inspired legislation are most of the time greeted with cold winds of mistrust.[11]

12.4 Raised to Distrust the Legislature?

The recent Dutch debate on the modern day value of the principle of legality provides a case in point of this mistrust. One could argue that, as a truly legal principle, with rule-of-law roots, it would be a lawyers' darling. The principle of legality in civil law countries keeps governments in check by requiring a demonstrable legal basis for—in fact—almost all of their operations. A basis the democratically underpinned legislature provides and most of the time is the sole authority that can provide it. But, much to my own surprise, it turned out to be anything but the lawyers' favourite principle. Quite the contrary. It were in fact the lawyers that seemed to make a problem of the operation of the principle of legality. This principle had, in the Netherlands at least, evolved as a serious standard that had affected increasingly more areas of government intervention, and actions over the last decades. The application of it was substantially widened in case law and by a provision in the (quite new) General Administrative Law Act that—at the outset of the new millennium—required a legal basis for government intervention by way of subsidies and financial support—an area wherein the administration hitherto had been free to roam on condition it acted within the confines of the budget and legal principles of careful consideration and such. This way of extending the purview of the principle of legality did not go down well with a lot lawyers. Even after, or may be due to the extension, some of them reported that they found the principle increasingly less worth studying: it was, they stated, an antiquated and overrated principle.[12] And that against the backdrop of heated, constitutional debates on the principle of legality and its requirements during the best part of the nineteenth and twentieth century. A total reversal of appreciation within less than a century. Why was that? The answer may not come as a big surprise. The present-day application of the principle legality puts parliament and the legislature in the driver's seat; a bunch of laymen and legal ama-

[10] Loth (2014, pp. 1738–1741).

[11] Voermans (2015, p. 68 ff.).

[12] Besselink et al. (2011).

teurs at the helm of an apparatus that spills out ever more legislation, with evermore restrictions to the lawyers core craft: law creation by interpretation and case law.[13] A strict application of the principle of legality in our day and age only yields to more—as a famous Dutch scholar said[14]—*partisan* legislation, acts stemming from a fickle and capricious body of laymen. Worse still: politicians.

There is clearly 'legal discomfort with the legislature.'[15] And that is strange because the law is accorded a central position in present law formation and the administration of justice, as expressed by the Netherlands government in a recent memorandum:

> At the heart of a democratic state under the rule of law lies the fact that law is pre-eminently the democratically legitimated instrument to impose authoritative standards on society and assign tasks and powers to the administration.[16]

On closer inspection, this is true even more so than ever before. Legislation is actually the vehicle that to a large extent *legitimises* law formation in modern relationships. A judicial basis, the law, still legitimises—and perhaps more than ever—the development of the law under public law and the government actions based on this. In various ways. Statutory requirements are not established through random majority decisions, but are the outcome of balancing interests where political points of view are viewed from both sides in an open forum according to a transparent procedure.[17] Witteveen points out—with a reference to Waldron—that disagreement on interpretation, or political disputes, on the occasion of debating and enacting laws, should not be seen as something negative.[18] The law can in fact can, by virtue of opposing views and interest, bridge differences by reflecting on various elements in a discussion leading up to a law and by internalising agreements following a political dispute. Thus Waldron also calls for a re-evaluation of legislation.[19] A figurehead modern thinker like Jurgen Habermas also acknowledges that, indeed, legality can contribute to the legitimacy of the law (even though as such it is something different and cannot in itself be equated to legitimacy).[20] Not only because people's representatives participate in the decision making (input participation) on

[13] "For many lawyers, law is respectable and politics is not. To some of these the very idea that law is a manifestation or type of politics seems almost offensive", as Tom Campbell (2012, p. 228) notes.

[14] Scheltema (1989).

[15] Voermans (2011, p. 76).

[16] See opinion of cabinet "Juridisering in het openbaar bestuur" *Kamerstukken II* 1998/99, 26 360, nr. 1, p. 5.

[17] Or as Waldron (1999b, p. 23) puts it: "The modern legislature is an assembly of representatives of the main competing views in society, and it conducts its deliberations and makes its decisions in the midst of the competition and controversy among them".

[18] Witteveen (2002, p. 238).

[19] Waldron (1999a).

[20] Ashenden (2010, p. 60) points out that in a historical perspective Habermas has correctly noted that "the issue of legitimacy in modernity is framed in terms of the democratic genesis of legal norms".

legislation, but also through the *public* debate carried out in the process. This *principle of discourse*—as he calls it—is crucial for the base of support for the law.[21] The law also commands legitimacy through the legality of the stages and readings of public legislative procedure it is subjected to prior to enactment (called throughput legitimacy by Scharpf[22]) and through the way in which it offers or attempts to offer a solution to problems (output legitimacy). So asking for a legal basis for all intervening government acts has an important direct and indirect legitimizing effect on that act—though this, of course, in itself is not yet sufficient. Legality does not equal legitimacy. It would be rather silly of me conclude that the importance for legislation as a source of law is the *q.e.d.* and that this fact, on its own, calls for more attention to legislation, legislative studies and drafting in law curricula. It is just an illustration of what is a miss. With the current structure of the law curricula we are creating generational blind spots, focusing our attention to wrong part of the playing field. Looking at the parts where the ball of the law is not rolling, where the main body of the players is not present. That surely can never be the intention of academic education in law.

12.5 Towards a New Academic Curriculum in Legal Studies?

This contribution is, therefore, not just a simple call for more legislative training or classes in the curricula of law degree programmes, even though I would be perfectly happy with this outcome. It is rather more an attempt at a better understanding. I think the analysis and arguments above demonstrate why we have—for instance—so few courses on legislation in the law degree programmes, and why it is so very difficult to adjust these degree programmes to the needs of these new times. It is a cultural phenomenon in particular. As long as law curricula are mainly structured to train lawyers to understand and convince each other as legal scholars, with the judge as a role model of the legal scholar, there will be no changes soon. This change, however, is certainly necessary and urgent since the nature of legal work is undergoing changes and the professional field is calling for a different kind of academically trained lawyers. Lawyers of the future, working in increasingly competitive environments, need more skills and capacities than a few decades ago, as was already pointed out by some CEOs of the largest Dutch law firms in Amsterdam in 2014. In a (controversial) appeal in a Dutch newspaper they called for less emphasis on technical strict legal knowledge and techniques in the law degree programmes in favour of a broader and more multi-disciplinary programme.[23] They rallied for, what they

[21] Habermas (1992, pp. 187–207).

[22] Scharpf (1999) distinguishes three ways in which decisions can acquire legitimacy: 'input legitimacy' (participating in the decision), 'throughput legitimacy' (via an agreement on the procedure) and 'output legitimacy' (conviction through the—beneficial—impact).

[23] NRC Handelsblad 17 maart 2014 http://www.advocatenblad.nl/2014/03/18/opleiding-jurist-moet-breder-2/.

refer to as 'T-shaped-client-loving-lawpreneurs'. Lawyers who can combine legal knowledge (the base of the T) with more general knowledge of psychology, sociology, political science and economics (the top of the T). Why? Because everyday problems are too complex to tackle with mere knowledge of law alone. It caused quite a stir, but their call has already lead to changes in the vocational training of lawyers and the setup of professional courses lawyers have to follow in order to pass their bar exam. There is a second reason to take a critical look at law degree programmes. Most universities running these programmes advocate that they train an academic stance (whatever that may be), professional skills, and, so most of them claim, also teach students on the cutting edge of academic research and the latest insights. To subdue students into academic research, even involve them. Arguably so. Especially the scientific academic part of the curricula has room for improvement. For sure, legal research has become far more scientific in the past fifteen years (although we are certainly not there yet) but it is not really included in the academic training in the way it should be. Research deserves a rather more substantial presence in the programmes. Especially the research that pays more (than traditional) attention to the context of the law (international dimension, more comparative law, general impact of the law) and the type of research that acknowledges that you cannot successfully study that context and impact by taking a merely legal perspective. For this it is important to use truly scientific methods and approaches to acquire in-depth-knowledge about law, to use interdisciplinary and multidisciplinary lenses to legal problems and to use methods other than merely legal methods. This is not to say that all legal researchers will have to hold multiple degrees in different disciplines in order to be effective or that legal researchers will always have to work in multidisciplinary teams with other academically trained scholars. It does say that we will increasingly need (and see) a more integrated approach to legal research. More attention for the realities of the law ('law in action), and more focus on, in particular, social science methods that will help us to find out about that reality. In his inaugural lecture in 2014 'Kijken naar het recht' (Looking at the Law), Dutch professor in social psychology Kees Van den Bos recommends an integrated approach for legal research and to reflect this in legal education.[24] He thus—perhaps unintentionally—agrees with the calls of the CEOs of the Amsterdam law firms who articulated the new requirements for the changing legal work.

So what would this look like? No, budding lawyers don't have to become psychologists, economists or politicians, but it would be good if they could understand the basics and the insights these disciplines bring to the fore. It would allow them to assess whether that type of research has been carried out correctly, or if the outcome is correct or not. Training students to become true academic professionals. Because if you want to understand what the law is, its significance in society, and what you as a professional can do with it, then I think it would be more sensible to look in particular at the context and the impact of law, law formation and the administration of justice. In the curricula the theory of law (its objective, what it represents, but also what it can/must achieve) should be used far more to consider the reality and

[24] van den Bos (2014).

context of the law. What does it mean these days? What is its impact on our society, on our markets? To what extent does law contribute or not to welfare, wealth, economic growth, trust and social cohesion. Why do we sometimes comply with the law, and sometimes not? What is the significance for acceptability of government action? Attention to the roles and context of the law is essential.

12.6 Learning from Experience as We Go Along?

For the practice of legislation and legislative drafting in today's dynamic and volatile legislative processes this lack of dedicated academic training comes at a cost. Where legislative professionals—mostly academically trained lawyers—used to learn their skills 'on the job' via a system of patronage. This makes 'knowledge management' within the legislative process vulnerable, all the more so because it is often just one or a few policy-making officers or legislative lawyers that possess the detailed knowledge of and about important legislative files. This individual knowledge of legislative projects is recorded or used rarely as such and is enshrined in the individual civil servants' experience. When they leave office, they take their knowledge and experience with them—resulting in serious knowledge loss of the department. In a situation of increased job mobility this tends to become a serious problem indeed.

A Dutch Legislative Review Committee already more than a decade ago signalled this problem along with other serious defects as regards the learning capacity[25] of the ministerial legislative processes. Already back in 2000 this Committee warned against complacency and passiveness in the field of training and the permanent education of legislation professionals. At the time it is largely left to the civil servants, tasked with the drafting of legislation, themselves to determine what further training courses they will attend. Even though training courses were on offer, these were not broadly attended.[26] On occasion the ministries themselves offered training courses but only in a more or less haphazard way.[27] More generally systematic and focused attention as regards the quality for legislation and legislative drafting was substandard. At the time there were hardly any protocols on the actions to be taken in various legislative processes and there was no systematic reflection on formulas or 'best practice' scenarios for such processes on the basis of experiences gained or knowledge gathered from process evaluations.

[25] This refers to a number of aspects of the building and maintenance of collective memory (method and substantive aspects) and expertise (knowledge management and staff policy). See Legislative Review Committee (2000).

[26] Legislative Review Committee (2000, p. 34).

[27] Examples include the in-company training courses on legislative drafting and legislative method and the legislation seminars that are organised, for example, by means of the external education bureaus within the Ministry of Transport, Public Works and Water Management (now: Infrastructure and Environment) and the Ministry of Social Affairs and Employment.

In the Review Committee's words:

> (…) there is no institutionalised instrument to improve processes, if necessary. This is because individuals may learn from their actions, but in an organisation actions are improved only if a procedure for improvement has been laid down and is communicated. Further, the possibilities offered by information and communication technology in the field of knowledge collection and exchange are used only to minimum degree. This is true of knowledge collection and exchange within ministries, and definitely between the ministries.[28]

The analysis and advice did not fall on deaf ears and the Dutch government has since then endeavoured to improve on the situation. There is more cooperation between ministerial departments, quality ensuring protocols have been put into place and legislative drafts are assessed and reviewed in different ways and from different angles (e.g. forms of regulatory impact assessment). Drafts are widely consulted and are submitted for e-consultation to the general public as a general rule (ever since 2014). Another notable result is the establishment of the Academy for Legislation. Ever since 2001 this institute is set up as a training facility for vocational training of legislative drafters working for the national government, with responsibilities in the field of recruitment as well. Every year 20 freshly graduated, academically trained lawyers are selected for a two year post-graduate training programme offered by the Academy. For two days a week these recruits are trained in the Academy and for the remainder of their workweek they work at a ministerial department as a civil servant to be trained further 'on the job'. After two years they take a final exam and on graduation receive a permanent position in a department. The Academy offers other classes as well for more experienced civil servants as well and other groups of legislative drafters. The programmes of the Academy are a success, at least that is the outcome of different evaluations over the past 15 years—the institution in the meantime is well established. The Dutch ministerial departments and other institutions seem to be well satisfied and report that it is worthwhile the effort and investment. Having a central facility even proves to be cheaper than having decentralized courses and training. Before 2002 they had to invest quite substantial funds in permanent education of their staff. The academy pays off in this respect: on the whole it is cheaper than all of these individual courses from the past. The programme itself was reviewed by the Dutch and Flemish Academic Accreditation Authority in 2005 and 2010 and accredited as a sound academic body. Due to this accreditation diplomas of the Academy have academic standing. A nice feat indeed. But it does beg the question: do you need a special and dedicated training institute to do the job? Why do universities not jump to the opportunity themselves and insert elements of legislative drafting, elements of legislative studies in their legal curricula? The Dutch post-doctoral training programmes for legislative drafting are, by the way, not unique in the world. They were more or less modelled to the examples of the William Dale centre of the Institute of Advanced Legal Studies of London University and programmes in Italy (Rome Isle) and summer courses in New Orleans at Tulane University. Still more schools and training centres

[28] Legislative Review Committee (2000, p. 36).

exist in this field worldwide. One could say that these schools exemplify sound practices, that they promote the training of drafting skills and the quality of legislation in a very sensible way. That they present good ways to prevent braindrains in the legislative process and that they are helpful for systematic knowledge management and transfer of expertise in legislative processes. One could say all that, as I said, for good reasons. One could also reason to the contrary and say that the setup of these post-doctoral programmes and institutions gives evidence to the fact that there is something amiss in the regular curricula of law schools. When academic legal teaching programmes would teach what the law is really about, there would be no need for post-graduate legislative patches—graduates would be fully able to understand what legislation and the sort of law it expresses was all about. Thus trained they could enrich the departmental legislative bureaus with their fresh academic insights from day one. Saving money now and enriching academia in the process. Something to consider.

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