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Marked Absences: Locating Gender and Race in International Legal History

Janne E. Nijman*

Abstract

This article was sparked by a critical reading of Henri de Waele's article 'A New League of Extraordinary Gentlemen? The Professionalization of International Law Scholarship in the Netherlands, 1919–1940', and aims to offer an alternative perspective on this period in the history of Dutch international legal scholarship. While it appreciates the author's examination of Dutch international law scholarship during the interwar period and concurs with the idea that this scholarship needs to be examined more closely, it argues that doing history today requires us first to raise 'the woman question', especially in the context of the so-called 'professionalization' of international law in the 1920s and 1930s, and second to include Dutch colonialism as an important backdrop to the work of the interwar international law scholars. I will give some pointers and illustrations to support this argument. The specific Dutch material brought to bear aims to show more generally the importance of questioning rather than reproducing traditional historiography, within which 'the woman question' and 'the colonial question' were left unmentioned. As such this article also deals with the issue of expanding and remaking international legal history as an issue of present and future purport.

1 Introduction

The summer of 2020 – during which I was contemplating this article – was defined by a global health crisis due to Covid-19, impacting women disproportionately,[1] and by

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1 See, e.g., Organisation for Economic Co-operation and Development (OECD), *Women at the Core of the Fight Against COVID-19 Crisis*, Policy Responses to Coronavirus (COVID-19) (2020), available at

#BlackLivesMatter protests and anti-racism movements in the United States, Europe and the Netherlands, which included a turn against the colonial past of European countries and the racism it involved. It is against this global background that my initial impulse to write a critical engagement with the article by Henri de Waele, 'A New League of Extraordinary Gentlemen? The Professionalization of International Law Scholarship in the Netherlands, 1919–1940',[2] strengthened and developed into an attempt to complement it with pointers to an alternative perspective on Dutch international law in these early decades of the 20th century.

This article turns around the question: how to expand or even correct historiography? This reminds me of *Mastry*, an exhibition of the African-American painter Kerry James Marshall (1955) at the Museum of Contemporary Art in Chicago, that I visited in 2016. Marshall's paintings are stunning, a profound joy to look at and engage with.[3] As all great art, it has many layers, evokes all kinds of responses and involves the human being completely. It hits you and uplifts you. I am reminded of one aspect in particular: Marshall's mission – for over 35 years – to expand the history of art. As the Museum's director, Madeleine Grynsztejn, writes in the Foreword to the exhibition's catalogue: 'Marshall draws attention to the ways African Americans have been marginalized or made invisible – as both the subjects and the makers of art. [. . .] Marshall's practice has been driven by an ethical imperative to bring the black figure into center view.'[4]

Marshall engages with the Western tradition of art, in which he feels at home. His paintings refer to canonical works, for example, by Michelangelo, Mondrian and Seurat. However, in his paintings figure only black people. Figuration is at the heart of his 'remedial project of forging a "critical mass" of black figure imagery in mainstream art museums'.[5] His mission is to change art history from within by having his paintings be part of the world's art museum collections and exhibitions, thereby 'address[ing] Absence with a capital A'.[6] Obviously, this is not the only way to correct history, but Marshall's mission to revisit and expand the canon of his field is an instructive and important one: the imaginary of the future is shaped today.

Marshall's paintings show how engaging with history has an inescapable political dimension that touches on the present.[7] It is not a big leap from the history of art to the history of international law with its Western, masculine canon and the urgent call for its remaking. Here, too, a new vernacular has to take shape: a truly global intellectual history that 'widen[s] the groups and sources regarded as responsible for the

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https://bit.ly/3lutWCB; Ginette Azcona et al., *From Insights to Action: Gender Equality in the Wake of COVID-19*, UN Women (2020), available at https://bit.ly/3nxIEKW.

2 De Waele, 'A New League of Extraordinary Gentlemen? The Professionalization of International Law Scholarship in the Netherlands, 1919–1940', 31 *European Journal of International Law* (*EJIL*) (2020) 1005.

3 Our Roaming Charges in this issue features a painting by Kerry James Marshall, at 1051.

4 Grynsztejn, 'Foreword' to H. Molesworth (ed.), *Kerry James Marshall: Mastry* (2016) 6.

5 Katz, 'Blots', in Molesworth, *supra* note 4, at 218.

6 Grynsztejn, *supra* note 4.

7 Marshall, 'Shall I Compare Thee . . .?', in Molesworth, *supra* note 4, at 72, 72–73.

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development of international thought'.[8] The traditionally Eurocentric canon of international legal history has to be expanded and remade. If an international legal canon is what we work with, this in itself is, of course, worth discussing: it has to be inclusive, self-critical and reflective of how our relationship with the past evolves through ongoing international legal scholarship.

The past and the present are always in dialogue, whether in Marshall's paintings or in international legal history.[9] The volume edited by Anne Orford, *International Law and Its Others*, examines how 'others' are 'figured, performed, inscribed and imagined in the discipline of international law'.[10] It comes from a conviction that international law has to be able 'to offer an answer [to] some of the most important, vital and intriguing questions of our time'.[11] Today, both the 'woman question' and the (Dutch) 'colonial question' constitute 'what is at stake in today's political environment' and what people hope to see addressed by current international legal scholarship.[12] For a while now, these pertinent questions have defined contemporary international legal scholarship's relationship with the past.

With the turn to critical history in international law came 'the imperial turn'.[13] In the last three decades, international legal scholarship has developed a sensitivity to international law's colonial origins,[14] has come to acknowledge that imperialism is 'ingrained in international law as we know it today'[15] and argued 'against the willed forgetting of international law's imperial past'.[16] Also came the turn to method. Martti Koskenniemi has written extensively about how – when writing history and drawing on, for example, Skinnerian contextualism – one has to decide implicitly or explicitly what to include in or exclude from the reconstructed context.[17] When examining the past, critical legal history requires international lawyers to question their biases, preconceptions, prejudices, blind spots and initial interests, as well as those that underpin established narratives.[18]

[8] Benton, 'Beyond Anachronism: Histories of International Law and Global Legal Politics', 21 *Journal of the History of International Law* (*JHIL*) (2019) 7.

[9] Cf. Nijman, 'An Enlarged Sense of Possibility for International Law: Seeking Change by Doing History', in I. Venzke and K.J. Heller (eds), *Situating Contingency in International Law: On the Possibility of a Different Law* (forthcoming 2021).

[10] Orford, 'Introduction: A Jurisprudence of the Limit', in A. Orford (ed.), *International Law and Its Others* (2006) 3.

[11] *Ibid.*, at 2.

[12] *Ibid.*, at 1–2.

[13] Benton, 'Made in Empire: Finding the History of International Law in Imperial Locations', 31 *Leiden Journal of International Law* (*LJIL*) (2018) 473.

[14] See, e.g., the seminal work by Anghie, 'Francisco De Vitoria and the Colonial Origins of International Law', 5 *Social and Legal Studies* 321 (1996); A. Anghie, *Imperialism, Sovereignty and the Making of International Law* (2004).

[15] Gathii, 'Neoliberalism, Colonialism and International Governance: Decentering the International Law of Governmental Legitimacy', 98 *Michigan Law Review* (2000) 2020.

[16] Orford, 'International Law and the Limits of History', in W. Werner, A. Galán and M. de Hoon (eds), *The Law of International Lawyers: Reading Martti Koskenniemi* (2015) 297.

[17] Koskenniemi, 'Histories of International Law: Significance and Problems for a Critical View', 27 *Temple International and Comparative Law Journal* (2013) 215.

[18] *Ibid.*

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Thanks to initiatives such as Immi Tallgren's *Portraits of Women in International Law: New Names and Forgotten Faces?*, international legal history is now starting to address the discipline's long-time blind spot for the exclusion of women both as subjects of international law and as makers of international law in international legal history scholarship.[19] Inescapably, an account of the past of Dutch international legal scholarship published in this journal intervenes in – or is embedded in the context of – these (methodological) debates.

De Waele claims, among others, a space for Dutch interwar international law professors, and constructs a national tradition. While I readily agree there is not one 'proper' account of Dutch interwar international legal history, there are two marked absences in De Waele's history, which have inspired the present article: the silence on the role of women in the discussed 'professionalization' of Dutch international law and the silence on the role of colonialism in Dutch interwar scholarship (no order of significance suggested of course).

First, De Waele squarely focuses on men, 'extraordinary gentlemen'; but we know that women have been invisible in international legal history, unjustifiably so, and for too long. With this focus, De Waele's article reproduces traditionally gendered international legal history. Hence, I would like to raise 'the woman question' and show that, once raised, either the women that *were* there become visible or when there were hardly any women their absence calls for an explanation. Secondly, the interwar period cannot be examined without a keen eye for the role of colonization in the Dutch position on international legal issues.

In the remainder of this contribution, I put De Waele's article in the context of the turn to national traditions within our discipline and the recent debate on 'professionalization' (Section 2). Subsequently, I claim that critical international legal history of Dutch interwar international law has to take 'the woman question' (Section 3) and the 'Dutch colonial question' (Section 4) on board. Both sets of remarks ultimately go to the importance of methodological choices made in the (re)construction of a relevant context and in the identification of the issues at stake for Dutch interwar scholars. The historical material provided should be read as a mere illustration of what bringing these questions on board would entail and how exploring these questions produces an alternative, complementary and (more) critical history. I then wrap up this contribution with a few concluding remarks (Section 5).

2 The Turn to National Traditions and to Professionalization in International Legal Scholarship

A *A National Tradition?*

De Waele's 'A New League of Extraordinary Gentlemen?' starts out by situating the discussion in 'a plethora of national traditions' that stemmed from the turn to (intellectual) history in international law.[20]

[19] The classic starting point is, of course, Charlesworth, Chinkin and Wright, 'Feminist Approaches to International Law', 85 *American Journal of International Law* (*AJIL*) (1991) 613; Tallgren's initiative *Portraits of Women in International Law: New Names and Forgotten Faces?* is a book project to be published in 2021.

[20] De Waele, *supra* note 3, at 1006.

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De Waele's project to bring a history of Dutch international legal scholarship to the *European Journal of International Law* (*EJIL*), a journal which is premised from the beginning on the idea of a pan-European tradition of international law, is to be highly appreciated. The *EJIL*'s long-time interest in the history and theory of international law and its series 'The European Tradition of International Law' have developed the journal into a space for the critical examination of highly esteemed international lawyers from various European countries. However, never was a Dutch scholar given the honour of featuring in this series, while so often the Netherlands is referred to as a country with a strong international law tradition. Tobias M.C. Asser (1838–1913), surely one of the 'men of 1873', is similarly missing in any meaningful way from Martti Koskenniemi's seminal work on the late 19th-and early 20th-century generations of international lawyers, *The Gentle Civilizer of Nations* (2004). Language is of course a serious barrier, and De Waele's aim to open up and expose Dutch international law scholarship to the readership of the *EJIL* is commendable.

Recently, national traditions have been given renewed attention. While I am intrinsically troubled by 'national turns', especially today, I see the value, for instance, of Jochen von Bernstorff's point about the German tradition and its influence on the development of international legal thought and practice,[21] as well as of Anthea Roberts's comparative international law project:

> [T]o understand international law as a transnational legal field that encompasses multiple national traditions, international lawyers need to be aware of certain national or regional *differences* in approaches to international law, as well as the extent to which some of these approaches have come to *dominate* understandings of the 'international' in a way that can make them appear, or allows them to be presented as, neutral and universal. Like processes of globalization more generally, the field of international law is defined by a dynamic interplay between the centripetal search for unity and universality and the centrifugal pull of national and regional differences.[22]

Thus while we have to stay wary of the (possible suggestion of) essentialism that comes with the language of 'national' traditions – and especially when it deploys the lauding language such as 'extraordinary gentlemen', even as perhaps a fond Victorian expression, it is important to uncover different national and regional traditions that have influenced or are suppressed in international law and its history.[23] As Dutch international law scholars, we have been negligent in the critical examination of Dutch interwar international law scholarship and practice. De Waele's turn to Dutch scholarship is all the more welcome since he engages with a period in history that for most countries in Europe is generally defined by an exceptionally rich intellectual and cultural life, and during which innovative contributions to international legal thought

[21] See von Bernstorff, 'German International Law Scholarship and the Postcolonial Turn', *EJIL Talk!* (7 January 2015), available at https://bit.ly/34ESPEX; Koskenniemi, 'Between Coordination and Constitution: International Law as a German Discipline', 15 *Redescriptions* (2011) 45.

[22] A. Roberts, *Is International Law International?* (2017) 3.

[23] See, for example, a wonderful contribution on the interwar period that touches on an Abyssinian or Ethiopian international law: Parfitt, '*Empire des Nègres Blancs*: The Hybridity of International Personality and the Abyssinia Crisis of 1935–36', 24 *Leiden Journal of International Law* (2011) 849.

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(not without their dark sides) emerged.[24] So, who were the Dutch contemporaries of Alvarez, Kelsen, Lauterpacht, Scelle and Viṣvanātha, to name just a few of our discipline's famous interwar scholars? Frankly, they are not discussed in international literature, perhaps with the exception of Cornelis van Vollenhoven (1874–1933), professor of colonial constitutional and administrative law in Leiden from 1901 to 1933, whose international law ideas were impactful in Europe at the time.[25]

Borrowing Martti Koskenniemi's words, De Waele defines the goal of his article as situating 'the jurists in their local environments as university professors, diplomats or counsel to governments, having institutional '"projects" of their own'.[26] This sets us up for the much-needed *critical* history of Dutch interwar international law, 'placing the leading scholars and their views within the global frame'.[27] In De Waele's reconstruction, this global frame is defined largely by the institutionalization of international law manifest in the rise and decline of the League of Nations and the (im)possibility of aligning the 'Dutch neutral tradition' with the League of Nations' collective security system.[28] Let me add here that the Dutch scholars at the time were rather divided on the issue.[29]

De Waele's main argument then centres on the allegedly standard understanding of Dutch interwar history: the country's fence-sitting policy, and scholars – unchallenged by Dutch practice – lagging behind. In terms of 'the pace' of the discipline's evolution, De Waele views the Dutch as 'measur[ing] up' 'negatively', 'given that few names of leading scholars readily spring to mind'.[30] This view is advanced in the introduction only to be rejected in the conclusion to the article, where De Waele claims to 'pull out the rug from under any habitual presumptions of insularity or backwardness'.[31] These 'extraordinary gentlemen', he argues, were actually eager to be a part of the game and to fulfil prestigious international functions: 'Dutch academics [. . .] partook with great enthusiasm in this "cosmopolitan milieu"'.[32] They have been 'undeservedly underexplored', as the article claims to show.[33]

So while I agree with De Waele that Dutch interwar international legal scholarship deserves scrutiny, this is not so much because it has received 'too little attention' or because the image of its 'laggard[ness]' needs correcting.[34] Rather, I would argue

[24] J. E. Nijman, *The Concept of International Legal Personality: An Inquiry into the History and Theory of International Law* (2004) (which in retrospect, too, should have given more attention to colonialism).

[25] See, e.g., Tourme-Jouannet, 'The Critique of Classical Thought during the Interwar Period: Vattel and Van Vollenhoven', in A. Orford and F. Hoffmann (eds), *The Oxford Handbook of the Theory of International Law* (2016) 101.

[26] De Waele, *supra* note 3, at 1006, quoting Koskenniemi, 'A History of International Law Histories', in B. Fassbender and A. Peters (eds), *The Oxford Handbook of the History of International Law* (2012) 967.

[27] De Waele, *supra* note 3, at 1006, quoting Koskenniemi, *supra* note 26, at 967.

[28] *Ibid.*, at 1015.

[29] Beunders, 'De Buitenlandse Politiek van Nederland 1918–1924', in N.C.F. Van Sas (ed.), *De Kracht van Nederland: Internationale positie en buitenlands beleid* (1991) 88, 92–93.

[30] De Waele, *supra* note 3, at 1007.

[31] *Ibid.*

[32] *Ibid.*, at 1019.

[33] *Ibid.*, at 1007.

[34] *Ibid.*, at 1006 and 1023.

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that, if we take the 'national' approach to the group of Dutch international law professors during the interwar period seriously, its value lies partly in its capacity for critical examination of these scholars' projects in relation to issues that were at stake at the time, not just internationally but also *nationally*. Doing history then requires that we raise questions such as, what were the scholars' actual projects, and *why*? What lay behind this 'great enthusiasm' for legal internationalism? With the neutrality policy as a bone of contention, what explains the different scholarly positions? What was the influence of the Dutch peace and women's movements, which were closely intertwined in the Netherlands and exceptionally vociferous in the (public) debate regarding, for example, the League of Nations, on Dutch international law scholarship and its professionalization? But also, how does the neutrality policy relate to the colonial war(s) in which the Netherlands was involved? And more generally, how did the Dutch international law scholars, for example in the late 1930s, address the fact that the country's 'colonial possessions were more vulnerable than ever'?[35]

While historical turn brought an outburst of critical history of international law and empires,[36] the Dutch Empire and international law have remained largely underexplored. While the 17th century and Grotius's advisory role in the Dutch East India Company are to some extent an exception,[37] literature has largely neglected the Dutch Empire in 19th- and early 20th-century international law scholarship.

A contextual reading which could assist in doing such critical work and which De Waele hints at in his Conclusion could have been brought to fruition by recognizing two important issues at stake in the Netherlands at the time: (i) (receding) first-wave feminism, coupled with the national and international peace movement, and (ii) the question of colonial rule in the Dutch East Indies and in Curaçao and Suriname. Both these issues, however, remain ignored as irrelevant to a history of Dutch international legal scholarship, in general, and to its 'professionalization', in particular.

First-wave feminism and its discontents were such an important social and political issue at the time that they naturally provoke 'the woman question'.[38] Where are the women in the examined process of professionalization? Were they 'absent' as international legal historiography suggests, or were they left (intentionally) 'invisible'?[39] The colonial question, in turn, was highly relevant to Dutch international law scholars, because the Dutch colonial empire was a basis on which to claim a more prominent position in international affairs than the size of the home country would justify. How did the Dutch colonial empire, the Aceh (*Atjeh*) war (1873–1942) and

[35] *Ibid.*, at 1022.

[36] See, e.g., M. Koskenniemi, W. Rech and M. Jiménez Fonseca (eds), *International Law and Empire: Historical Explorations* (2017).

[37] See, e.g., M. van Ittersum, *Profit and Principle: Hugo Grotius, Natural Rights Theories and the Rise of Dutch Power in the East Indies, 1595–1615* (2006).

[38] Auchmuty, 'Recovering Lost Lives: Researching Women in Legal History', 42 *Journal of Law and Society* (2015) 34.

[39] Tallgren, 'Absent or Invisible? Women Intellectuals and Professionals at the Dawn of a Discipline', in F. Mégret and I. Tallgren (eds), *The Dawn of a Discipline: International Criminal Justice and its Early Exponents* (2020) 381.

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the Indonesian nationalism movement impact Dutch international law scholarship at the time? How did Dutch scholars relate to the Netherlands strengthening its colonial control in the East Indies in the interwar period? Were they complicit in the colonial project?

Employing contextualism uncritically, as Koskenniemi has also explained,[40] means we lose out on a valuable conversation between present and past international law: 'an outright uncritical attitude [. . .] may end up suppressing efforts to find patterns in history that might account for today's experiences of domination and injustice'.[41] The representation of women in the academia is still an issue, not only in the Netherlands. And for many, the 'Dutch colonial question' remains to be unanswered: that much is clear from the Dutch King's apologies in Indonesia as recently as in early 2020.

Writing on a 'national tradition' for the *EJIL* may stimulate the desire to write proudly about the 'visible' legal scholars of the country in question. Yet, if we take the task seriously, we must address some unpleasant questions. Before I show in a very preliminary fashion a possible productive way of raising both the 'woman question' and the 'colonial question' in relation to Dutch interwar international law scholarship, I expound briefly the use of 'professionalization' in De Waele's historical narrative.

B *'Professionalization' as 'Professorization'?*

Since De Waele sets out to deal with 'The *Professionalization* of International Law *Scholarship* in the Netherlands, 1919–1940' (emphasis added), it is worth noting that the article actually aims to move the analysis beyond mere scholarship to include a broader understanding of 'professional practices'.[42]

De Waele's conceptualization and operationalization of 'the professionalization of scholarship' follow 'three vectors': first, an academic-institutional dimension, which points to the 'emancipation of international law' from a secondary, marginal position into an increasingly more central place in the curricula of Dutch law schools, taught by professors who held a chair in the field. With this academic 'emancipation' came a serious increase in the quality of scholarly debates – a 'substantive blossoming in scientific discourse'[43] – and output. The second vector involves targeting broader audiences through media interventions and public debates by the 'protagonists', as a new 'professional practice' that showed international law to be a 'true profession' with serious expertise 'in the eyes of the public'. Third, Dutch international law scholars in the interwar period started to take up non-academic professional roles, such as national advisors or international civil servants engaged in international law practice. They benefited from an expansion of professional opportunities: a growing interest in their advice on international legal and political issues on the part of the Dutch government as well as of the newly established Permanent Court of Arbitration (PCA)

40 Koskenniemi, *supra* note 17, at 229.

41 *Ibid.*

42 Jean d'Aspremont et al. (eds), *International Law as a Profession* (2017). Granted, this volume does not dedicate a chapter to women in the profession and nor does the category 'women' feature in any meaningful way.

43 De Waele, *supra* note 3, at 1014.

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and Permanent Court of International Justice (PCIJ), which opened up exciting international career opportunities in The Hague. These vectors structure De Waele's article and my remarks in the next two sections.

In all of this, professionalization ultimately amounts to what De Waele calls 'professorization'. Professionalization is about the male professors of international law – hence 'extraordinary gentlemen'. Zooming in on professors only creates or rather reproduces a blind spot around the role of women in this professionalization, for example by excluding the collateral role of relevant social movements. When one qualifies 'professional practices' less narrowly, a richer picture emerges and the role of women starts to surface. In other words, the methodological choice for a concept such as 'professorization' has significant implications. It fails to bring out how 'professional practices' reproduced power structures and rather than bringing to light the inclusion and exclusion at play at the time, it reproduces them. In my view, a history of Dutch interwar international law has to map how discriminatory practices based on gender, race, class and possibly other categories were operational within the field.[44]

3 Where Are the Women?

The protagonists of the 'professionalization' discussed by De Waele are without irony or scrutiny called the 'extraordinary gentlemen' of the epoch. While I am well aware of the difficulties with 'woman' or 'women' as a category,[45] I put them aside here and subscribe to 'the importance of asking the "woman question"' when writing international legal history.[46] What was the role of women in the professionalization of Dutch international legal scholarship? Surely, they have been absent in Dutch international legal historiography; but should we not examine whether there were women contributing to the professionalization of the discipline in broader ways, even if they were left out of traditional historiography with its focus on 'gentlemanly' practices, and therewith not appreciated for their role and significance?[47] Rather than taking the 'visibility of the new professional class'[48] as a point of departure, I would argue that we should question how this visibility was constructed and what or who remained invisible through this construction. Leaving the woman question and the colonial question unmentioned simply leads to the reproduction of incomplete histories, with blind spots for the roles of gender and race.

I raise these questions here to expand (Dutch) international legal history. First, I will outline the role women played in the broader process of the professionalization of Dutch international law (scholarship) and how this role can be made visible when

[44] Cf. Backhouse, 'Gender and Race in the Construction of "Legal Professionalism": Historical Perspectives' (2013), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2273323.

[45] D. Riley, *'Am I that Name?': Feminism and the Category of 'Women' in History* (1988).

[46] Auchmuty, *supra* note 38.

[47] Backhouse, 'Contesting the Legal Culture of Professionalism', 24 *International Journal of the Legal Profession* (2017) 56.

[48] De Waele, *supra* note 3, at 1009.

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we are 'imaginative' in our research and in our use of sources.[49] This then triggers an exploration of why we find no women among Dutch international law professors between the wars. This absence points, inter alia, to legal obstacles women encountered in furthering their academic careers and obtaining professorship. Exploring these questions in a somewhat anecdotal manner enables us to complement traditional – gender-biased – international legal history with some preliminary findings.

A *Dutch Interwar Academia: Invisible Women*

Like elsewhere in Europe, women started gradually to enter Dutch universities in the second half of the 19th century (there were, of course, earlier, albeit rare, examples). The Leiden professor Cornelis van Vollenhoven (1874–1933), who is one of De Waele's main protagonists, started his lectures 'invariably' with 'Ladies, Gentlemen', as his biographer, Henriëtte de Beaufort, recollected.[50] Where did these ladies go after graduating? One of them became Queen Juliana of the Netherlands (1909–2004). Another, a lifelong friend of Juliana's, was Mrs B. J. A. de Kanter-van Hettinga Tromp (1905–2000).

De Kanter-van Hettinga Tromp was born into a privileged and educated family. Both her parents had studied law at Leiden University. She went to grammar school (Gymnasium), and with Latin – in those days a requirement to study law – under her belt, she enrolled in law at Leiden University in 1923. Attending university was generally still a privilege of the upper, sometimes upper middle, classes in the Netherlands. De Kanter-van Hettinga Tromp enjoyed studying under Professor Cornelis van Vollenhoven. Her feelings come across in her description of van Vollenhoven penned together with Arthur Eyffinger, a former librarian of the International Court of Justice (ICJ).[51] Eyffinger, who knew her well, wrote how '[Van Vollenhoven] auspicated his pupil's majestic *editio maior* of Grotius' *De jure belli ac pacis* on which she laboured close to a decade (1929–1938)'.[52] To be sure, while De Kanter-van Hettinga Tromp should not be remembered in international legal history as merely a female student of a male professor, it must be noted that her edition of Hugo Grotius's *De iure belli ac pacis* (*DIBP*) is still considered the best.[53] She made a lasting contribution to the study of Grotius's work; or, to put it in the language of De Waele's first 'vector', to the 'substantive blossoming' of (Dutch) international legal scholarship. In addition to her scholarly output, De Kanter-van Hettinga Tromp contributed to early 20th-century international law scholarship in other ways. She played a decisive role in the establishment and life of associations (the Van Vollenhoven Foundation, Grotius foundations and subsequently the Grotiana Foundation) and journals (*Grotiana Yearbook* and later the *Grotiana* journal) crucial to the infrastructure and organization of the scholarly field.[54]

[49] Auchmuty, *supra* note 38, at 34.

[50] Henriëtte de Beaufort, *Cornelis van Vollenhoven 1874–1933* (1954) 181.

[51] De Kanter-van Hettinga Tromp and Eyffinger, 'Cornelis van Vollenhoven (1874–1933)', in G. Tanja (ed.), *The Moulding of International Law: Ten Dutch Proponents* (1995) 285.

[52] Eyffinger, 'Mrs. B.J.A.H. de Kanter-Van Hettinga Tromp (1905–2000)', 20–21 *Grotiana* (1999–2000) 3.

[53] See, e.g., the work of the eminent Grotius scholar Haggenmacher, 'Grotius and Gentili: A Reassessment of Thomas E. Holland's Inaugural Lecture', in H. Bull, B. Kingsbury and A. Roberts (eds), *Hugo Grotius and International Relations* (1990) 133, at 145 n.43.

[54] Eyffinger, *supra* note 52, at 4.

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In those same years, Gezina van der Molen (1892–1978) was working on her doctoral dissertation. From a traditional middle-class Calvinist background,[55] she was not allowed by her father to attend the Gymnasium. She first attended a teachers' college with the intention to obtain additional qualifications later, and started Law at the Calvinist *Vrije Universiteit* (VU) in Amsterdam in 1924 when she was 32 years old. She was the first woman to receive a doctorate in international law at that university in 1937 and to hold a professorship of international law well after World War II.[56] Her book *Alberico Gentili and the Development of International Law: His Life Work and Times*, for which she did extensive research in Oxford, was published in English; it is still cited in international legal historiography on Gentili (and Grotius).[57] In the first proposition of her doctoral thesis she claimed that Gentili was a fellow Calvinist, which seemed to have annoyed the Leiden professor and PCIJ judge Willem '*jonkheer*' van Eysinga (1878–1961).[58] Her understanding of Gentili's concept of *societas gentium* as a universal legal society stayed with her throughout her career; in her dissertation she related the idea to the League of Nations. As a journalist, she had visited Geneva and reported on the League of Nations in the 1920s. During World War II, she was active in the Dutch resistance movement. Unlike many of her colleagues, Van der Molen had the courage to refuse signing the Aryan statement in October 1940. Even Benjamin Telders (1901–1942), who was a powerful force behind the Leiden academic resistance against the Nazis, ultimately signed. In 1941, like Regout and Telders, mentioned by De Waele in this context,[59] she too published on the law of occupation under the 1907 Hague Convention on the laws and customs of war on land.[60]

I will come back to Gezina van der Molen and the paradoxes and controversies surrounding her work elsewhere;[61] here, I merely intend to show that when one examines the professionalization of international law scholarship and asks 'where are the women?', there are some whose role in the professionalization can and should be made visible. That said, female scholars were practically unrepresented in interwar Dutch academia. The next question is: *why* are there no female professors? Why did men obtain academic chairs while women did not? Such questions foreground the relevance of both De Kanter-van Hettinga Tromp's and Van der Molen's marital status to their professional lives in the Netherlands.

[55] De Waele rightly emphasizes that Dutch society at the time was 'pillarized'.

[56] G. H. J. van der Molen, *Alberico Gentili and the Development of International Law: His Life, Work and Times* (1937).

[57] See, e.g., Haggenmacher, *supra* note 53.

[58] G. van Klinken, *Strijdbaar & Omstreden: Een biografie van de calvinistische verzetsvrouw Gezina van der Molen* (2006) 127.

[59] De Waele, *supra* note 3, at 1017.

[60] G. van der Molen, *Bezettingsrecht* (1941). The Hague Convention IV Respecting the Laws and Customs of War and Its Annex: Regulations Concerning the Laws and Customs of War on Land. The Hague, 18 October 1907.

[61] I am currently working on a longer portrait to do justice to her life and work.

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B *The Absence of Women in the Dutch Academia between the Wars: Legal Obstacles*

Van der Molen never married, but shared her life and home with the schoolteacher Maria Elisabeth Nolte (PhD 1951) from 1930 until Gezina's death in 1978. Van der Molen worked as a paid examiner in high-school examinations and as a journalist, until she started her doctorate. Unlike her male peers, who could conduct their doctoral research while, for example, working as paid assistants to their professors, Van der Molen was not a member of the VU's paid staff before World War II.

De Kanter-van Hettinga Tromp did not just start her laborious work on the most authoritative edition of *DIBP* in 1929, she also married that same year. She was *juris utriusque doctor* when she published it 10 years later,[62] but she did this work outside a paid academic position at Leiden University. De Kanter-van Hettinga Tromp could pursue this work while raising four children thanks to the privileged (class) position she was in. She was a member of what Margit van der Steen called 'a strong and elitist *old girls*' network', who were close to the Royal Household and saw women's emancipation, world peace, international (labour) law and human rights as closely interlinked.[63]

One of the targets of these early feminists were the legal obstacles women faced in getting paid jobs which would allow them to pursue an academic, or other professional, career, for example in international law. These biographical details about De Kanter-van Hettinga Tromp and Van der Molen indeed point to gender discrimination.

First-wave feminism had been part of 19th-century Dutch society. Dutch women obtained the right to vote in 1919, effective in 1922, which gave a great boost to women's emancipation in the Netherlands. That development, however, was not linear. A major setback came with the legislation of 1923. At the time, the 1838 Civil Code was still in place, which considered married women *de jure* incapable of *any* legal act. They were *personae miserabilis*, and during the interwar period the legal position of married women deteriorated even further. From 1924 onwards, women who worked as civil servants were fired the day they married and married women were unemployable. After 1935, the law was extended to married female teachers at primary and secondary schools. They, too, were dismissed and would not be re-hired. Even while women had full suffrage, it would take until the mid-1950s for this discriminatory law to be abolished.[64]

[62] As indicated in the edition, B.J.A. de Kanter-van Hettinga Tromp (ed.) *Hugonis Grotii De jure belli ac pacis libri tres: in quibus jus naturae & gentium: item juris publici praecipua explicantur* (1939). The fact that she obtained a doctorate is also confirmed by Anet Bleich, *De stille diplomaat: Max van der Stoel, 1924–2011* (2018) 62.

[63] Van der Steen, "Het was het nieuwe geluid dat gehoord werd": De betekenis van de Pacificatie voor de emancipatie van vrouwen', 26 *Jaarboek voor de Geschiedenis van het Nederlands Protestantisme na 1800* (2018) 87.

[64] The *Nederlandse Vereniging voor Vrouwenbelangen, Vrouwenarbeid en Gelijkburgerschap* headed by Dr Hilda Verwey-Jonker played a decisive role in this landmark of emancipation.

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This legislation had direct implications for young female international lawyers. Leiden, for example, was a state university. The law barred married women outright from any formal or recognized academic position, depriving them of a context for their scientific and professional ambitions. They had to choose between marriage or professional life. I know from personal histories that women who were no longer allowed to work as secondary school teachers started a doctorate independently of remunerated institutional structures.[65] Thus, during the interwar period, only unmarried women could be appointed – or hold a chair – at state universities, if the culture accepted female scholars at all. VU, on the other hand, was not a state university and, as a Calvinist institution, its identity was largely defined by the ideology of 'motherhood'.[66] This was of course not conducive to female appointments, either.

My point here is that when we narrate the history of our discipline, we need to ask questions that help us map and explain the pervasive gender inequality. In the Dutch interwar context, this means noting that, while their married male peers could write their doctoral theses while being paid and obtain university posts upon graduation, married women could only do scholarly work or write a doctoral dissertation on an independent basis, without the recognition of a formal university position. Intersectionality comes up: only the affluent could do this.

C *Feminism and Peace Movements: The League of Nations, Disarmament and International Law*

When one then wonders where Dutch educated women were between the wars, first-wave feminism comes to mind. The Dutch women's movement, which had energetically campaigned for full suffrage and succeeded by 1919, developed hand in hand with the Dutch peace and disarmament movement. This was particularly true after the International Women's Peace Conference of the International Congress of Women in 1915 for which more than 1,200 women from 12 countries travelled to The Hague, inspired by Dr Aletta Jacobs's 'Call to the Women of All Nations'.[67] This led to the creation of the Women's International League for Peace and Freedom (WILPF) and subsequently to the creation of national branches.[68] In the following decades, all branches united around the WILPF objectives: to contribute to the promotion of global disarmament, to the peaceful settlement of disputes by the PCA and PCIJ, to the

[65] For example, an interview with Dr Catherine Brölmann about the personal history of her friend Renée Kotting-Menko (1913–2004).

[66] This is paradoxically also visible in the work of Gezina van der Molen.

[67] A. Jacobs, 'Call to the Women of All Nations' *Jus Suffragii: Monthly Organ of the International Woman Suffrage Alliance*, 9 (6) (1 March 1915) 245–246, as also published in S. Oldfield (ed.), *International Woman Suffrage. Ius Suffragii 1913–1920*, Vol. II (November 1914 – September 1916) (2003 ed) 63.

[68] L. Jansen, *Women's International League for Peace and Freedom: Den Haag 1915–2015* (2015). See also G. Bussey en Margaret Tims, *Pioneers for Peace: Women's International League for Peace and Freedom 1915–1965* (1980). I will touch on the pacifist movement in a portrayal of Bertha von Suttner for Immi Tallgren's project. The suffragism and pacifism of many women did not, however, necessarily go hand in hand with anti-colonialism. Aletta Jacobs is a case in point. This first-wave feminism was generally less sensitive to the liberation of non-European women.

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success of the League of Nations and its collective security system and to social justice; in short, to the development of the international legal order and its institutions.

In the Netherlands, De Kanter-van Hettinga Tromp was one of the frontrunners in the peace and women's emancipation movements during the late 1920s and 1930s. Being from an upper-class family and married to a Dutch diplomat, Dr P. J. de Kanter, she moved easily within the social circles of the Remonstrants (remember Grotius), social democrats and privileged of Dutch society, with their pacifist and international law leanings.

For the purposes of this article, let it suffice to say that when one examines the professionalization of Dutch international law between the wars and considers the increased public debate on issues such as prevention of war and promotion of the development of international law, legal institutions and peaceful settlement of conflicts, as an aspect (vector 2) of this professionalization, every choice excluding peace movements and their role in the (organization of) public debate comes down to excluding women's voices and 'the female experience' from the history of international law's professionalization in the interwar Netherlands. War and the laws of war were a man's business. While Oppenheim's and Van Vollenhoven's former female students – and evidently women at other law schools – had no access to paid jobs in academia or to prestigious positions in The Hague (vector 3), many, including De Kanter-van Hettinga Tromp, went on to create and serve an infrastructure and a physical and figurative space for Dutch public debate, which the male professors then could occupy with their 'specific expertise' on the League of Nations and the development of international law and institutions.[69]

When one dives into the archives of the women's and peace movements of the 1930s (and well after!), De Kanter-van Hettinga Tromp is quite prominently present.[70] Associations for peace and the League of Nations needed to be run; professors of international law needed to be invited for talks;[71] foundations had to be managed and budgets and annual reports produced;[72] programmes of conferences and evening lectures had to be stencilled; coffee and drinks needed to be served and magazines and newsletters written and circulated, and so on. In all of these practices, we encounter the name of De Kanter-van Hettinga Tromp. She played a decisive role in the establishment of

[69] De Waele, *supra* note 3, at 1015.

[70] She was a prominent figure in the Dutch peace and League of Nations movement, for example in the Algemeene Nederlandsche Vrouwen Vredebond [General Dutch Women's Peace League], and an active member of the Dutch branch of the WILPF; see also the peace movement online archive at the Peace Palace Library, for example 'Memoranda van Mevr. Mr. B.J.A. de Kanter-van Hettinga Tromp voor de studiebijeenkomst op 28 November 1935' [a memo written by De Kanter-van Hettinga Tromp in preparation of a study meeting on 28 November 1935] https://www.peacepalacelibrary.nl/pmfiles/N24-36-030.pdf (discussing the League of Nations and its shortcomings in dealing with conflicts between China and Japan and Italy and Abyssinia, as well as (Van Vollenhoven's) idea of an international police force supervised by an international court).

[71] Another initiative coming from the peace bureau of the Vredeshuis in 1939 was a conference on sustainable peace, *Beginselen van Internationale samenwerking, gericht op een blijvenden vrede* [Principles of International Cooperation, aimed at sustainable peace], which would take place in April 1940.

[72] B.J.A. de Kanter-van Hettinga Tromp, *Jaarverslag 1934–1935* [Annual Report 1934–1935], *De Vredeskamer* (1935) 1–11, available at https://bit.ly/3nzS7kQ.

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the *Vredeshuis* (House of Peace) in 1934 in The Hague by one of the many peace organizations, the foundation '*de Vredeskamer*' (the Peace Chamber), active at the time.[73] The *Vredeshuis*, with its library, study room and meeting hall, aimed to offer a home to various peace and women's organizations. It also facilitated public access to information on the national and international peace movements, the League of Nations and international legal institutions such as the PCA and PCIJ, at a time when the Peace Palace Library was not easily accessible, and accommodated 'discussions on war and peace'.[74] The *Vredeshuis* was opened in May 1934 in the presence of PCIJ judges Walther Schücking[75] and Willem van Eysinga, as De Kanter-van Hettinga Tromp, secretary of the Foundation, writes in the annual report of its first year.[76] When in 1936, *de Vredeskamer* merged with another peace organization into the *Centraal Vredes Bureau* (Central Peace Office, CVB), De Kanter-van Hettinga Tromp acceded to the new board, while the revolutionary socialist poet Henriette Roland Holst-van der Schalk, a friend of social liberal Cornelis van Vollenhoven, became one of the members of the supervisory board.[77] One of the CVB brochures articulated their view on the Dutch 'peace through law' tradition: Erasmus, Grotius and Van Vollenhoven were each portrayed and quoted on the cover.[78] Other Dutch international law scholars, such as Antoon Struycken (1873–1923) and Jean François (1889–1973), who opposed pacifistic thinking were left unmentioned.[79]

Even if one is not interested in writing a 'women's history', but aims to write a history of international law's interwar professionalization, the 'female experience' must be included. Professionalization understood as 'professorization' mobilizes the three vectors in very restricted ways, leading to an exclusion of women who, from the outside of the academia, contributed to the scholarship and participated in academic activities. Moreover, they were at the forefront of social movements and created a space for public debate on international law and peace, in which male international law professors could then take position. Methodological choices matter when writing international legal history.[80] In De Waele's article, these choices amount to the

[73] See W. H. Posthumus-van der Goot at al., *Van moeder op dochter: Het aandeel van de vrouw in een veranderende wereld* (2d ed., 1948) 507.

[74] De Kanter-van Hettinga Tromp, *supra* note 72, at i.

[75] Walther Schücking was a regular contributor to the pacifist journal *Die Friedens-warte*, founded by Bertha von Suttner and Alfred Friedl, who influenced his pacifist ideas. See, e.g., A. von Bogdandy and I. Venzke, *In Whose Name? A Public Law Theory of Adjudication* (2014) 50–52.

[76] De Kanter-van Hettinga Tromp, *supra* note 72, at 3.

[77] See Huygens Institute, http://resources.huygens.knaw.nl/rapportencentraleinlichtingendienst/data/IndexResultaten/IndexPersoon?reconstructieid=128&persoon=ja (15 October 2020). She was also a member of the board of the Dutch branch of the League Against Imperialism and Colonial Oppression, which was established by the International Congress against Colonial Oppression and Imperialism in Brussels in 1927. She represented the Dutch branch at this Brussels Conference, which was also attended by Mohammed Hatta and other (student) members of the Indonesian Nationalist movement. See *NRC* of 18 February 1927 https://hdl.handle.net/10622/ARCH00804.65.

[78] Addendum to 9 *De vrouw en de Vrede* (1 November 1936), available at https://bit.ly/34FRaip.

[79] Beunders, *supra* note 29, at 102–103.

[80] See also Tallgren, *supra* note 39, at 387ff.

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reproduction of a gendered history. As I hope to have shown, by simply asking 'the woman question', we prevent women from remaining invisible; and by asking '*why* were they largely absent?', we may enrich our histories by pointing to explanations for their absence.

4 Dutch Colonialism Between the Wars

When we turn to research on the relationship between the Dutch Empire and international law, it is clear that a lot of work needs to be done.[81] My point here is merely that a history of Dutch interwar international law scholarship and its 'professionalization' that excludes Dutch colonialism of the 1920s and 1930s is problematic. I will first support this claim with some background remarks on modern Dutch imperialism, and then provide three short illustrations again following the three vectors that De Waele uses to point to this 'professionalization'.

A *Dutch Modern Imperialism in the Late 19th and Early 20th Centuries*

At the time, mainland Netherlands thought of itself as the 'motherland' to a vast *Rijk*, or empire, which included territories in South America, such as Suriname and Curaçao, as well as the territory of today's Republic of Indonesia in Asia. These colonies were important to the Netherlands' position within the international community and in international affairs. They gave the 'motherland' the clout and prestige it would not have had otherwise. Mainland Netherlands, its government and most of its society furthered a perception of the country as a major world power.[82] As such, the Dutch Empire was a driving factor in how the Dutch viewed the international legal order and its development at the time. It is true that the Netherlands took pride in being 'an original member of the League of Nations';[83] however, the country was also frustrated about not being a player at the main table. Also for that reason, it was eager to keep its colonies.

So while De Waele mentions that 'the Netherlands was behind the curve as regards the emancipation of international law as an independent scholarly discipline',[84] I suggest exploring *why* this was the case. If the Netherlands was 'behind the curve' while believing it was not 'punch[ing] far below their weight' in international affairs, should we not explore the implications of Dutch self-understanding as a colonial empire for Dutch interwar international law scholarship and practice? And, what role Dutch colonialism had, for example, in the 'rising demand for "grammarians"'?[85]

[81] While I am developing a bigger research project on the relationship between international law and the Dutch Empire, here I merely aim to show that interwar colonialism and the questions it raised cannot be set aside when examining the Dutch international legal tradition of the period.

[82] Van Sas, 'De kracht van Nederland: Nationaliteit en buitenlands beleid', in Van Sas, *supra* note 29, at 9, 12–13.

[83] De Waele, *supra* note 3, at 1007.

[84] *Ibid.*, at 1011.

[85] *Ibid.*, at 1011.

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Dutch historians have shown that in the spirit of modern imperialism, the Netherlands made efforts to secure a firmer grip on the colonies, rather than foster their independence.[86] In Asia, this led to the Aceh War (1873–1942), to which I will return, fought to secure the oil-rich Sumatran state of Aceh for the colonial empire. The interests of the Netherlands and Dutch Royal Oil were fully aligned. In general, Dutch big business had a massive financial stake in Dutch colonialism. After 1900, socialists in the Netherlands condemned Dutch conduct in the East Indies as 'imperialistic'.[87] They were, however, an exception.

In a way, the critique of the exploitation of the Indonesian peoples led to a classic move in the history of international law and empire. In 1901, the Dutch government proclaimed a so-called 'ethical policy' that would remain in place well into the interwar period. This colonial policy bolstered Dutch colonial rule under the guise of the social, economic and political elevation of the Indonesian peoples; the 'superior' motherland governed the colonies supposedly in the service of the colony and its peoples.[88] As the historian Cees Fasseur has explained, the 'ethical policy' was legitimized by such ominous words as the 'duty' and 'responsibility' of the Netherlands to develop and 'educate' the colonized peoples.[89] One is reminded of Anthony Anghie's words: 'fundamentally animated by the civilizing mission that is an inherent aspect of imperial expansion which, from time immemorial, has presented itself as improving the lives of conquered peoples. This mission is based on a crude distinction between the civilized and the uncivilized [...]'.[90]

One of the 'extraordinary gentlemen', Cornelis Van Vollenhoven, was a frontrunner in the rejection of the economic exploitation of the colonies and in the articulation of 'the ethical policy'.[91] Soon after the defence of his doctoral thesis, *Omtrek en Inhoud van het Internationaal Recht* (*Scope and Content of International Law*) (1898),[92] Van Vollenhoven came to serve under the Minister for the Colonies (and a plantation-owner in Deli), J. T. Cremer. For a few years he was closely involved in national politics. Soon, however, he subscribed to the critique of the established, exploitative Dutch colonial policy and advocated the 'emancipation' (*ontvoogding*) and 'self-government' of the Dutch East Indies.[93] That said, while Van Vollenhoven spoke out against the colonial rule which treated the Dutch East Indies as 'property' to be owned and exploited to generate a budget surplus, his views on the development and 'civilization' of the Dutch East Indies by the 'chosen' Dutch were ultimately paternalistic and imbued

[86] Van Sas, *supra* note 82, at 14.

[87] Kuitenbrouwer, 'Het imperialisme-debat in de Nederlandse geschiedschrijving', 113 *BMGN – Low Countries Historical Review* (*BMGN*) (1998) 56.

[88] C. Fasseur, 'Nederland en het Indonesische nationalisme: De balans nog eens opgemaakt', 99 *BMGN* (1984) 21.

[89] *Ibid.*, at 28.

[90] Anghie, 'On Critique and the Other', in Orford, *supra* note 10, at 394.

[91] De Kanter-Van Hettinga Tromp and Eyffinger, *supra* note 51, at 8.

[92] C. van Vollenhoven, *Omtrek en Inhoud van het Internationaal Recht* (1898).

[93] van Vollenhoven, 'De Ontvoogding van Indië; Samenhang der maatregelen en plannen (1919)', in C. van Vollenhoven, *Verspreide Geschriften* Vol III (1935) 256–278.

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with a sense of European superiority in governance and culture.[94] Inevitably, 'the ethical policy' supported the colonial grip of the Dutch as 'guardians' who had to educate and discipline the indigenous peoples and their traditional leaders.[95] The colonial government suppressed Indonesian nationalism with a reign of terror in the 1920s. Until World War II, Dutch colonial rule of the East Indies can best be characterized as a 'police state'.[96]

After Van Vollenhoven took up the Leiden Chair of constitutional and administrative law of the colonies and indigenous *adat* law of the Dutch East Indies in 1901, he argued for the recognition of indigenous *adat* law as part of the legal system of the Dutch East Indies. His lifelong commitment to the anthropological description and the development of *adat* law may have stemmed from the idea that it would support 'healthy nationalism' and contribute to a fair justice system for the indigenous peoples. However, cultivating the *adat* law system was equally conducive to the racism underpinning Dutch colonial rule and to the reinforcement of cultural differences existing within the empire. As such, it was understood, including by some of Van Vollenhoven's own students, to undermine Indonesian nationalism.[97] Van Vollenhoven pushed for Indonesian autonomy, (colonial) constitutional reform and respectful treatment of the native employees, but his self-perception as educator and expert was not devoid of paternalism and civilizational zeal. That said, Van Vollenhoven was angered by the discrimination against his former Indonesian (doctoral) students who were barred from the colonial governmental and administrative system. After all, his students were well educated:

> My Javanese friends here encounter nothing but obstruction at the Colonial Department. [. . .] they feel it, just as I do. [. . .] They are thoroughly embittered by this, and rightly so. They see the whole Dutch East Indies question is played out away from the ballot box, that the voters, even those of goodwill, know nothing and could not care less; just think of the foolish questions they are asked over and over again by friendly professors.[98]

The (law) education of future colonial civil servants played a significant role in the interwar years of the Dutch colonial project. Ultimately, the Indonesian peoples and elites would be able to rule themselves; however, the 'ethical policy' was not aimed at a quick transfer of power to an indigenous Indonesian government and its civil servants. Criticisms of the 'ethical' colonial policy, in particular where it pertained to education, were largely ignored.[99] Contrary to the British Indian Civil Service, the Dutch kept fully separate administrative systems based on race.[100]

[94] De Beaufort, *supra* note 50, denies a general sense of superiority. This calls for further research, but language such as 'ontvoogding' suggests at least ambivalence on this point.

[95] See Fasseur, 'Hemelse godin of melkgevende koe: de Leidse universiteit en de Indische ambtenaarsopleiding 1825–1925', 103 *BMGN* (1988) 209; see also Wertheim, 'Snouck Hurgronje en de ethiek van sociaalwetenschappelijk onderzoek', 144 *De Gids* (1981) 323.

[96] H. Burgers, *De garoeda en de ooievaar: Indonesië van kolonie tot nationale staat* (2010) 228.

[97] Fasseur, 'De nadagen van de ethische politiek', Paper presented at symposium *Van ethische politiek naar dekolonisatie*, Vrije Universiteit, Amsterdam, 9 May 2012, available at https://bit.ly/2GAPYF6.

[98] De Beaufort, *supra* note 50, at 187, cited in and translated by De Kanter-van Hettinga Tromp and Eyffinger, *supra* note 51, 15.

[99] Fasseur, *supra* note 88, at 22ff.

[100] Fasseur, *supra* note 95, at 214.

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B *Interwar Academic Curricula: (Dis)entanglement, Colonialism and Controversy*

During the interwar period, as De Waele points out, the legal curriculum at Dutch universities was subject to change: public international law had moved from 'a marginal place in academia' into a more central place, with a growing number of specific academic chairs and of professors teaching international law courses. That said, it is good to keep in mind that public international law as an independent sub-discipline had to come from afar. It became 'emancipat[ed]' from the domains of constitutional law and colonial law – legal fields that were deeply intertwined at the time – in what was only a gradual transition. In the meantime much of the practical entanglement of these legal fields persists.

Since 1922, the Dutch Constitution no longer designated the Dutch East Indies as a 'colony'. Together with Suriname and Curaçao, they were now part of the territory of the Kingdom of the Netherlands. However, the Dutch Constitution applied only to mainland Netherlands. Hence, there was no equal legal footing within the Kingdom of The Netherlands. The Netherlands continued to exercise hegemony and sovereignty over Indonesia, and many of the 'extraordinary gentlemen' were involved in discussions on Dutch colonial rule in the East Indies, which was steeped in different visions of the Dutch Empire and international law.

Van Vollenhoven's professional life testifies to this entanglement of the Dutch Empire and international law in legal thought and practice. His outlook on colonial constitutional and administrative law, indigenous *adat* law and international law was understood as progressive at the time, while today it might at best be described as amounting to 'ethical imperialism'.[101] Underlying all of Van Vollenhoven's work was the idea of a three-step world community under a 'universal legal system' in which, for example, the law of indigenous *adat* provinces (*adat rechtskringen*) would be a part of national law and society, in turn governed by the rule of international law.[102] Van Vollenhoven's 'ethical' colonial policy was linked to his international ethical policy (to which I will briefly return below).[103] As for this entangled relationship between colonial policy and foreign policy, he was no exception.

In other words, teaching and writing on international law in the interwar period was still very much embedded within the Dutch colonial project. Various opinions on the future of the Dutch colonial empire were passed around in Dutch politics, which had implications for international law. Liberal and confessional parties tended to emphasize the idea of 'one empire', while socialists tended to support Indonesian nationalism and independence. How did these views on Dutch colonialism differ among the 'extraordinary gentlemen' and how did they affect their international legal arguments? I cannot offer an answer here, and further research is needed on this issue.

[101] Boogman, 'Achtergronden, tendencies en tradities van het buitenlands beleid van Nederland (eind zestiende eeuw – 1940)', in Van Sas, *supra* note 29, at 16, 31.

[102] J.M. Otto, *Reële rechtszekerheid in ontwikkelingslanden: Inaugural lecture* (2000) 3.

[103] H. te Velde in Remieg Aerts et al., *Land van kleine gebaren: Een politieke geschiedenis van Nederland 1780–2012* (1999) 169.

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Arguably, the educational controversy between the Universities of Leiden and Utrecht about Indological education serves to illustrate the different approaches to Dutch colonialism and the implications for (law) education.

Similar to the East India College founded in 1806 in Hailey, UK, Leiden University had been responsible for the academic education of the native civil servants of the Dutch East Indies since 1902.[104] Cornelis van Vollenhoven lectured as part of the programme, which was housed in the faculties of law and the humanities.[105] The Leiden programme for native East Indies civil servants and governmental jurists was animated by the paternalism of the interwar 'ethical policy': the Indonesian people needed to be educated and guided towards self-government and independence, while in the meantime a colonial judiciary working with Indonesian jurists – provided they were assimilated into the Dutch system and mindset – would be cost-efficient. The Leiden programme ultimately served to support rather than undermine the colonial government.

Thanks to his Indonesian students in Leiden, Van Vollenhoven was close to the Indonesian nationalist movement in the Netherlands led by some of his students as well as by a student from Rotterdam, the future vice-president of Indonesia, Mohammed Hatta.[106] Hatta attacked the racial discrimination of colonialism and advocated self-determination and the right to national independence. When his voice, and that of the movement he was part of, became too loud, Minister of Justice Donner had him arrested in 1928. During the early 1920s, Hatta voiced resistance against native Indonesian participation in the *Volksraad* (the representative body in Batavia established in 1918) on the basis of the principle of 'non-cooperation' with the oppressors.[107] Back in the colony in the early 1930s, Hatta and Soekarno were arrested by the colonial government for this position and they were sent away to the periphery of the land. In his lectures,[108] journalism[109] and other writings, Van Vollenhoven compared the call for Indonesian independence to the Dutch call for independence from the Spanish Empire in the 16th and 17th centuries. In the 1922 newspaper article '1572 and Indië', Van Vollenhoven stated that for centuries the law of nations had been merely a European international law, of and for Christian nations, but that a new time had come and international law applied to the Indonesian people and supported their demand for freedom and accountability (without breaking all bonds).[110]

[104] Fasseur, *supra* note 95.

[105] *Ibid.*

[106] De Beaufort, *supra* note 50. The Indische Vereniging (Indonesian Association) was a society of a social, non-political nature established in 1909. In 1924, however, it developed into a political movement on Indonesian nationalist basis, Perhimpuan Indonesia.

[107] Burgers, *supra* note 96, at 152.

[108] De Kanter-van Hettinga Tromp and Eyffinger, *supra* note 51, at 9–16; De Beaufort, *supra* note 50, at 176 *et seq* on his relations with his (Indonesian) students; Fasseur, *supra* note 94.

[109] See, e.g., Van Vollenhoven's discussion of 'self-determination for the East Indies' in *NRC* on 23 July 1921, published as a series of three articles '*Indië* in de Grondwet' [the *Indies* in the Constitution], also included in C. van Vollenhoven and F. M. van Asbeck (eds), *Mr. C. van Vollenhoven's Verspreide Geschriften:* Vol. III: *De Indiën, herdenkingen, overige schriften, registers* (1935) 326.

[110] 'Autonomie van Indië' [Autonomy of the Indies] series in *NRC* 3–6 April 1922, also included in: *VG* III (n 109) at 360ff.

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Van Vollenhoven and his Leiden colleagues were increasingly criticized for their views on the Dutch East Indies' road to self-government, the establishment of the *Volksraad* and for fanning Indonesian nationalism by their teaching. After his contribution *Proeve van eene Staatsregeling voor Nederlandsch-Indië* (1922), Van Vollenhoven became the target of harsh criticism on the part of his Utrecht colleagues. They complained about the content of his courses and lectures given to Indonesian law students in Leiden. As an advocate of Indonesian autonomy and constitutional reform, Van Vollenhoven came to be perceived as a threat to Dutch 'big business' and was accused of undermining the established colonial policy and interests.[111] The controversy around his teaching gave rise to many publications in newspapers and magazines. In 1925, Van Vollenhoven's Utrecht colleagues, led by professor Jan de Louter (1847–1932) and PCIJ judge Bernard Loder (1849–1935), together with entrepreneurs, trades and planters, requested that the University of Utrecht establish an alternative Indologist curriculum and faculty. Leiden lost its monopoly on Indologist studies. In Utrecht, the so-called 'sugar and oil faculty' was established to give future native civil servants and jurists an alternative education.[112] In the same year, Van Vollenhoven defended himself and his colleagues in the prominent cultural and literary magazine *De Gids* against 'The attack on Leiden' ['*De aanslag op Leiden*'] mounted by his Utrecht colleagues.[113]

Underlying the controversy about curricula among the various professors were differing outlooks on Dutch colonialism. Utrecht may seem to have adhered to the vision of Dutch domination and subordination of the Dutch East Indies to the 'motherland', while Leiden may seem to have supported Indonesian autonomy and national independence through a process of gradual 'emancipation' (*ontvoogding*). In hindsight, however, when one reads Van Vollenhoven's defence, one can only agree with his biographer: he missed the opportunity to take a firmer stand on the rights of the Indonesian people. Ultimately, in line with the 'ethical policy', Leiden professors affirmed their commitment to 'the civilizing mission' of the Dutch colonial rule in the East Indies. It is hard to miss the note of paternalism and the racial bias of Dutch law schools at the time, laid bare by this controversy. Indonesian graduates would not be allowed to serve in the Dutch colonial administrative system (*Binnenlands Bestuur*), but only in the native administration (*Inlands Bestuur*). Institutional racism and white supremacy underpinned the colonial rule.[114]

In brief, the conflict over the education of native civil servants and therewith over the Dutch Empire among (international) law professors from Leiden and Utrecht, as well other Dutch universities, illustrates how future research into the professionalization of Dutch interwar international legal scholarship needs to account for the entanglement of these men in the Dutch colonial project.

[111] Van Vollenhoven, 'De aanslag op Leiden', 89 *De Gids* (1925) 248, 248.

[112] Fasseur, *supra* note 95, at 224. This name goes to the financers of the new school, among which Dutch oil company *Koninklijke Nederlandsche Petroleum Maatschappij*, and the interests it aimed to secure.

[113] Van Vollenhoven, *supra* note 111.

[114] Cf. e.g., *Wet op de Staatsinrichting van Nederlandsch-Indië* [Law on the form of government of the Dutch Indies], entry into force on 1 January 1926, Art. 163.

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C *Experts in the Public Debate*

De Waele shows how the contributions of the Dutch interwar scholars to the public debate often centred around Dutch neutrality policy, the League of Nations with its collective security system and peace and disarmament. However, as I have shown above, in the very same newspapers and magazines, they contributed to discussions on interrelated colonial issues.

Public debate often touched on both the Dutch Empire and international law. The Atlantic Charter and the League of Nations Treaty recognized the right to self-determination. But what did this right entail? Did it amount to internal or external self-determination? How should the Dutch Empire develop in light of international law? How should the Netherlands navigate international law, while generally intent on holding on to the Dutch colonies? After World War I, the legal issues at stake often involved colonial constitutional law and international law: the title to colonial rule in the Dutch East Indies, or the right to self-determination, self-government and independence of the indigenous Indonesian peoples, as well as questions of territory, occupation and (agricultural) land.[115] The Aceh War, fought since the late 19th century against what, in terms of international law, was an independent Sumatran sultanate, and which continued after World War I, features rather uncritically in the discussion, with the exception perhaps coming from the socialists.[116] Discussions further touched on fundamental rights in the Dutch East Indies,[117] international relations of the Kingdom with Venezuela,[118] or with Japan or China, the League of Nations and the Mandate system, the law of the sea and sea straits, and so on and so forth. These issues gave rise to discussions to which most of the 'extraordinary gentlemen' contributed as advisors to the Dutch Government (to which I will come back) or by writing for the national newspaper *NRC*, or for *De Gids* or other journals.

Van Vollenhoven was not just prolific on the Dutch East Indies question. He also participated in discussions in the press on issues of disarmament, peace and security, and was perhaps most determined on his 'plan' to create an international police force to enforce international law under supervision of an international court. His ethical colonial and foreign policy views were interrelated, informed by the idea that the Netherlands could play a leading role in the construction of a Grotian international legal order based on 'altruism' rather than on 'egoism'.[119] The Amsterdam professor

[115] On Indonesia, see, e.g., C. van Vollenhoven, *De Indonesiër en zijn grond* (1919); Hasselman, 'Indonesische grondrechten en Nederlandsche juristen', 84 *De Gids* (1920) 468.

[116] See, e.g., for a rather uncritical discussion of how Aceh became part of the Kingdom, Van Vollenhoven, *supra* note 109, at 232.

[117] See, e.g., Hasselman, 'Indonesische grondrechten en Nederlandsche juristen', 84 *De Gids* (1920) 465.

[118] Van Kleffens, '*De Internationaalrechtelijke Betrekkingen Tusschen Nederland en Venezuela, 1816–1920* by K.H. Corporaal', 15 *AJIL* (1921) 486, at 487: 'The [international legal] relations between the Netherlands and Venezuela are determined by the existence of a Dutch colony, the Island of Curaçao, close to the Venezuelan coast.' This state of affairs continued throughout the interwar period, and today Curaçao is still part of the Kingdom of The Netherlands.

[119] Van Vollenhoven lectured on 'Altruism in the law and state' in Leiden in 1917, see De Kanter-van Hettinga Tromp and Eyffinger, *supra* note 51, at 21–22. See also Van Vollenhoven, *De Drie Treden van het Volkenrecht* (1918) [The Three Stages in the Evolution of the Law of Nations].

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Antoon Struycken (1873–1923) warned against the dangers of Van Vollenhoven's plan in the Hague theatre Diligentia in 1913, and their debate would continue after World War I. De Louter joined the critics, but Van Vollenhoven remained steadfast in both his academic and public writings.

In all Dutch societal 'pillars', peace associations and League of Nations associations organized numerous lectures, seminars and conferences. Some were also dedicated to colonial issues. As an example we could mention the conference on *Het Abessijnsch-Italiaansch conflict en de Volkenbond* (The Abyssinian-Italian conflict and the League of Nations) organized by Vereeniging voor Volkenbond en Vrede (the Association for the League of Nations and Peace) in 1935.[120] Rather exceptionally, De Waele mentions Nijmegen Catholic University professor Robert Regout's support for the (Vatican-sanctioned) colonial war of Italy in Abyssinia by mobilizing the classic Catholic just-war theory.[121] Regout was active in the Catholic peace movement; he claimed to understand the need for expansion, but argued that this should not involve a war of aggression.[122] His 1936 speech was front-page news in – perhaps one of Van Vollenhoven's newspapers – the *Leidsche Courant*.[123] Telders similarly wrote for *De Gids* on the annexation of Abyssinia by fellow League member state Italy.[124] There, Telders called Struycken a 'sceptic' resigned to the impotence of the League from the beginning of the Italian aggression.[125] Two years later, in the same magazine, Telders explained how Struycken's realism in international affairs and about the League of Nations was in part grounded in his awareness that colonies would soon 'grow[] into self-conscious nations, which [would] soon demand their own constitutional form and set-up'.[126]

This goes to illustrate how the Dutch interwar scholars, who were visible in the general media as experts on international law, and as such were seen as the face of the 'true profession', were equally steeped in Dutch colonialism when they participated in the public debate. When unpacking the history of the legal profession, the role of the Dutch Empire has to be taken on board.

[120] *Het Abessijnsch-Italiaansch conflict en de Volkenbond. Redevoeringen van prof. mr. V.H. Rutgers, mr. G. van der Bergh, mr. G.A. Boon, jhr. mr. DJ. de Geer, mr. A.M.Joekes, mr. R. Regout S.J. in de Openbare Vergadering op 16 October 1935 te Amsterdam*, published by the Vereeniging voor Volkenbond en Vrede [Association for the League of Nations and Peace].

[121] De Waele, *supra* note 3, at 1016.

[122] See 'Pater Dr. Rob. Regout S.J. over den Volkenbond' [Father Dr. Rob. Regout S.J. on the League of Nations], *Pro Pace* (October 1935) 94, at 94–95. In that same issue of *Pro Pace*, there is an article on the Abyssinian–Italian conflict published with the title 'Waarom spreekt de Paus niet?' [Why does the Pope not speak up?], at 82.

[123] See 'De R.K. Vredesbond in Nederland. De Paus en de Vrede' [The Roman Catholic Peace League in the Netherlands. The Pope and the Peace], *Leidsche Courant* (18 February 1936) 1, at 1.

[124] Telders, 'De Ethiopische les', 100 *De Gids* (1936) 98.

[125] *Ibid.* at 103.

[126] Telders, 'Struycken en de Volkenbond', 102 *De Gids* (1938) 306, at 313–314.

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D *National Advisors on Colonial and International Legal Issues*

De Waele argues that the professionalization of Dutch international law can be observed in the 'extraordinary gentlemen' stepping in as internal and external advisors of the Dutch government and as international civil servants. In this role, too, Dutch colonialism was an inescapable, even if mostly implicit, part of the professional life of Dutch interwar scholars.

For example, De Louter lived in the Dutch East Indies from 1872 to 1877, where he taught at a *gymnasium* before joining Utrecht University as a professor of colonial (administrative) law. He published a six-volume work on the constitutional and administrative law of the Dutch East Indies.[127] Frederik Baron van Asbeck (1889–1968) advised the Governor of the Dutch East Indies and the Ministry for the Colonies on international relations of the Dutch East Indies (1921–1930) and joined the Permanent Mandates Commission in 1935.[128] Both De Louter's student Jan Hendrik Verzijl (1888–1987) and Van Vollenhoven were members of the Mixed Commissions, as De Waele points out.[129] In addition to his experience as advisor to the Minister for the Colonies around the turn of the century, Van Vollenhoven was on an advisory committee responsible for drafting a constitutional arrangement for the Dutch East Indies after World War I together with his Leiden colleague Jacques Oppenheim (1849–1924), whose professorial assignment included international law. The arrangement kept *adat* law in place.

The story outline here is of course highly incomplete and pertains only to the Dutch East Indies, omitting colonial issues related to Suriname and Curaçao. However, my point is that when the third 'vector' of 'professionalization' is discussed – that is, the Dutch interwar scholars moving into non-academic professional positions – it is hard to ignore the role of Dutch colonialism in their work. This role deserves serious scrutiny, in particular drawing on Dutch historians who have pointed to the influence of the Dutch Empire on the interpretation and application of international law.

Niek van Sas and Maarten Kuitenbrouwer have pointed out that Dutch internationalism was not merely an idealism or well-meaning cosmopolitanism.[130] It was aimed at strengthening the Dutch international position also by means of international law. Historian Maarten Kuitenbrouwer has shown how in the late 19th century in The Hague and Batavia the Aceh War led to discussions on the application of the emerging laws of war. After initial hesitation, some legal advisors started to suggest that international law was not binding in relations between 'civilized nations', specifically

[127] De Louter, *Handleiding tot de kennis van het staats- en administratief recht van Nederlandsch-Indië*, 6 vols (1875–1914).

[128] See the inventory of his archive 'Inventaris van het archief van prof. mr. dr. F.M. Baron van Asbeck [levensjaren 1889–1968]; en enkele verwanten over de jaren 1902–1993', available online at the National Archive: https://www.nationaalarchief.nl/onderzoeken/archief/2.21.183.03.

[129] De Waele, *supra* note 3, at 1021.

[130] Van Sas, *supra* note 82, at 13–14; Kuitenbrouwer, *supra* note 86; M. Kuitenbrouwer, *Nederland en de opkomst van het moderne imperialisme: Koloniën en buitenlandse politiek 1870–1902* (1985).

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the Netherlands, and 'uncivilized nations', specifically the people of Aceh.[131] Tobias Asser had initially qualified the reasoning and argued that 'weaker' indigenous nations should not be placed outside the legal order completely; however, he considered special 'police actions or measures' legitimate because of Dutch supremacy and responsibility.[132] The understanding that international law applied differently in Europe, among 'civilized nations', than it did in Asia, where the Dutch colonial power waged a war against the Aceh people, became dominant. The military historian Petra Groen identified this double standard in the application of the laws of war as well established by 1900 and continuing to inform the mindset in The Hague and Batavia during the interwar period.[133] As such, violence used in the Dutch colonies, and in particular during the Aceh War, was not in violation of international law – even though it exceeded the violence permitted by the laws of war – simply because the law did not apply to 'uncivilized nations'.[134] In the East Indies, the Dutch colonial power did not feel bound by the same international law it fought for in The Hague and considered applicable in Europe. Internal and external legal advisors were involved to develop these international legal justifications of the Aceh War. Late 19th- and early 20th-century Dutch foreign policy and international legal thought were tightly entangled with Dutch colonialism and colonial policy.[135] This entanglement calls for further research in the field of international legal history.

De Waele's study of the stronger engagement in international law practice of Dutch scholars as an indication of the 'professionalization' of Dutch interwar scholarship provokes deeper exploration of the implications of the Dutch Empire for these scholars' international legal arguments as discussed in the present article. Natural resources, free trade capitalism and 'the civilizing mission' were at the heart of both colonial and international law. Addressing the professionalization of one field without accounting for its entanglement with the other is problematic.

5 Conclusion

In his contribution, De Waele has brought a number of Dutch interwar scholars into focus for a broader *EJIL* audience. This is highly valuable. His article prompted me, however, to suggest an alternative, or at least complementary and more critical, reading of Dutch interwar international law.

As shown above, methodological choices matter, since they determine whether traditional, gender-biased and imperial history, with its well-entrenched absences, is reproduced or whether innovative insights about the history of international law,

[131] Kuitenbrouwer, *supra* note 130, at 73. As Groen explains, this attitude continues during the interwar period: see Groen, 'Geweld en geweten. Koloniale oorlogvoering en militaire ethiek in Nederlands-Indië, 1816–1941', 182 *Militaire Spectator* (2013) 248.

[132] Kuitenbrouwer, *supra* note 130, at 74.

[133] Groen, *supra* note 131, at 266.

[134] *Ibid.*

[135] Te Velde in Remieg Aerts et al., *supra* note 103, at 169.

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specifically in The Netherlands, are brought forward. International legal history has all too often been constructed based on biased categories and concepts. By raising 'the woman question' and the issue of Dutch colonialism, I have aimed to underscore the urgent need for further inquiry into how race and gender discrimination were institutionalized in Dutch international law (as a profession) in the interwar period. As this preliminary research aims to show, it is high time to examine the role of Dutch international law and lawyers in the Dutch Empire – and vice versa. Much historical and socio-legal work is needed.[136] We need a history writing that 'diminish[es] the power of blindness, not for antiquarian interest in detail but so as to see more clearly into the future'.[137]

A critical history can contribute to our understanding of how international law as a profession was constructed in the Netherlands and beyond during the interwar period, and how race and gender were deeply entrenched in this construction. Marking absences lies at the heart of critical history, which should locate gender and race in international legal history. The history we choose determines the people and institutions we invest with power and authority.

[136] There is a very recent, wonderful example of history writing based on 'marginalia and footnotes', by Kalyani Ramnath. She provides a history of decolonization and international law by focusing on the Utrecht professor Jan Hendrik Verzijl and a 'recovery of debt' court case involving a Tamil-speaking Chettiar woman in a post-World War II British India. See Ramnath, 'Intertwined Itineraries: Debt, Decolonization, and International Law in Post-World War II South Asia', 38 *Law and History Review* (2020) 1.

[137] Koskenniemi, 'Histories of International Law: Dealing with Eurocentrism' 19 *Rechtsgeschichte* (2011) 152, at 176.

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