PAUL SCHOLTEN AND THE FOUNDING OF THE BATAVIA RECHTSHOGESCHOOL

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ABSTRACT

“De student van inheemschen oorsprong moet leeren in eigen taal wetenschappelijk te denken.”
Paul Scholten, Report on Proposals for Batavia Rechtshogeschool, folder 70

As a prominent legal scholar, Paul Scholten’s works have been widely analyzed in the Netherlands, but his intellectual legacy in the founding of Batavia Rechtshogeschool in the Netherlands East Indies remains under-researched. This is a glaring absence considering the role of colonial legal education in shaping cognitive categories of justice among the (elite) autochthonous population.

In this paper, I examine Paul Scholten’s legacy in the founding of the Batavia Rechtshogeschool. More specifically, I trace Paul Scholten’s Neo-Kantian worldview in the curriculum and in the pedagogical outlook of the school, which manifested in his proposals to drop Latin from compulsory courses and to nurture autonomy among the students. Drawing my data from colonial official documents, papers of the Commission to Reform Native Rechtsschool, Paul Scholten’s personal archive, and various Dutch- and Malay-language newspapers in the Indies, I propose the following argument: I argue that in his pragmatic approach in designing the curriculum and in his deeply philosophical outlook in laying out the pedagogy for the Rechtshogeschool—both inspired by Neo-Kantian philosophy—Paul Scholten decisively liberalized legal education in the Indies from the confines of European elitism and classical-oriented education in the Netherlands.

The liberating nature of Paul Scholten’s intervention in the Rechtshogeschool’s founding arguably made the school’s graduates relevant in the upcoming upheaval in Indonesian history.

KEYWORDS

Batavia Rechtshogeschool, Colonial Legal Education, Paul Scholten, Netherlands East Indies, Indonesia, Legal Education Curriculum

CITE AS
INTRODUCTION

As a prominent legal scholar, Paul Scholten’s works have been widely analyzed in the Netherlands,[1] but his intellectual DNA on legal studies in the Netherlands East Indies remains under-researched. This is a glaring absence considering the role of colonial legal education in shaping cognitive categories of justice among elite Indonesians at the time.[2] The Digital Paul Scholten project has made previously inaccessible resources available for scholars outside the Netherlands to examine various Scholten-related topics. This paper benefits markedly from the project.

In this paper, I examine Paul Scholten’s legacy in the founding of the Batavia Rechtshogeschool. More specifically, I trace Paul Scholten’s Neo-Kantian worldview (levensbeschouwingen) in the curriculum and in the pedagogical outlook of the school. Scholten’s worldview emerged in his proposals to drop Latin from compulsory courses and to nurture autonomy among the students. These two proposals were controversial because first, eliminating Latin allegedly would shake the very foundation of legal science, a major part of which traced back to Roman law; and second, nurturing autonomy was feared to stoke the threat of nationalism.

Drawing my data from various sources,[3] I argue that in his pragmatic approach in designing the curriculum and in his deeply philosophical outlook in laying out the pedagogy for the Rechtshogeschool—both inspired by Neo-Kantian philosophy—Paul Scholten decisively liberalized legal education in the Indies from the confines of European elitism and classical-oriented education in the Netherlands. The liberating nature of Paul Scholten’s intervention in the Rechtshogeschool founding arguably made the school’s graduates relevant in the upcoming upheaval in Indonesian history.

I begin with an overview of the Baden School value theory that influenced Paul Scholten. This is followed by contrasting sentiments from Indonesians and Europeans in the Indies on the merit of Latin in the school curriculum, which set the mood in the colony. Afterwards, I present an outline of Scholten’s proposal to the founding committee and his ensuing discussion with the Indies colonial officials. I examine Scholten’s philosophy of science and pedagogy before wrapping up with several anecdotes that hint at Scholten’s enduring legacy. I conclude by calling for thorough research on how the Rechtshogeschool education laid out the foundation for conceptions of justice among legal scholars in the early years of postcolonial Indonesia.

THE BADEN SCHOOL VALUE THEORY AND PAUL SCHOLTEN

Paul Scholten was known to be committed to Baden School Neo-Kantian value theory.[4] Herman Dooyewerd, a famous Dutch legal scholar and Scholten’s contemporary, observed Scholten as being, “…strongly influenced by the Neo-Kantian legal conception (rechtsopvatting), particularly of the Baden School: Rickert, Windelband and Lask. And from this [school], the philosophy of value (waardenfilosofie) was an essential part.”[5]

The Baden School was famous for its signature inquiries into the question of values (axiology) and its
universalizability.[6] It deems certain values as belonging to a priori categories—that is they exist without the need of experience—and consequently are logically deducible.[7] In fact the pioneer of the value theory, Wilhelm Windelband, considered that philosophy’s main objective was to discover universally valid values.[8] Heinrich Rickert, Windelband’s protégé, developed value theory primarily to establish the objectivity of cultural sciences.[9] However his value theory can stand on its own as a basis for inquiries into other branches of humanities, such as legal philosophy.[10] The following paragraph, drawn from Oakes,[11] attempts to summarize Rickert’s expansive value theory.

Suppose there are two culturally infused interpretations that are attached to one segment of empirical reality, and these interpretations are incompatible with one another. Despite their mutual-exclusiveness, both may—in theory—be empirically valid. This requires a decision to pick which of these two interpretations (which is essentially values attached to the empirical reality) is objective regardless of the cultural influence. To solve this problem, Rickert begins by positing the objectivity of values, that “there are principles that are independent of values, which provide the base for deciding among those values,”[12] i.e. deciding that certain values are universally valid and beyond the reach of cultural and historical influence. Rickert then continues with a meta-empirical assumption: “some values are unconditionally valid and... all human value positions stand in a more or less proximate relation to them that is defined as more than capricious” (original italics).[13] In other words, Rickert suggests that human values that are shaped by cultural norms congregate in a varied but certain distances from these valid values, such that “the degree of consistencies or inconsistencies between cultural values and universally valid values can be fixed.”[14] In short, (human) values practically “express proximate universals across cultures and eras.”[15] It was not important to know precisely what the unconditionally valid values are. In fact, Rickert suggests that we do not know what they are, but we sense that they exist. As we grasp the degree of consistency and inconsistency between human values and the universally valid values, then “the objectivity of value relevance...can be demonstrated.”[16] As a result, Rickert concludes, “the attempt to establish knowledge of the unique process of history with reference to normatively general values can no longer be regarded as a product of mere caprice.”[17] This is the point where Rickert establishes the objectivity of cultural science, more specifically in the study of history.

In summary, the Baden school’s value theory posits that universal values exist regardless of the particular experiences various human societies went through over the span of historical, cultural, and sociological evolutions. The theory deeply influenced continental legal philosophy during its heyday. In later sections I will demonstrate how this value theory undergirds Paul Scholten’s outlook in preparing the curriculum and pedagogy for the Rechtshogeschool.

PREPARATORY WORKS AND REACTIONS FROM THE INDIES

The works to prepare the founding of the Rechtshogeschool began in 1919 when the governor general created the Commission to Reform the Native Rechtsschool[18] (henceforth “the Indies commission”). Its task was to investigate the possibilities to reform the existing Rechtsschool. Colonial officials found it urgent to establish a college-level legal education because the Indies had experienced a shortage of jurists, which led to employing retired public officials of European origins to serve in the native courts.[19] Further, the pressure was mounting to unify the legal system, which presumably would grant the native population more legal certainty than the existing plural system.[20] The Indies Commission concluded it was necessary to establish a college-level legal education institution in the Indies itself, a school that was designed with the Indies’ specific needs and conditions in mind. A law college would provide a path to a modern legal system in the Indies, as it would train jurists—Indonesian, European and Foreign Orientals alike—to serve in a unified administration of justice. In 1924, the Minister of the Colonies appointed Paul Scholten to finalize the
Around the same time in 1920, the Netherlands appointed a separate commission to establish a legal training specifically designed for the Netherlands-Indies (henceforth “the Netherlands Commission”), whose views diverged widely from that of the Indies commission. [21] No contacts existed between the two commissions until the end stage of the Indies Commission’s assignment. The latter was disturbed by what they implied as the Netherlands Commission’s presumptuousness. [22] They wrote, “…the commission in the Netherlands has not even considered whether college-level legal education in this land [the Indies] would be useful and necessary, but immediately assumed that it must be acquired in the Netherlands.”[23]

The lack of communication resulted in many disagreements between the two commissions, but the most glaring was the Netherlands Commission decision to drop Latin from the compulsory subjects and to replace it with Javanese—a high language spoken by more than half the population in the Indies. The Netherland’s Commission considered Malay unnecessary because the students’ daily usage was sufficient to sustain their future professional career. The Indies commission disagreed. They argued that Javanese could not become a compulsory subject because other ethnic groups’ mother tongue was not Javanese.[24] Further, everyday Malay was considered a brabbeltaal, laag-Maleisch, a “gibberish, low Malay,” which was insufficient for academic or professional work. Students who speak the language fluently could not necessary read Malay easily. The Indies Commission concluded that, “…a systematic study of Malay is absolutely necessary,”[25] proven by the success in its implementation at the vocational school for law and administration [STOVIA]. The Indies Commission regretted the Netherlands decision about Latin that risked the deterioration (beschlechtering) of law study in the colony. Only the principle of education concordance led the Indies Commission to follow the Netherlands Commission’s lead. The sharp divergence between the two commissions incited varied reactions in Indies newspapers.

Latin or No Latin, Reactions from the Indies

Articles in the local newspapers were surprisingly well informed on the inner processes in the preparatory works. Paul Scholten followed these public reactions, proven by newspaper clippings carefully preserved in his personal archive. Only one clipping was written in Malay and published in Neratja. Folded with the clipping was a typed translation in Dutch.

Neratja: Rechtshogeschool di Hindia, March 1st 1924

On March 1st 1924 Neratja, a prominent Malay language newspaper published a compelling article that criticized the Indies Commission’s plan on admission requirements and the role of Latin in the admission and in the curriculum.[26] In the Indies Commission proposal, admissions were prioritized for those who had passed either the final exam of the Western-classical division of the Algemene Middelbare School (AMS), the final exam of Netherlands gymnasium or equal, or the state exam division A or B in the Netherlands; these educational institutions taught Latin to the students. The Commission suggested that Latin be made a compulsory course in the school, a subject not traditionally offered in law colleges in the Netherlands as students had to have solid knowledge of Latin upon admission.

Neratja disagreed with this proposal. It suggested that the Rechtshogeschool admit graduates of AMS of both Western and Eastern classical languages division, HBS students who had no Latin proficiency, and Rechtsschool graduates, known also as rechtskundigen. In fact the rechtskundigen should get priority admission.[27] Neratja pleaded with the government to follow Leiden University’s policy to waive candidaatsexamen for the rechtskundigen that had allowed
them to graduate from the Faculty of Law and Letters in two years. Neratja pointed out how the Indies Commission’s exclusive proposal would reduce the pool of students to such a low number to justify running the law college. The author questioned the practicality to require proficiency of Latin for the Netherlands Indies law study: “Does the Indies population need to study Latin because the judges speak in Latin, or do the judges need to have fluency in the plaintiff’s native tongue?”[28]

Through its article Neratja attempted to demonstrate how the requirement of Latin was based neither on relevance nor usefulness for practicing law in the Indies. Rather, Latin was a criterion for membership to a peculiar, elite club that separated the autochthonous population from what I term “authentic Europeans.” Neratja found such requirements and limited admission of rechtsekundigen to the school absurd; the acute shortage of jurists, the ineffective service of retired European officials at landraden, and the cosmopolitan nature of the Indies requiring legal training specific to the Indies situation were the reasons for establishing the college in the first place. In other words, Neratja signaled that what was urgent was justice, not formalities that slavishly followed the Netherlands law curriculum. Rather than knowledge of Latin, it was justice that was highly valued by Indonesians. This, I suggest, was a nod to Heinrich Rickert’s argument on the existence of universally valid values.

As Neratja published the article on March 1 after Scholten’s arrival in the Indies and before his meeting with the Indies luminaries on March 19, Scholten must have read a translation of this article before the meeting. He would have felt vindicated by the indigenous voice on the irrelevance of Latin in the Indies legal education.[29]

De Nieuwe Courant, 31 January 1924

An earlier article published in January 1924 by De Nieuwe Courant represented a different segment of the Indies population: the White Europeans who demanded classical education. [30] The article argued that there was no need for a law college that would “produce second-rate lawyers”; what was more urgent was a classical education. The government was responsible to provide a classical education for the European population who settled in the Indies. It would lure to the colony Europeans who were “good workers, not second-rate workers.”[31] The article went on,

The so-called classical preparatory trainings are non-existent in the Indies; the Indies knows neither gymnasium nor lycceum. Yet, people want to found a law college! Without the study of the classical languages! Don’t they see that with such training the graduated jurists will never be equal to those that the Netherlands universities produce? That the better-situated portion of the European population indeed prefer to send their children to the Netherlands than to let them acquire a degree [here] which only has value in the Indies, with the graduate bound to the Indies? That is how the surrogate-jurists, the second-tier scholar come into being.[32]

Surrogate-jurist, second tier scholars, these derogatory terms marked De

Nieuwe Courant’s doubt that Indies trained jurists in Netherlands-Indies law had the capacity to be “full-fledged” jurists like the ones trained in the Netherlands, particularly when they lack classical training. That these jurists would not acquire European graduates’ cognitive categories of justice was both a racist and an elitist claim. This article revealed the desire for authenticity among certain members of the European population in the Indies, which they believed would be made possible through classical education. It voiced a longing for equality, prestige, and the same footing as “authentic Europeans” coming from the Netherlands.[33]

The disagreements on the role of Latin went beyond the confines of the two commissions. In fact it incited debate...
among the Indies population about proper training for the Indies jurists. One side wanted a legal education that would produce lawyers who could serve the specific needs of the Indies, while another a legal education that followed a strict concordance to the Netherlands law curriculum. In doing his job, Paul Scholten undoubtedly faced a tug of war between inclusivity versus exclusivity, context versus tradition, relevance versus “authenticity,” true justice versus formality. It is in this sense that his pragmatic proposal to do away with Latin in particular and classical training in general was a liberating force: the longing and pursuit of justice are universal values innate in every society. It does not depend on classical training or proficiency in Latin. In fact, Scholten explicitly stated this in his inaugural speech: “De behoefte aan recht heeft God zelf in ons hart gelegd,” the need for justice God himself has placed in our heart.[34]

PAUL SCHOLTEN’S PROPOSAL

When Paul Scholten arrived in the Indies in 1924, he was received with some semblance of skepticism.[35] Scholten, however, quickly gained the Indies’ respect due to his “deep interest in the people, a warm love for the new country, an unshakable conviction about the role and value of science coupled with a vivid experience in higher education, and a deep faith.”[36] He was gracious and inclusive in preparing the school’s founding: He talked to many segments of the Indies population; he traveled to Sumatra as well as Java to meet plantation operators (ondernemers); he went to visit schools like HBS, AMS, Rechtsschool, Bestuurschool, STOVIA, and even schools run by Taman Siswa—later declared “wild” by the government; he visited factories and hospitals; all these in order to gain insight into the best way the Rechtshogeschool could serve the Indies. Scholten’s genuine interest in setting up a school that would truly benefit the colony won him the respect of many in the Indies.[37]

To implement his task, Scholten had complete access to the Indies and the Netherlands commission reports, as well as the Indies’ newspaper articles published in Dutch and Malay discussed in the previous sections. They must have given him a better understanding of the dynamics as well as tensions within the Indies and between the Indies and the Netherlands. If he was unnerved by the feuding clamors, he kept it in check. The proposal he submitted to the Governor General exuded confidence, and he tackled skepticism diplomatically as recorded in the transcript of discussions he had with the Indies high-ranking officials.

In setting the curriculum, Scholten underlined his departure from the Netherlands law curriculum set by the 1921 Academic Statute. He found the curriculum too much of a compromise of various trends. Although the Netherlands-Indies law curriculum in the same Statute[38] did consider Indies specific needs, he found it neglected foundational courses such as philosophical introduction to the principles of law and economics (wijzgerige inleiding in de rechtsstudie and staathuishoudkunde). Agreeing with the Indies commission findings, he considered that the Indies curriculum must be developed independently of the Netherlands with the Indies’ unique conditions in mind. He laid out five principles that guided his proposed curriculum and pedagogy[39]:

1. In range and depth, the study must be equivalent with that in the universities in the Netherlands. It must concentrate on educating jurists for the practice [of law] in a scholarly manner.

2. Legal subjects/courses should stand in the foreground. Focus, and not unrelated sprawls of courses, is urgently necessary for the formation of the young mind (jeugdigen geest).

3. A good legal study is not possible without broad cultural-study education. A good place must be given for those sciences in which the society where the law applies itself is the subject.

4. The dichotomy between Western- and Eastern-oriented [topics] must be disregarded. The school must focus on the
presently applied law in the Indies, regardless of its origin.

5. The pedagogical approach should rely on two principles: from the simple and easy to the difficult and intricate, and from bondage (gebondenheid) to freedom (vrijheid).

In contrast to the Indies Commission’s suggestion, Scholten argued that Roman law not be made a compulsory course—with significant consequence for Latin—because even in the Netherlands it was studied only as a part of a course on the legal system (rechtsstelsel) that formed Dutch law.[40] In the case of the Indies, Roman law was only relevant as a part of world history where its unique characteristic is situated. For those who decided to specialize in civil law (privaatrecht), a specialization taken in the fourth year, he conceded that an elementary understanding of Latin was necessary. Consequently, it was not necessary for all students to study Latin. Scholten openly admitted that this proposal would allow him the flexibility to take in Hogere Burgerschool’s (HBS) natural science and AMS eastern classics students after the prioritized AMS western classic students.[41]

In contrast to Latin, Scholten underscored the importance of proficiency in the vernacular languages for reasons more profound than pragmatic. He wrote,

Further an Indonesian language is included in the program. The students of indigenous origin must learn to think scientifically (wetenschappelijk) in their own language. For the others [non-Native students] at least the study of one language is necessary for an adequate knowledge of the native life…. It is important for students to understand the structure of the society in which the law is applied…but that of anthropological knowledge (volkenkunde) only becomes of greater importance provided it is not a list of curiosa but if it is accepted as a basis of the study of society[42] (emphasis added).

Scholten considered language an essential component in the conception of law as demonstrated in section 10 of the Algemene Deel. Language proficiency is a key to understanding the society upon which certain laws were to be imposed.

But in the paragraph above he pushed further: the requirement to study Malay was not simply to facilitate these future (indigenous) officials to communicate with their fellow compatriots, but, more importantly, to encourage them to think scientifically in their own terms and referring to their own cognitive universe. If the idea of teaching Malay or Javanese in the Indies school curriculum was not new, his reasoning was radically different from the earlier arguments. For example, Algemene Nederlands Verbond (ANV, General Dutch League) proposed teaching Malay because Dutch was too difficult to become the lingua franca in the Indies.[43]
I suggest that herein lays the key point to Scholten’s position: Proficiency in Latin in itself was not one of the universally valid values. It was only a human value infused by Western civilization that congregate around a certain universally valid value, in this case justice. Vernacular languages were equally valuable like Latin. They contain in themselves conceptions—in the Kantian sense of the term—that were based on empirical facts. These conceptions congregate in a proximity to justice, the same universally valid value to which Latin stands at a proximate distance.

Mastery in these languages and of the society where the jurists were immersed in by way of anthropology, sociology and other social sciences, to Scholten, were priorities more important than the knowledge of Latin. He further defended his proposal to drop Latin by arguing that Roman law was “only relevant in its meaning in world history.”[44]

Although he acknowledged that in the civil law there would be repeated reference to Roman law, Latin still “lies too far from the sphere of thoughts of the Indies society for them to make use of it as an introduction to legal study.”[45]

The opinion that Roman law was a law par excellence, he underscoring, was no longer valid.

**Discussion with the Indies Commission**

High-ranking officials in the colony questioned Paul Scholten’s stance on Latin. In an important meeting on March 19th, 1924, they had a chance to challenge him.[46] The president of the Supreme Court, P.W. Filet argued that because indigenous students were already naturally familiar with Indonesian languages, providing academic training in Malay was unnecessary; lack of Latin, on the contrary, would handicap those who would later decide to pursue a career in criminal law.[47] Based on the value of classical upbringing that Latin would provide[48] and the practical usefulness of knowing Latin, Scholten explained, Latin was irrelevant for the East Indies. He deemed classical education in the Indies was “somewhat unattainable *(iets onbereikbaar)* even for the students at Algemene Middelbare School Western-classics section,”[49] a surprising comment noting his general tendency to be generous.

In another article that touches upon Scholten, I suggested a possibility of racial prejudice in this statement.[50] After examining Scholten’s Neo-Kantian leaning, I would like to suggest a more charitable view here: First, Scholten most likely was unconvinced that the students would be able to overcome the spatial, geographical, and cultural boundaries they were confronted with to imagine and to recognize symbols and values offered in a classical training. Further, Scholten must have been skeptical that knowledge of Latin would be as effective as vernacular languages in leading Indies jurists to justice and legal science *(recht enrechtswetenschap)* most relevant to the local condition. He considered more urgent a formal training facilitating a strong grasp of local languages beyond a mere lingua franca—in terms of linguistics and philosophical aspects, and that it would result in legal jurisprudence that intimately responded to specific cultural, historical, and sociological contexts in the Indies. On top of that, Scholten was perhaps wisely aware that many of the students would not specialize in European commercial law where the fluency of Latin would be most needed. In fact Indonesian lawyers did not thrive in this career specialty because most European companies in the Indies preferred to deal with European lawyers.[51]

In conclusion, Scholten argued that Latin was irrelevant to the study of criminal law; it became necessary only when one wanted to do a deeper study of civil law and Roman law. Thus, to require all students to study Latin for the sake of appearance was of “questionable wisdom.”[52] Scholten’s credential as a professor of Roman law made it especially hard to argue against his conviction. After all, he had taught Roman law in the University of Amsterdam for many years and had observed the urgency or the lack of it for the Indies.[53]

In this section I have demonstrated how Paul Scholten’s pragmatic approach in designing the curriculum for the Rechtshogeschool democratized legal education in the Indies. His proposal to push Latin to the background enabled him
to expand the pool of eligible students to be admitted to the school beyond those who were trained only in Western classics. His firm insistence in offering Malay or Javanese as a compulsory vernacular language to master expanded the students’ universe of reference beyond the western confines. Further, by forcing Indonesian students to master their own language and to think scientifically in it, he established that scientific knowledge was not a monopoly of European tradition. Scholten thus believed scientific pursuit to be one of the universally valid values innate in human beings regardless of their linguistic reference. This position reflects Heinrich Rickert’s identification of science as a universal good that contains the universally valid value of truth.[54]

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Paul Scholten came to the Indies twice totaling seven months; he worked tirelessly to fulfill his task. In May 1924, he went back to the Netherlands to coordinate with the Ministry of the Colonies, and—important to note—to recruit two teaching staff. Out of eight staff needed to teach nineteen courses, Scholten specifically requested two teaching positions to be filled by recruits from the Netherlands: Civil Law and Civil Procedural Law, and Criminal Law and Criminal Procedural Law. A communication sent by the Department of Education and Religious Affairs to the Governor General stated that Prof. Scholten wished, “...the most appropriate persons must be sought.”[55] A.H.M.J. van Kan, a graduate of the University of Amsterdam who at the time was teaching Roman law at Leiden University, was selected to teach Civil Law and Civil Procedural Law. He became the chairman (voorzitter) after Scholten left for the Netherlands. For the other position, Scholten ended up recruiting a lawyer who already resided in the Indies, J.H.J. Schepper, a high-ranking staff member at the Zendingsconsul. Schepper was also assigned to teach the foundational course, philosophy of law (wijsbegeerte van het recht).[56] Schepper proved himself of an independent mind: In 1927 he wrote a newspaper article that defended Soekarno in his famous trial in Bandung. Other professors assigned students to read this article as a part of their course syllabus.[57] When he came back to Batavia in September, Scholten was ready to launch the school. At the launch in October, he gave a profound speech that offered a window to his vision and philosophy of learning that undergirded the Rechtshogeschool outlook for eighteen years before the Japanese put an end to it.

SCHOLTEN’S PHILOSOPHY OF SCIENCE AND PEDAGOGICAL OUTLOOK

Paul Scholten laid out his philosophy on science and learning in his speech at the school’s inauguration. It was eloquently written and must have been eloquently delivered: Scholten conveyed his respect for the autochthonous society—a society he acknowledged as honoring and recognizing that knowledge is power; his understanding of science that was inspired by a Kantian canon—science as a search to connect a priori concepts (denkvormen) and phenomena; his take on the situatedness of a college of law in the crosscurrent between science and religious knowledge, and between non-Western and Western cultures; and how the founding of the Rechtsschool, “satisfies not only a longing for knowledge, but also a longing for justice.”[58] Stronger than the struggle for power, he reminded his audience, was “an inner conviction that there is a necessity, that people are obligated to certain things and that out of that the demand for justice inevitably arises. The philosophy of our time has again secured a place for this intuitive belief in the system of human thoughts.”[59] He then underlined the importance of how each country needed to have its own legal research center (rechtswetenschappelijk centrum), a reflection of his belief that law has to spring forth from contextualized intellectual struggles. Thus, halfway through his speech, Scholten addressed the skepticism expressed by De Nieuwe Courant by establishing the unconditionally valid value of justice as a means to justify the necessity of a law school in Batavia, which even a skeptic would have found hard to challenge.

Scholten laid out his philosophy on science by underlining what the Rechtshogeschool’s objective should be:
enlightenment for the students, that is a process that leads to a capacity for self-reflection. To Scholten science and learning would lead one to awareness and self-reflection, to a consciousness of one’s obligations defined by deeper values that were above the influence of particular space or time:

The science of science is one of the most difficult matters but this is sure: Science wants something other than knowledge alone. Science wants comprehension (begrijpen), understanding (verstaan); it seeks connection between ways of thinking (denkvormen) and phenomena (verschijnselen), which the human intellect lays out.[61] He continued, “For the human being (mensch) who comes to self-reflection all issues of life finally resolve into two questions: What can I know? What must I do? Questions that for the religious man flow into this deeper third final question: how do I stand with God?”[62] The first two questions are of the Kantian canon, while the third is a question infused by his Christian outlook, where he linked the Kantian ethical question to the responsibility towards one’s relation to God. He pressed on,

What can I know? The question that every science, every knowledge asks about its credentials (geloofabsrieven). What must I do? The question, which would give substance to every living human consciousness that he is obligated to [do] certain things. Justice and legal science stand [for] both [questions].[63]

Science to Scholten thus was a process that connected ways of thinking (denkvormen) and phenomena (verschijnselen), which resulted in “understanding” in the Kantian sense of the term.[64] The point of all this understanding is linked to the question of what one must do with this knowledge: fulfillment of certain obligations, that is to manifest justice and to pursue legal science that would realize justice in concrete terms. Scholten’s view of science as containing the universal value of truth—recognized by way of judgment—echoed Rickert’s method to map concrete goods and their related values.[65] Science in this line of thought is a process to bring to the surface human cognition of universally valid value of truth. Scholten’s conviction was then reflected in his proposal on the pedagogy of the Rechtshogeschool: The essence of good pedagogy is nurturing a transition from bondage to freedom, both in the method of teaching and in the outward design of the courses, which would help students find their vocation. He writes,

As much as possible there must be a guard against that [notion], that Higher Education should impart ready knowledge (parate kennis). Only education that forces independent thinking (zelf denken) is real education…. This is only possible by inspiring and following the interest of the student by giving him a large measure of freedom. That freedom does not mean licentiousness; on the contrary, the student will be under more monitoring on his work than what is common in Holland.[66] [To promote independent thinking]…. Therefore, each class must be a seminar (responsiecollege). In the fourth year the self-motivation will have to take a predominant place in seminar settings (werkcolleges).[67]

It was Scholten’s firm belief that students should be given freedom in choosing their legal specialty. They cannot evade hard work nor be left to choose the subject they would practice without guidance. But, “on the field of these subjects he should follow his own interest as much as possible, he must be self-engaged (in making decisions).”[68]

In his inaugural speech, Scholten reiterated the importance of critical thinking, self-efficacy, the capacity to reflect, to ponder, and to be constantly asking questions. At the end of the day, students must master the subjects themselves through this process. He said, “Die tijd is voorbij, dat memoreereen van een vlijtig neergepand dictaat het einddoel van den student was—Those days are gone, where memorizing industriously penned lecture notes was the goal of the student” (Scholten 1950, 321). He continued,
The students should know that searching, that struggling with the problems out of their own personal experience, they must labor upon it, if only by their willingness to accept the ideas of their teacher, or by their [teacher’s] criticism, which they confront him with. That opens something in their mind, they see something that used to be strange, it awakens something in them, and their minds grow. It comes down to this and not to ready knowledge (paratie kennis). This knowledge is useful and necessary; without it science is not possible, but only if the student at the college has seen some of the scientific method, will he take something from it that has become a value for his life. [69]

Beyond the students, Scholten underscored the importance of intellectually active teaching staff. He said, “…what distinguishes [a higher education] from other tasks is that the professor himself must also be a seeker, that he not only narrates, but he himself must labor in his profession even at the college.”[70]

Despite having read an advice by C. Nieuwenhuis on youth and students’ increasing belligerence towards the colonial government, [71] Paul Scholten remained firm on his conviction to teach vernacular languages and encourage autonomy in the Rechtshogeschool. Nieuwenhuis letter to Engelenberg, a staff at Department of Education and Religious affairs, expressed his concerns on the state of young, educated Indonesian. He blamed it partially on the education system: limited access to education post middle school and to outlet such as sports and other extracurricular activities made the youth look elsewhere for stimulation. They ended up exploring politics and writing nationalist articles in newspapers for a sense of fulfillment. To counter this, Nieuwenhuis urged an expansion of teaching Dutch to ensure the youths’ loyalty to the Netherlands. “Taalpolitiek is reaal politiek,” he wrote, because Dutch was now competing with English and Malay as a result of cultural propaganda from the nationalist camp. This advice, however, failed to deter Scholten.

Paul Scholten aimed for an education that transformed bondage to freedom through particular teaching method and outward design of the courses. His vision for the Batavia Rechtshogeschool was for an education that encouraged finding universally valid values. The universally valid value of truth and justice and its manifestation via legal science could only emerge when nurtured by independent, autonomous individuals, precisely the core of a Kantian moral ethic.

**A PEEK INTO STUDENT LIFE IN THE RECHTSHOGESCHOOL**

On October 21, 1924, the colonial state gazette, *De Javasche Courant*, published the Rechtshogeschool’s bylaws in Staatsblad No. 85, 1924. It laid out rules for admission, the calendar of study, costs, vacation time, courses, and examinations. As Scholten had directed, Latin was demanded only for fourth year students who had no classical background and who opted for a specialty in civil law (Article 21). At the candidaatsexamen Javanese and Malay became the languages of choice as well as subjects to be examined for all students regardless of their specialty. In 1928, students from the Rechtshogeschool, along with students from other colleges, organized the second Youth Congress. They proclaimed the historical “Youth Oath,” where for the first time in the Indies’ history, ethnic identity was superseded by a national identity: they pledged to be one nation, Indonesia; to speak one language, Indonesian; and to consider one motherland, Indonesia. Learning Malay in a formal, academic setting must have spurred the students’ confidence in the language’s unifying potential. Resink underlines the significance of the Rechtshogeschool education in laying out the foundation for this vision among its students.[72] Nowhere else in the Indies higher education were students taught the value of language, culture, and adat, but at the Rechtshogeschool. The roles played by the likes of Soegondo Djojopoespito and Mohammad Yamin in the Youth Conference 1928 reflected the pedagogy of the school.

I have reported anecdotes of the Rechtshogeschool’s student daily life elsewhere.[73] Here I briefly recount several to drive home the argument that in line with Scholten’s outlook, the Rechtshogeschool professors did encourage autonomy
and independent thinking among their students: Students were addressed as “Mister” and treated as adults. They basked in the respectful treatment they received from the professors, director of the dorm, and fellow students.[74] Extensive selections of newspapers were made available in the school dormitory’s library, Oei Tjoe Tat reported, such as Nieuws van de Dag, het Bataviaasch Nieuwsblad, de Java Bode, De Locomotief, Sin Po, and Matahari van Semarang, as well as nationalist-oriented Indonesian-language newspapers like Nationale Commentaren.[75] An article by a nationalist member of the Volksraad, Sam Ratulangi, published in Nationale Commentaren awakened a sense of Indonesian-nationalism in Oei, whose legal status at that time was “Foreign Oriental.” Teaching staff did not shy away from encouraging students to attend Volksraad sessions to familiarize themselves with the nuts and bolts of running a state, which many did. Relations between professors and students were warm and respectful, to the point of father-son/daughter intimacy; Resink recounts how Prof. Schepper were especially close to Amir Sjarifuddin and Ani Abbas Manoppo, while Prof. Logemann to Sjafruddin Prawiranegara and Djokosutono—who for a time served as his teaching assistant. These students came to visit their professors’ house to discuss ideas, listen to music, and even dine.[76] Finally, a particularly shining anecdote was the encounter between Prof. Logemann and Hamid Algadri: Logemann, testing Hamid Algadri’s resolve, allowed Algadri after a ‘tense exchanges’ to reschedule his oral exam on constitutional law so that he could attend his party’s rally in Cirebon.[77]

Through his deeply philosophical outlook, Paul Scholten instituted in the Rechtshogeschool a pedagogical tradition that nurtured autonomy and facilitated independence among the students to think for themselves. The professors embraced his idealism on encouraging freedom wholeheartedly, such that it elevated their relations with their students to collegial, mutually respectful relations. The liberating nature of Paul Scholten’s intervention in the Rechtshogeschool founding made the school’s graduates relevant in the upcoming upheaval in Indonesian history, as has been reported in many historical narratives.[78]

In his conviction, at an awkward juxtaposition to the colonial ideology of control over mind and body of the colonized, Paul Scholten stood tall in quiet defiance.

CONCLUSION

Paul Scholten’s curriculum and pedagogical outlook, which left profound marks in the Rechtshogeschool, were neither shaped by random nor opportunistic positions. They were formulated from a deep thinking process and a solid personal philosophy. Noting his character as a deep thinker, it is unfathomable to consider that he took such a position without contemplating the consequences.

Anecdotal records demonstrated how his intellectual legacy underpinned daily life of the students and teachings at the Rechtshogeschool. Nevertheless these anecdotes are inadequate; we need more thorough research to gain deeper insights into how Rechtshogeschool—and Paul Scholten by implication—have shaped cognitive categories of justice of our early leaders. This is an urgent research to undertake because to orient Indonesian legal education, it is imperative to understand how our nation’s founders came to recognize the universal value of justice from both western and eastern “human values.” If their four years of education brought us the seismic 1928 Youth Conference, perhaps we can hope for our contemporary legal education to bring about “small earthquakes” that raze down false values.
Paul Scholten gave us teaching moments: a direction for legal education cannot be left to chance. It is imperative that it is outlined out of deep philosophy and clear conviction so that the human values it ends up achieving revolve around a true universally valid value.


[4] Hengstmengel, “Paul Scholten En Herman Dooyeweerd”; he was also deeply influenced by Christian theology and personal philosophy of Philipp Kohnstam. See also Bruggink, “Paul Scholten.”

[5] Hengstmengel, “Paul Scholten En Herman Dooyeweerd.” Dooyeweerd qualified this observation by saying that Scholten did not remain faithful to the school because he was also “looking for those last basic concepts (laatste grondbegrippen) and also the concept of law itself in its ultimate meaning in the method of the general legal doctrine (de algemene rechtsleer (Hengstmengel 2010, 16).” However, Dooyeweerd’s definition of the method, “abstract [it] until you come to the principles that you discover again in all branches of jurisprudence, and which must then be purified of their particularity” sounds deeply Rickertian in the ways the method attempts to extract universal principle from across various jurisprudence.

[6] Makkreel and Luft, Neo-Kantianism in Contemporary Philosophy. Baden School is one of two major Neo-Kantian schools of thought. The literature on Neo-Kantian philosophy is extremely vast; understandably my summary of Heinrich Rickert’s value theory is an oversimplification. It only scratches the surface of the theory.


[10] The work of Gustav Radbruch, Rechtsphilosophie (1914), for example, was inspired by Rickert and Baden School Neo-Kantians’ work on value theory, see Zijderveld, Rickert’s Relevance.


[13] Ibid., 44

[14] Ibid., 44
Classical education referred to gymnasium in the Netherlands that prepared students for advanced academic studies in Leiden University, of proposed rules of admission to the Rechtshogeschool and of the state of legal uncertainty in the policy of higher education both in the East Indies and in the Netherlands. It was undoubtedly penned by an ARA, Collectie Paul Scholten, "Newspaper Clipping." folder 77. The Leiden Legacy. The author's real identity remains a mystery.

A number of native jurists who graduated from the Rechtsschool, thwarted this attempt. He argued that a unified legal system would put the indigenous population at a disadvantage with respect to the Europeans, see Burns, The Leiden Legacy.

De Commissie voor de Hervorming van de Opleiding van Indische Rechterlijke Ambtenaren. Snouck Hurgronje was the chair and Cornelis van Vollenhoven the secretary.

Carpentier Alting was a member of a commission that Snouck Hurgronje chaired in 1911 to reform Indology study in the Netherlands, see Fasseur, De Indologen. This fact makes the ‘rift’ even more interesting to dissect.


This opinion resonated with the ongoing debate in the Netherlands and in the Indies at the time about the role of Javanese vs. Malay in colonial education, see Groeneboer, Gateway to the West, 212.


At this time Scholten’s proposal was yet to be finalized and presented to the Indies audience.

The article noted that the draft proposal virtually dismissed the waiver policy at Leiden University Faculty of Law and Letters by not allowing rechtskundigen to apply. A number of native jurists who graduated from the Rechtsschool successfully finished their legal studies at Leiden, a proof that the Rechtsschool provided an excellent preparation for a Meester in de Rechten degree. See Pompe, “A Short Review”; Rechtsschool, Djakarta, Gedenkboek Uitgegeven Ter Gelegenheid van de Opheffing Der Rechtsschool in 1928; and Massier, The Voice of the Law in Transition.

ARA, Collectie Paul Scholten, “Newspaper Clipping.” folder 77.

The article was clearly written by someone well versed in the nuts and bolts of the Rechtsschool education and in the policy of higher education both in the East Indies and in the Netherlands. It was undoubtedly penned by an Indonesian author—noted by the fluid Malay used—who was aware of the exam waiver for native rechtskundige at Leiden University, of proposed rules of admission to the Rechtshogeschool and of the state of legal uncertainty in the landraden. The author’s real identity remains a mystery.

Classical education referred to gymnasium in the Netherlands that prepared students for advanced academic studies.
in universities. Latin was one of the languages taught at a gymnasium.

[31] ARA, Collectie Paul Scholten, “Newspaper Clipping,” folder 77

[32] Ibid. Ironically, it was convenient for the author to forget the fact that the only gymnasium ever opened in Batavia, the Koning Willem III School in 1867 had to shut down its classical education section within 4 years due to low enrollment, see Nasution, Sejarah Pendidikan Indonesia.

[33] Drawing from Jean Gelman Taylor, Ann Stoler explores this anxiety for authenticity further through her interrogation of racial relations and dynamics in the East Indies. Taylor, The Social World of Batavia; Ann Stoler, Carnal Knowledge and Imperial Power; Fasseur made a note of the same anxiety in the closing of a government training school in 1913 in Batavia after 50 years of service because “a candidate for European civil service—thus runs the argument—should study exclusively in Europe.” Fasseur, De Weg Naar Het Paradijs En Andere Indische Geschiedenissen. 61

[34] Scholten, Verzamelde Geschriften van Prof. Mr. Paul Scholten Deel II, 323.


[36] Ibid., 1

[37] Ibid.

[38] This statute was for studies in the Netherlands.


[40] Ibid., folder 70, 13

[41] Ibid., folder 70, 14. For difference of HBS and AMS, see Groneboer, Gateway to the West.

[42] Ibid., folder 70, 9-10

[43] Groeneboer, Gateway to the West.


[45] Ibid.

[46] Among those present were the Governor General M. Fock, Prof. Scholten himself, a member of the Indies Council K.F. Creutzberg, president of the supreme court Mr. P.W. Filet, Secretary General Ch.I.I.M. Welter, the director of the Department of the Interior (Binnenlands Bestuur) L.J. Schippers, the director of Department of Justice Mr. F.J.H.Cowan, the director of the Department of Education and Religious Affairs J.F.W. van der Meulen, and his assistant J. Hardeman, and senior official at the General Secretary Mr. Ed. Broens.


[48] Scholten did not mention it explicitly here, but I suggest that what he meant by the “value of upbringing” was its impact on the worldview of the student.
This is quite similar to what is normally called the mind. It gives rise to the understanding of empirical events (phenomena).

Kantian "understanding" according to the Glossary of Kantian terms written by Prof. Stephen Palmqvist of Hong Kong Baptist University, http://staffweb.hkbu.edu.hk/PPP/Ksp1/KSPglos.html (accessed September 30, 2015), is defined as follows (original italics):

**Understanding**: in the first *Critique*, the faculty concerned with actively producing knowledge by means of concepts. This is quite similar to what is normally called the mind. It gives rise to the logical perspective, which enables us to


[52] Creutzberg, a member of the Council of the Indies (*Raad van Indie*), suspected that criminal law students would end up self-teaching themselves Latin. He deemed that facultative placement of Latin for the criminal jurists was a good way to judge if the practice was feasible. Scholten agreed, but still insisted that it should be gradually let go.

[53] A month after this meeting, De Locomotief—a progressive newspaper—published a series of articles that supported the process and was defensive of Paul Scholten’s appointment. By this time, a revised draft must have circulated among elite residents in the Indies, hence the knowledgeable article that quoted some of the draft text. Agreeing that the Indies should be more independent from the Netherlands in the direction of its higher education system, De Locomotief supported the idea that knowledge of Latin should not be obligatory for admission.

[54] See Staiti, “Heinrich Rickert.” for a quick explanation of Rickert’s six domains of values, one of which is the domain of logic that hosts science as a universal good.


[57] Djalins, “Re-Examining Subject Making.”


[59] Ibid., 323

[60] *Denkwormen* here refers the second component in Kantian concept formation. The first would be the capacity of the senses (*zinlijk*) that brings about intuition, followed by capacity of the intellect (*verstandelijk*) that brings about concepts. *Denkwormen* in this sentence thus refers to concepts/ways of thinking brought about by the process of meaning making of empirical events (phenomena).


[62] Ibid., 320

[63] Ibid., 320

[64] Kantian “understanding” according to the Glossary of Kantian terms written by Prof. Stephen Palmqvist of Hong Kong Baptist University, http://staffweb.hkbu.edu.hk/PPP/ksp1/KSPglos.html (accessed September 30, 2015), is defined as follows (original italics):
compare concepts with each other, and to the empirical perspective (where it is also called judgment), which enables us to combine concepts with intuitions in order to produce empirical knowledge. The first Critique examines the form of our cognitions in order to construct a system based on the faculty of understanding (=the theoretical standpoint). (Cf. sensibility.)

[65] See Staiti, Heinrich Rickert, for a brief introduction to Rickert system of values that maps link between concrete goods and values in six domains.

[66] See Djalins, “Re-examining Subject Making,” on the independent nature of university study in the Netherlands, wherein students at the United Faculty of Law and Letters in Leiden had to navigate practically on their own. Scholten and the Indies Commission considered a more involved teaching by the professors preferable for the Indies.


[68] Ibid.


[70] G.J. Resink in “Rechtshogeschool” recounts concrete expressions of the professors’ commitment to this principle. See also Bruggink, “Paul Scholten”, fn. 17, a report by one of Scholten’s own students on how he put this didactical insight into his own lecture.


[72] Resink, “Rechtshoogeschool.”

[73] Djalins, “Re-Examining Subject Making.”

[74] Agung, Kenangan Masa Lampau; Algardri, Mengarungi Indonesia.

[75] Beynon, Verboden Voor Honden En Inlanders.

[76] Resink, “Rechtshoogeschool.”

[77] Algardri, Mengarungi Indonesia.

[78] For example, see Lev, “Origins.”

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